

SUBSIDIARY LEGISLATION 370.32

INVESTMENT SERVICES ACT (DEPOSITARIES OF COLLECTIVE INVESTMENT SCHEMES) REGULATIONS

5th April, 2016

LEGAL NOTICE 114 of 2016, as amended by Legal Notice 189 of 2026.

Substituted by:
L.N. 189 of 2026.

	Arrangement of Regulations	Regulations
Part 1	Preliminary	1 - 2
Part 2	General requirements applicable to depositaries of collective investment schemes	3 - 14
Part 3	Requirements applicable to depositaries of UCITS	15 - 25
Part 4	Depositaries of AIFs	26
Part 4a	Requirements applicable to depositaries of AIFs	27 - 37
Part 4b	Requirements applicable to depositaries of specific AIFs	38 - 44
Part 5	Requirements applicable to depositaries of collective investment schemes other than UCITS and AIFs	45 - 47

Part 1

Preliminary

1. (1) The title of these regulations is the "Investment Services Act (Depositaries of Collective Investment Schemes) Regulations.

Citation and scope.
Amended by:
L.N. 189 of 2026.

(2) The objective of these regulations is in part to transpose the following:

- (a) Articles 22, 22a, 23, 24, 25, 26 and 26a of the UCITS Directive; and
- (b) Articles 19(4) second sub-paragraph, 21 and 61(5) of the AIFMD.

(3) These regulations shall be applicable to depositaries of all collective investment schemes.

2. (1) In these regulations, unless the context otherwise requires:

Interpretation.
Amended by:
L.N. 189 of 2026.

"the Act" shall mean the Investment Services Act;

Cap. 370.

"AIFMD" means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers, as may be amended from time to time;

"alternative investment fund" or "AIF" means a collective investment scheme, including the subfunds thereof, which raises capital from a number

of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and which does not qualify as a UCITS Scheme in terms of the UCITS Directive;

"alternative investment fund manager" or "AIFM" means a legal person whose regular business is the management of one or more AIFs;

"central securities depository" or "CSD" shall have the same meaning as assigned to it in point (1) of Article 2(1) of Regulation (EU) No 909/2014;

Cap. 370. "collective investment scheme" or "scheme" shall have the same meaning as that provided in the Act;

Cap. 330. "the competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;

"CRD" means Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"CRR" means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"depository" means an investment services licence holder that is licensed to provide depository services to any collective investment scheme;

"depository functions" means the functions which shall be carried out by a depository in accordance with these regulations;

"depository lite" means a depository that is licensed to provide depository services limitedly to collective investment schemes as referred to in regulation 4(3);

"depository services" means the investment services established in item 5(c) of the First Schedule of the Act;

"Directive 2010/43/EC" means Commission Directive 2010/43/EC of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depository and a management company as may be amended from time to time and includes any implementing measures that have been or may be issued thereunder;

"Directive 2006/73/EC" means Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational

requirements and operating conditions for investment firms and defined terms for the purposes of that Directive as may be amended from time to time and includes any implementing measures that have been or may be issued thereunder;

"European depositary" means an entity established in a Member State other than Malta that is subject to the provisions of Article 21 of the AIFMD, as transposed in national law;

"European regulatory authority" means the body or bodies designated by a Member State or an EEA State other than Malta in accordance with Article 44 of the AIFMD to carry out the duties provided for under the different provisions of the said Directive;

"Extraordinary Investor" means an investor which qualifies as an extraordinary investor in accordance with the Investment Services Rules;

"financial instrument" means a financial instrument as specified in Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments;

"fund manager" means the entity responsible for the discretionary investment management of the assets of a collective investment scheme and it shall include an AIFM and a UCITS management company;

"home Member State" shall have the same meaning as assigned to it in paragraph (p) of Article 4(1) of the AIFMD with respect to an AIF, and that assigned to it in paragraph (q) of Article 4(1) of the AIFMD with respect to an AIFM;

"IFD" means Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"IFR" means Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"investment services licence holder" means a person licensed in accordance with article 6 of the Act to provide any of the investment services established in the First Schedule to the Act;

"Investment Services Rules" means the Rules issued by the competent authority pursuant to the provisions of the Act;

Cap. 370.

"Maltese UCITS" means:

- Cap. 370. (a) an investment company, a partnership *en commandite* or a limited partnership with its registered office and head office situated in Malta and licensed in terms of the Act; or
- S.L. 370.16 (b) where the UCITS is constituted as a common fund, a UCITS domiciled in Malta in terms of the Investment Services Act (Contractual Funds) Regulations and licensed in terms of the Act; or
- Cap. 370. (c) where the UCITS is established as a unit trust, a unit trust whose proper law is the law of Malta;

"management body" shall mean the body with the ultimate decision-making authority in a management company or fund manager, investment company or depositary, comprising the supervisory and the managerial functions, or only the managerial function if the two functions are separated;

"Member State" means a Member State of the European Union or an EEA State;

"MIFID" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast), as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"Professional Investor Fund" or "PIF" means a collective investment scheme which qualifies as a professional investor fund in accordance with the Investment Services Rules;

"Qualifying Investor" means an investor which qualifies as a qualifying investor in accordance with the Investment Services Rules;

"Regulation (EU) No. 231/2013" shall mean Commission Delegated Regulation (EU) No. 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision;

"Regulation (EU) No 909/2014" means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012, as amended from time to time, and includes any binding legal instruments, guidelines and other measures that have been or may be issued thereunder;

"UCITS" means undertakings for collective investment in transferable securities in terms of the UCITS Directive as defined herein;

"UCITS Directive" means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast), as amended by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014;

"UCITS management company" means a management company authorised by a European regulatory authority or the competent authority and the regular business of which is the management of UCITS.

(2) Words and expressions which are also used in the Act shall have the same meaning as in the Act. Cap. 370.

Part 2

General requirements applicable to depositaries of collective investment schemes

3. This Part shall apply to depositaries of all collective investment schemes. Applicability of Part 2.

4. (1) An entity shall be licensed under the Act to provide depositary services to a collective investment scheme. Requirement of a licence.
Substituted by:
L.N. 189 of 2026.

(2) An entity may be licensed under the Act to provide depositary services to any type of collective investment scheme.

(3) Without prejudice to sub-regulation (2), an entity may be licensed under the Act to provide depositary services limitedly to:

- (a) AIFs marketed in Malta in accordance with regulation 7 of the Investment Services Act (Alternative Investment Fund Manager) (Third Country) Regulations; S.L. 370.24.
- (b) AIFs which have no redemption rights exercisable during the five (5) year period from the date of initial investment, and which generally do not invest in assets that shall be held in custody in terms of the Investment Services Rules; and, or
- (c) Professional Investor Funds targeting Qualifying Investors and Extraordinary Investors.

5. (1) The collective investment scheme or the fund manager on behalf of the scheme shall ensure that a depositary is appointed. Written contract.

(2) The appointment of the depositary of a collective investment scheme pursuant to sub-regulation (1) shall be evidenced by a written contract also referred to as the custody agreement.

(3) The depositary agreement shall, *inter alia*, regulate the flow of information deemed to be necessary to allow the depositary to perform its functions for the scheme for which it has been appointed as depositary in accordance with these regulations.

6. (1) The depositary shall have the right to charge fees to the scheme and to be reimbursed for expenses in accordance with the terms and conditions of the depositary agreement referred to in regulation 5. Depositary's fees.

(2) The depositary may, if authorised to do so by the terms and conditions of the custody agreement, exercise a right of retention over the assets of the scheme held under its control, to the extent of any lawfully due but unpaid fees and expenses, until such fees and

expenses are paid.

Termination of the
custody agreement.

7. (1) Without prejudice to any requirements as may be prescribed by the competent authority, a depositary agreement may be terminated by the scheme, by the fund manager, by the depositary or by order of the competent authority:

Provided that the fund manager may terminate the depositary agreement in the case where it is a party to the agreement and it has been granted termination rights.

(2) The depositary shall proceed with the conveyance of the assets held for the scheme as stipulated in the depositary agreement or as instructed by the scheme.

Termination of
appointment.
Amended by:
L.N. 189 of 2026.

8. (1) The termination of the appointment of the depositary in accordance with the provisions of regulation 7 shall only come into force following the lapse of a transitional period of three months from the date of the notification to terminate the custody agreement, within which the scheme or the fund manager on behalf of the scheme is to appoint another depositary:

Provided that the three-month transitional period shall not apply in the instances where the depositary agreement includes clauses which provide for its immediate termination.

(2) At any time prior to the expiration of the transitional period, the depositary and the scheme or the fund manager on behalf of the scheme may, by agreement, extend the transitional period.

(3) Where the scheme, the fund manager on behalf of the scheme or the depositary serves notice to terminate the appointment of the depositary, it shall simultaneously notify the competent authority of the intended termination of the appointment of the depositary and of the transitional period specified in sub-regulation (1).

(4) In the case where following the lapse of the transitional period, the scheme, or the fund manager on behalf of the scheme, fails to find a replacement for the outgoing depositary, the scheme, or the fund manager on behalf of the scheme shall immediately notify the competent authority.

(5) Following an assessment of the case, the outgoing depositary shall, in accordance with the directions given by the competent authority, provide the monitoring, safekeeping and oversight functions as the case may be in relation to the assets of the scheme:

Provided that, having regard to the circumstances of the case, the competent authority may also order the suspension of the collective investment scheme licence or the liquidation and winding up of the scheme.

Replacement of the
depositary.

9. The constitutional documents of the scheme shall lay down the conditions for the replacement of the depositary as well as rules to ensure the protection of unit-holders in the event of such

replacement.

10. In the event of insolvency of the depositary and, or of any third party located in any Member State or EEA State to which custody of assets has been delegated, the assets of the scheme held in custody shall not be available for distribution among, or realisation for the benefit of, the creditors of such a depositary and, or such third party.

Insolvency of the depositary.

11. (1) A depositary holding assets of a scheme in custody shall hold such assets solely for and on behalf of and in the interest of the scheme and its investors.

Assets held by the depositary constitute a distinct patrimony.

(2) Notwithstanding the provisions of article 1894 of the Civil Code, the assets held by the depositary shall be deemed to constitute a distinct patrimony, separate from that belonging to the depositary and from that of other collective investment schemes, the assets of whom are also held by the depositary.

Cap. 16.

(3) Except as expressly provided in the depositary agreement entered into between the depositary and the scheme or the fund manager on behalf of the scheme and notwithstanding the provisions of the Civil Code, the control of assets of the scheme, shall not give or be deemed or construed to give to the depositary any rights over such assets nor shall it create any form of loan between the depositary and the scheme and this notwithstanding the nature of the assets or the rights or obligations of the depositary in relation to the assets.

Cap. 16.

12. (1) The scheme whose assets are held by a depositary enjoys a right of ownership in such assets notwithstanding that they may be registered in the name and title of or are otherwise vested in the depositary.

Scheme enjoys right of ownership in assets.

(2) The records, accounts and other statements held or issued by the depositary shall, saving any proof to the contrary, constitute evidence of their contents and of the right of ownership of the scheme as provided in terms of sub-regulation (1).

13. (1) The creditors of the depositary shall have no claim or right of action on or against the assets held by the depositary for and on behalf of the scheme and such assets shall not be affected in any manner by the provisions of laws and regulations in force regulating the insolvency or bankruptcy of the depositary.

Assets held under control not subject to the rights of creditors of the depositary.

(2) In the event of any such insolvency or bankruptcy or related order or resolution, or in the event that the competent authority so requires, the depositary or any administrator or receiver or other officer appointed to represent it by any court or otherwise, shall on demand of any scheme or of the competent authority, immediately transfer the control, possession and title of all assets held by or in the name of the depositary on behalf of the scheme to another depositary or to such other person as may be instructed by the scheme or by the competent authority.

Cap. 12.

(3) In the event that any assets held by the depositary are, at the request of any creditor of the depositary, made subject to any precautionary or executive act or warrant granted by any Court in terms of the Code of Organization and Civil Procedure, the scheme on whose behalf such assets are being held or the competent authority may, by application to the Court, request the release of the assets from such act or warrant and the Court shall on production of evidence, as it may deem fit, accede to the application without delay.

Applicability of the
Duty on
Documents and
Transfers Act.
Cap. 364.
Cap. 123.

14. (1) The delivery of the assets of a scheme to a depositary and from a depositary to a scheme or another depositary for the purpose of these regulations shall not be deemed to constitute a chargeable transfer for the purposes of the Duty on Documents and Transfers Act and for the purposes of article 5(1) of the Income Tax Act, where the delivery of such assets does not constitute a change in the beneficial owner of the assets.

(2) For the purposes of this regulation, beneficial owner means a person who is the real owner of, or who is otherwise beneficially entitled to, the assets held by the depositary, as is provided in regulation 12.

Part 3

Requirements applicable to depositaries of UCITS

Applicability of
Part 3.

15. (1) This Part shall apply exclusively to depositaries of UCITS.

(2) The depositary of a Maltese UCITS shall also be guided by the provisions prescribed in the Investment Services Rules for Investment Services Providers applicable to depositaries.

Appointment of the
depositary.

16. (1) The UCITS management company shall ensure that a single depositary is appointed for each UCITS it manages.

(2) Where the scheme is a self-managed UCITS, it shall ensure that a depositary is appointed.

Eligibility criteria.
Amended by:
L.N. 189 of 2026.

17. (1) The depositary of a Maltese UCITS shall have an established place of business in Malta.

(2) The following entities shall be eligible to provide custody services to a UCITS:

Cap. 371.

- (a) a national central bank;
- (b) a credit institution authorised in accordance with the CRD and in possession of a licence issued in terms of the Banking Act;
- (c) a branch established in Malta of a credit institution authorised in a Member State or EEA State;
- (d) a company incorporated in Malta, which is wholly owned by a credit institution, provided that the liabilities of the company are guaranteed by the credit institution, and the credit institution is either a Maltese credit institution or a credit institution established in

an EU Member State or an EEA State and authorised in accordance with the CRD:

Provided that the entity referred to in this paragraph (d) shall be required to have a minimum of one director who is resident in Malta on its board of directors;

- (e) an investment firm or branch of an investment firm established in a Member State or EEA State other than Malta subject to capital adequacy requirements in accordance with the IFD and the IFR including capital requirements for operational risks and authorised in accordance with MIFID and which also provides the ancillary service of safe-keeping and administration of financial instruments for the account of clients, including custody and related services such as cash or collateral management in accordance with point (1) of Section B of Annex I of MIFID:

Provided that such investment firms shall in any case have own funds not less than the amount of initial capital referred to in Article 9(1) of the IFD, as transposed in the Investment Services Rules:

Provided further that the entity referred to in this paragraph shall be required to have a minimum of one (1) director who is resident in Malta on its board of directors.

- (3) The entities referred to in sub-regulation (2) shall be in possession of a licence issued in accordance with article 6 of the Act to provide depositary services.

Cap. 370.

- (4) An entity which is referred to in sub-regulation (2)(c), (d) and (e) shall be subject to prudential regulation and ongoing supervision and shall satisfy the following minimum requirements:

- (a) it shall have the infrastructure necessary to keep in custody financial instruments that can be registered in a financial instruments account opened in the depositary's books;
- (b) it shall establish adequate policies and procedures sufficient to ensure compliance of the entity, including its managers and employees, with its obligations in terms of these regulations;
- (c) it shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment and effective control and safeguard arrangements for information processing systems;
- (d) it shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest;
- (e) it shall arrange for records to be kept of all services, activities and transactions that it undertakes, which shall be sufficient to enable the competent authority to

fulfil its supervisory tasks and to perform the enforcement actions provided for in these regulations as well as in the applicable Investment Services Rules;

- (f) it shall take reasonable steps to ensure continuity and regularity in the performance of its depositary functions by employing appropriate and proportionate systems, resources and procedures including to perform its custody activities;
- (g) all members of the management body and the senior management of the said entity shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience;
- (h) the management body of the said entity shall possess adequate collective knowledge, skills and experience to be able to understand the depositary's activities, including the main risks; and
- (i) each member of the management body and senior management shall act with honesty and integrity.

(5) *Repealed by Legal Notice 189 of 2026.*

Conflicts of
interest.
*Amended by:
L.N. 189 of 2026.*

18. (1) No company shall act as both UCITS management company and depositary.

Cap. 370.

(2) A scheme which is in possession of a collective investment scheme licence issued in terms of the Act shall not act as depositary.

(3) In carrying out their respective functions, the UCITS management company and the depositary shall act honestly, fairly, professionally, independently and solely in the interests of the UCITS and the investors of the UCITS.

(4) A depositary shall not carry out activities with regard to the UCITS or the UCITS management company on behalf of the UCITS, that may create conflicts of interest between the UCITS, the investors in the UCITS, the UCITS management company and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary functions from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the UCITS.

Oversight function.

19. The depositary shall:

- (a) ensure that the sale, issue, repurchase, redemption and cancellation of units of the UCITS are carried out in accordance with the requirements prescribed by the competent authority, if any, applicable to the UCITS and with the constitutional documents of the UCITS;
- (b) ensure that the value of the units of the UCITS is calculated in accordance with the provisions of the constitutional documents of the UCITS;

- (c) carry out the instructions of the UCITS management company or the UCITS, unless they conflict with the requirements prescribed by the competent authority, if any, applicable to the UCITS and with the constitutional documents of the UCITS;
- (d) ensure that in transactions involving the assets of the UCITS, any consideration is remitted to the UCITS within the usual time limits;
- (e) ensure that the income of the UCITS is applied in accordance with the constitutional documents of the UCITS.

20. (1) The depositary shall ensure that the cash flows of the UCITS are properly monitored and, in particular, that all payments made by or on behalf of investors upon the subscription of units of the UCITS have been received.

Monitoring of cash flows function.
Amended by:
L.N. 189 of 2026.

(2) The depositary shall ensure that all cash of the UCITS has been booked in cash accounts that are:

- (a) opened in the name of the UCITS, the UCITS management company acting on behalf of the UCITS, or the depositary acting on behalf of the UCITS;
- (b) opened at one of the following entities:
 - (i) a central bank;
 - (ii) a credit institution authorised in accordance with the CRD; or
 - (iii) a bank authorised in a third country;
- (c) maintained in accordance with the principles set out in Article 16 of Directive 2006/73/EC.

(3) Where the cash accounts are opened in the name of the depositary acting on behalf of the UCITS, no cash of the entity referred to in sub-regulation (2)(b) and none of the own cash of the depositary shall be booked on such accounts.

21. (1) The assets of the UCITS shall be entrusted to the depositary for safekeeping as follows:

Safekeeping function.

- (a) for financial instruments that may be held in custody, the depositary shall:
 - (i) hold in custody all financial instruments that may be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;
 - (ii) ensure that all financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the UCITS or the UCITS management company acting on behalf of the

UCITS, so that they can be clearly identified as belonging to the UCITS in accordance with the applicable law at all times;

- (b) for other assets, the depositary shall:
 - (i) verify the ownership by the UCITS or by the UCITS management company acting on behalf of the UCITS of such assets by assessing whether the UCITS or the UCITS management company acting on behalf of the UCITS holds the ownership based on information or documents provided by the UCITS or by the UCITS management company and, where available, on external evidence; and
 - (ii) maintain a record of those assets for which it is satisfied that the UCITS or the UCITS management company acting on behalf of the UCITS holds ownership and keep that record up to date.

(2) The depositary shall, on a regular basis, provide the UCITS management company or the UCITS with a comprehensive inventory of all the assets of the UCITS.

Reuse of assets
held in custody.
Amended by:
L.N. 189 of 2026.

22. (1) The assets held in custody by the depositary shall not be reused by the depositary, or by any third party to which its custody tasks have been delegated, for their own account except where:

- (a) the reuse of the assets is executed for the account of the UCITS;
- (b) the depositary is carrying the instructions of the UCITS management company on behalf of the UCITS;
- (c) the reuse is for the benefit of the UCITS and in the interest of the unit holders;
- (d) the transaction is covered by high-quality and liquid collateral received by the UCITS under a title transfer arrangement:

Provided that the use of the term "reuse" in this regulation shall comprise any transaction of assets held in custody including, but not limited to, transferring, pledging, selling and lending.

(2) The market value of the collateral shall, at all times, amount to at least the market value of the reused assets plus a premium.

Delegation.
Amended by:
L.N. 189 of 2026.

23. (1) The depositary shall not delegate to third parties the functions referred to in regulations 19 and 20.

(2) The depositary may delegate to third parties the functions referred to in regulation 21(1) only where:

- (a) the tasks are not delegated with the intention of avoiding the requirements prescribed in these regulations and in the applicable Investment Services

Rules;

- (b) the depositary can demonstrate that there is an objective reason for delegation; and
- (c) the depositary has exercised due skill, care and diligence in the selection and appointment of any third party to whom it intends to delegate parts of its tasks, except where such third party is a central securities depository acting in the capacity of an investor CSD as defined in the delegated act adopted pursuant to Articles 29(3) and 48(10) of Regulation (EU) No 909/2014, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it.

(3) The functions referred to in regulation 21(1), may be delegated by the depositary to a third party only where that third party at all times during the performance of the tasks delegated to it:

- (a) has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the UCITS or the UCITS management company acting on behalf of the UCITS which have been entrusted to it;
- (b) for the custody tasks referred to in regulation 21(1)(a), is subject to:
 - (i) effective prudential regulation, including minimum capital requirements and supervision in the jurisdiction concerned; and
 - (ii) an external periodic audit to ensure that the financial instruments are in its possession;
- (c) segregates the assets of the clients of the depositary from its own assets and from the assets of the depositary in such a way that they can, at any time, be clearly identified as belonging to clients of a particular depositary;
- (d) takes all necessary steps to ensure that in the event of insolvency of the third party, assets of a UCITS held by the third party in custody are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and
- (e) complies with the general obligations and prohibitions prescribed in regulations 5, 21(1), 18 and 22.

(4) Notwithstanding the provisions of sub-regulation (3)(b)(i), where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point, the depositary may delegate its functions to such a local entity only to the extent required by the law of that third country, only for as long as there are no local entities that satisfy the delegation

requirements and only where:

- (a) the investors of the relevant UCITS are duly informed, prior to their investment, of the fact that such a delegation is required due to legal constraints in the law of the third country, of the circumstances justifying the delegation and of the risks involved in such a delegation;
- (b) the UCITS, or the UCITS management company on behalf of the UCITS, has instructed the depositary to delegate the custody of such financial instruments to such a local entity.

(5) The third party may in turn sub-delegate the functions referred to in sub-regulation (3) subject to the same requirements. In such a case, the provisions of regulation 24(4) shall apply *mutatis mutandis* to the relevant parties.

(6) For the purposes of this regulation, the provision of services by a central securities depository acting in the capacity of an issuer CSD as defined in the delegated act adopted pursuant to Articles 29(3) and 48(10) of Regulation (EU) No 909/2014 shall not be considered a delegation of the depositary's depositary functions, and the provision of services by a central securities depository acting in the capacity of an investor CSD as defined in such delegated act shall be considered a delegation of the depositary's depositary functions.

Liability of the
depositary.

24. (1) The depositary shall be liable to the UCITS and to the unit-holders of the UCITS for loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with regulation 21(1)(a) has been delegated.

(2) In the case of loss of a financial instrument held in custody, the depositary shall return a financial instrument of an identical type or the corresponding amount to the UCITS or the UCITS management company acting on behalf of the UCITS without undue delay:

Provided that the depositary shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

(3) The depositary shall also be liable to the UCITS and to the investors of the UCITS for all other losses suffered by them as a result of the depositary's negligent or intentional failure to properly fulfil its obligations pursuant to the provisions of the Act, these regulations and the applicable Investment Services Rules.

(4) The liability of the depositary referred to in sub-regulations (1) to (3) shall not be affected by any delegation as referred to in regulation 23.

(5) The liability of the depositary referred to in sub-regulations (1) to (3) shall not be excluded or limited by agreement.

(6) Any agreement that contravenes the provisions of sub-regulation (5) shall be void.

Cap. 370.

(7) Unit-holders in the UCITS may invoke the liability of the depositary directly or indirectly through the UCITS management company or the UCITS itself provided that this does not lead to a duplication of redress or to unequal treatment of the unit-holders.

25. (1) The depositary shall, on request, make available to the competent authority all information which it has obtained while performing its duties and that may be necessary for the competent authority or for the European regulatory authorities of the UCITS or the UCITS management company.

Reporting obligations of the depositary.

(2) Where the UCITS or the UCITS management company are established in a Member State or EEA State, other than Malta, the competent authority shall without delay share the information received with the European regulatory authority of the UCITS and the UCITS management company.

Part 4

Depositaries of AIFs

26. A depositary shall be licensed under the Act to provide depositary services to any collective investment scheme, including AIFs or limitedly to collective investment schemes as referred to in regulation 4(3), including those AIFs referred to in paragraphs (a) and (b) thereof.

Depositaries of AIFs.
Substituted by:
L.N. 189 of 2026.

Part 4a

Requirements applicable to depositaries of AIFs.

Substituted by:
L.N. 189 of 2026.

27. (1) This Part shall apply solely to depositaries which provide custody services to the following:

Applicability of Part 4a.
Amended by:
L.N. 189 of 2026.

- (a) Maltese AIFs which are managed by an AIFM; and, or
- (b) Maltese self-managed AIFs.

(2) A depositary shall also be guided by the provisions prescribed in the Investment Services Rules for Investment Services Providers applicable to depositaries.

28. The AIFM shall ensure that a depositary is appointed for each AIF it manages:

Appointment of the depositary.

Provided that where the scheme is a self-managed AIF, it shall appoint a depositary.

29. (1) The depositary of a Maltese AIF shall have an established place of business in Malta:

Eligibility criteria.
Amended by:
L.N. 189 of 2026.

Provided that in the case of a non-EU AIF which is managed by a Maltese AIFM, the depositary may be either established in Malta or be established in the third country where the non-EU AIF is established:

Provided further that the competent authority may allow a credit institution authorised in accordance with the CRD and established in a Member State or EEA State other than Malta to be appointed as depositary to an AIF the units or shares of which are marketed to professional investors until 22 July 2017.

Cap. 370. (2) The following entities shall be eligible to provide custody services to all AIFs:

Cap. 371. (a) a credit institution authorised in accordance with the CRD and in possession of a licence issued in terms of the Banking Act;

(b) a branch established in Malta of a credit institution authorised in a Member State or EEA State;

(c) a branch established in Malta of an overseas credit institution which is subject to prudential requirements at least equivalent to the requirements applicable to Maltese credit institutions;

(d) a company incorporated in Malta, which is wholly owned by a credit institution, provided that the liabilities of the company are guaranteed by the credit institution, and the credit institution is either a Maltese credit institution or a credit institution established in a Member State or EEA State and authorised in accordance with the CRD:

Provided that in such a case, the depositary shall be required to have a minimum of one director on its board of directors who is resident in Malta;

(e) a company incorporated in Malta which is wholly owned by a Maltese or foreign institution or company which is deemed by the competent authority to be an institution or company which provides unit-holders with protection equivalent to that provided by a depositary fulfilling the requirements prescribed in paragraphs (a), (b), (c) or (d) and provided the liabilities of the company acting as depositary are guaranteed by the institution or company and the institution or company has paid-up share capital of five million euro (€5,000,000) or its equivalent in foreign currency:

Provided that, in such a case, the depositary shall be required to have a minimum of one director on its board of directors who is resident in Malta;

(f) an investment firm or branch of an investment firm established in another Member State or EEA State subject to capital adequacy requirements in accordance with the IFD and the IFR including capital requirements for operational risks and authorised in accordance with MIFID and which also provides the ancillary service of safe-keeping and administration of financial instruments for the account of clients in accordance with point (1) of Section B of Annex I of MIFID:

Provided that such investment firms shall in any case have own funds not less than the amount of initial capital referred to in Article 9 of the IFD, as transposed in the Investment Services Rules.

29A. (1) Notwithstanding the provisions of regulation 29(1) and any other applicable law, the competent authority may allow a credit institution that is authorised in accordance with the CRD, as transposed in national law and established in a Member State other than Malta, to be appointed to provide depositary services to a Maltese AIF, provided that the following conditions are fulfilled:

Additional
eligibility criteria.
Added by:
L.N. 189 of 2026.

- (a) the competent authority has received a reasoned request from the AIFM to allow the appointment of a European depositary established in another Member State and that request demonstrates the lack of depositary services in Malta that are able to meet effectively the needs of the AIF having regard to its investment strategy; and
- (b) the aggregate amount in the national depositary market of Malta of assets entrusted for safe-keeping, as referred to in regulation 32, on behalf of AIFs authorised or registered under the applicable national law in accordance with Article 4(1)(k)(i) of the AIFMD, as transposed in national law, and managed by an EU AIFM does not exceed fifty billion euro (€50,000,000,000) or the equivalent in any other currency:

Provided that for the purposes of paragraph (b), assets entrusted for safe-keeping by depositaries acting under regulation 7(1)(a) of the Investment Services Act (AIFM Third Country) Regulations, as well as the own assets of depositaries, shall not be taken into account for the purpose of determining whether the conditions established in paragraph (b) is met.

S.L. 370.24.

(2) Notwithstanding the conditions established in sub-regulation (1) being met, the competent authority shall allow the appointment of a European depositary established in a Member State other than Malta only after carrying out a case-by-case assessment of the lack of relevant depositary services in Malta having regard to the investment strategy of the AIF.

(3) Where the competent authority allows the appointment of a European depositary, it shall inform ESMA thereof.

(4) The provisions of this regulation shall be without prejudice to the application of the provisions of Article 21, other than Article 21(5)(a) of the AIFMD, as transposed in these regulations and the Investment Services Rules.

(5) Without prejudice to the powers and functions of the competent authority under the Act and any regulations made and Rules issued thereunder, where Malta is the home Member State of an AIF or, where an AIF is unregulated, the home Member State of the AIFM managing such AIF, and a European depositary is appointed in accordance with the provisions of this regulation in relation to such AIF, the competent authority shall, where it has reasonable grounds to suspect that acts contrary to the provisions of the AIFMD, as transposed in national law, are being or have been carried out by such European depositary, promptly notify ESMA and the European regulatory authority of the European depositary concerned thereof in as specific a manner as possible.

(6) Where a depositary established in Malta has been appointed in accordance with Article 21(5a) of the AIFMD, as

transposed in national law, in relation to an AIF having as a home Member State a Member State other than Malta, or an AIF, being unregulated, that is managed by an AIFM having as a home Member State a Member State other than Malta, and the European regulatory authority of the AIFM managing such AIF has notified the competent authority in accordance with Article 50(5g) of the AIFMD, as transposed in national law, the competent authority shall take appropriate action and shall notify ESMA and such European regulatory authority of the outcome of the action taken.

Conflicts of
interest.

30. (1) In order to avoid conflicts of interest between the depositary, the AIFM and, or the AIF and, or its investors:

- (a) the AIFM shall not be licensed to act as depositary;
- (b) a prime broker acting as counterparty to an AIF shall not act as depositary for that AIF unless it has functionally and hierarchically separated the performance of its functions as depositary from its tasks as prime broker and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF:

Provided that delegation by the depositary to such prime broker of its custody tasks in accordance with regulation 34 is allowed if the relevant conditions are met; and

- (c) the depositary shall not be appointed as external valuer of the AIF, unless it has functionally and hierarchically separated the performance of its functions as depositary from its tasks as external valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

(2) In the context of their respective roles, the depositary and the AIFM shall act honestly, fairly, professional, independently and in the interests of the AIF and the investors of the AIF.

(3) The depositary shall not carry out any activities with regard to the AIF or the AIFM on behalf of the AIF that may create conflicts of interest between the AIF, the investors in the AIF, the AIFM and itself, unless the depositary has functionally and hierarchically separated its tasks as depositary from its other potentially conflicting tasks and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

Monitoring of cash
flows.
Amended by:
L.N. 189 of 2026.

31. (1) The depositary shall in general ensure that the AIF's cash flows are properly monitored.

(2) The depositary shall in particular ensure that all payments made by or on behalf of the investors upon subscription of units of an AIF have been received and that all the cash of the AIF has been booked in cash accounts opened in the name of the AIF or in the name of the AIFM acting on behalf of the AIF or in the name of the depositary acting on behalf of the AIF with any one of the following entities:

- (a) a central bank;
- (b) a credit institution authorised in accordance with the CRD;
- (c) a bank authorised in a third country; or
- (d) another entity of the same nature in the relevant market where cash accounts are required provided such entity is subject to effective prudential supervision which has the same effect as Union law and is effectively enforced in accordance with the principles set out in Article 16 of Directive 2006/73/EC.

(3) Where the cash accounts are opened in the name of the depositary acting on behalf of the AIF, no cash of the entity referred to in sub-regulation (2) and none of the depositary's own cash shall be booked on such accounts.

32. (1) The assets of the AIF or the AIFM acting on behalf of the AIF shall be entrusted to the depositary for safekeeping as follows:

Safekeeping
function.

- (a) for financial instruments that can be held in custody:
 - (i) the depositary shall hold in custody all financial instruments that can be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;
 - (ii) for that purpose, the depositary shall ensure that all those financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the AIF or the AIFM acting on behalf of the AIF, so that they can be clearly identified as belonging to the AIF in accordance with the applicable law at all times;
- (b) for other assets:
 - (i) the depositary shall verify the ownership of the AIF or the AIFM acting on behalf of the AIF of such assets and shall maintain a record of those assets for which it is satisfied that the AIF or the AIFM acting on behalf of the AIF holds the ownership of such assets;
 - (ii) the assessment whether the AIF or the AIFM acting on behalf of the AIF holds the ownership shall be based on information or documents provided by the AIF or the AIFM and, where available, on external evidence;
 - (iii) the depositary shall keep its records up-to-date.

(2) The depositary shall not reuse the assets referred to in sub-

regulation (1) without the prior consent of the AIF or the AIFM acting on behalf of the AIF.

Oversight function. **33.** In addition to the tasks referred to in regulations 31 and 32(1), the depositary shall:

- Cap. 370. (a) ensure that the sale, issue, re-purchase, redemption and cancellation of units or shares of the AIF are carried out in accordance with the provisions of the Act, the Rules and regulations issued thereunder, and the fund rules or instruments of incorporation;
- Cap. 370. (b) ensure that the value of the units or shares of the AIF is calculated in accordance with the provisions of the Act, the Rules and regulations issued thereunder, the fund rules or instruments of incorporation and the valuation procedures as outlined in the applicable Investment Services Rules;
- Cap. 370. (c) carry out the instructions of the AIFM, unless they conflict with the provisions of the Act, the Rules and regulations issued thereunder, the AIF's fund rules or instruments of incorporation;
- (d) ensure that in transactions involving the AIF's assets any consideration is remitted to the AIF within the usual time limits;
- Cap. 370. (e) ensure that the AIF's income is applied in accordance with the provisions of the Act, the Rules and regulations issued thereunder and the fund rules or instruments of incorporation.

Delegation.
Amended by:
L.N. 189 of 2026.

34. (1) The depositary shall not delegate to third parties its functions as described in this Part save for those referred to in regulation 32(1).

(2) The depositary may delegate to third parties the functions referred to in regulation 32(1) subject to the following conditions:

- Cap. 370. (a) the tasks are not delegated with the intention of avoiding the requirements prescribed in the Act, the Rules and regulations issued thereunder;
- (b) the depositary can demonstrate that there is an objective reason for the delegation;
- (c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it wants to delegate parts of its tasks, except where that third party is a central securities depository acting in the capacity of an investor CSD as defined in the delegated act adopted pursuant to Articles 29(3) and 48(10) of Regulation (EU) No 909/2014, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it; and

(d) the depositary ensures that the third party meets the following conditions at all times during the performance of the tasks delegated to it:

- (i) the third party has the structures and the expertise that are adequate and proportionate to the nature and the complexity of the assets of the AIF or the AIFM acting on behalf of the AIF which have been entrusted to it;
- (ii) for custody tasks referred to in regulation 32(1)(a), the third party is subject to effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned and the third party is subject to an external periodic audit to ensure that the financial instruments are in its possession:

Provided that where the law of a third country requires that certain instruments be held in custody by a local entity and no local entities satisfy the delegation requirements prescribed above, the depositary may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements subject to the following requirements:

- (a) the investors of the relevant AIF must be duly informed that such delegation is required due to legal constraints in the law of the third country and of the circumstances justifying the delegation, prior to their investment; and
- (b) the AIF, or the AIFM on behalf of the AIF, must instruct the depositary to delegate the custody of such financial instruments to such local entity;
- (iii) the third party 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 any time be clearly identified as belonging to clients of a particular depositary;
- (iv) the third party 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;
- (v) the third party complies with the general obligations and the prohibitions set out in regulation 30(2) and (3) and regulation 32(1) and (3).

(3) The third party may, in turn, sub-delegate those functions, subject to the same requirements prescribed in the above sub-regulations. In such a case, regulation 36 shall apply *mutatis*

mutandis to the relevant parties.

(4) For the purposes of Article 21 of the AIFMD, as transposed in these regulations and the Investment Services Rules, the provision of services by a central securities depository acting in the capacity of an issuer CSD as defined in the delegated act adopted pursuant to Articles 29(3) and 48(10) of Regulation (EU) No 909/2014 shall not be considered a delegation of the depository's depository functions, and the provision of services by a central securities depository acting in the capacity of an investor CSD as defined in such delegated act shall be considered a delegation of the depository's depository functions.

Liability of the
depository.

35. (1) The depository shall be liable to the AIF or to the investors of the AIF, for the loss by the depository or a third party to whom the custody of financial instruments held in custody in accordance with regulation 32(1)(a) has been delegated.

(2) In the case of such a loss of financial instruments held in custody, the depository shall 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. The depository shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

Cap. 370.

(3) The depository shall also be liable to the AIF, or to the investors of the AIF, for all other losses suffered by them as a result of the depository's negligent or intentional failure to properly fulfil its obligations pursuant to the provisions of the Act, the regulations and the Rules issued thereunder.

(4) Liability to the investors of the AIF may be invoked directly or indirectly through the AIFM, depending on the legal nature of the relationship between the depository, the AIFM and the investors.

Discharge of
liability.

36. (1) The depository's liability shall not be affected by any delegation referred to in regulation 34.

(2) Notwithstanding the generality of sub-regulation (1), in the case of a loss of financial instruments held in custody by a third party pursuant to regulation 34, the depository may discharge itself of liability if it can prove that:

- (a) all requirements for the delegation of its custody tasks set out in regulation 34 are met;
- (b) a written agreement between the depository and the third party expressly transfers the liability of the depository 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 third party in respect of the loss of financial instruments or for the depository to make such a claim on their behalf; and
- (c) a depository agreement between the depository and the AIF or the AIFM acting on behalf of the AIF expressly allows a discharge of the depository's liability and

establishes the objective reason to contract such a discharge.

(3) Where the law of a third country requires that certain financial instruments are held in custody by a local entity and there are no local entities that satisfy the delegation requirements prescribed in regulation 34(2)(d)(ii), the depositary can discharge itself of liability provided that the following conditions are met:

- (a) the rules or instruments of incorporation of the AIF concerned expressly allow for such a discharge under the conditions prescribed in this sub-regulation;
- (b) the investors of the relevant AIF have been duly informed of that discharge and of the circumstances justifying the discharge prior to their investment;
- (c) the AIF or the AIFM on behalf of the AIF instructed the depositary to delegate the custody of such financial instruments to a local entity;
- (d) there is a depositary agreement between the depositary and the AIF or the AIFM acting on behalf of the AIF which expressly allows such a discharge; and
- (e) there is a written agreement between the depositary and the third party that expressly transfers the liability of the depositary to that local entity and makes it possible for the AIF or the AIFM acting on behalf of the AIF to make a claim against that local entity in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf.

37. (1) A depositary shall make available to the competent authority and, where the AIF and, or the AIFM are established in a Member State other than Malta, to the European regulatory authorities of such AIF and, or AIFM, on request, any information that it would have obtained while performing its duties.

Reporting obligations of the depositary.
Substituted by:
L.N. 189 of 2026.

(2) Where an AIF and, or an AIFM are established in a Member State other than Malta and a depositary has been appointed in accordance with Article 21(5a) of the AIFMD, as transposed in national law, in relation to such AIF, the competent authority shall share, without delay, with the European regulatory authorities of such AIF and, or AIFM any information relevant for the exercise of their supervisory powers.

(3) Where an AIF and, or an AIFM are established in Malta and a European depositary has been appointed in accordance with regulation 29A in relation to such AIF, the competent authority shall share, without delay, with the European regulatory authority of such European depositary any information relevant for the exercise of the supervisory powers of such European regulatory authority.

Part 4b

Requirements applicable to depositaries of specific AIFs

38. (1) This Part shall apply solely to depositaries lite which provide custody services to the following types of AIFs:

- (a) AIFs which are managed by a Maltese or EU AIFM or

Substituted by:
L.N. 189 of 2026.

Applicability of Part 4b.
Amended by:
L.N. 189 of 2026.

are self-managed AIFs and which have no redemption rights exercisable during the period of five years from the date of the initial investments and which, in accordance with their core investment policy, generally do not invest in assets that must be held in custody in accordance with regulation 32(1)(a) or which generally invest in issuers or non-listed companies in order to acquire control of such companies in accordance with the provisions of the applicable Investment Services Rules; and, or

- (b) third country AIFs which are marketed in Malta by a Maltese or EU AIFM in terms of regulation 7 of the Investment Services Act (Alternative Investment Fund Manager) (Third Country) Regulations.

S.L. 370.24

(2) A depositary lite as referred to in sub-regulation (1) shall also be guided by the rules prescribed in Part B IV of the Investment Services Rules for Investment Services Providers applicable to depositaries.

Appointment of the depositary.
Amended by:
L.N. 189 of 2026.

39. The AIFM shall ensure that a depositary or a depositary lite is appointed to provide depositary services to AIFs referred to in regulation 38(1) which are managed by the AIFM.

Eligibility criteria.
Amended by:
L.N. 189 of 2026.

40. The following entities shall be eligible to provide depositary services to AIFs as referred to in regulation 38(1):

- (a) entities, other than UCITS management companies and AIFMs, that are licensed under the Act to provide, or hold themselves out as providing, any of the investment services stipulated in the First Schedule to the Act, other than those stipulated in items 3, 5, 7, 9 and 11, in or from Malta and to hold or control clients' money or customers' assets;
- (b) Recognised fund administrators in possession of a Recognition Certificate issued in terms of article 9A of the Act.

Cat. 370.

Applicability of Part 4a to depositaries providing custody services to AIFs prescribed in regulation 38(1)(a).
Amended by:
L.N. 189 of 2026.

41. A depositary lite which provides custody services to AIFs referred to in regulation 38(1)(a) shall, in addition to the regulations prescribed in Part 2 applicable to depositaries of all collective investment schemes, also be regulated by regulations 30 to 37 of Part 4a.

Applicability of Part 4a to depositaries providing custody services to AIFs prescribed in regulation 38(1)(b).
Amended by:
L.N. 189 of 2026.

42. (1) A depositary lite which provides custody services to AIFs referred to in regulation 38(1)(b) shall, in addition to the regulations prescribed in Part 2 applicable to depositaries of all collective investment schemes, also be regulated by regulations 30(2), 31, 32(1), 33 and 37 of Part 4a:

Provided that one or more entities may be appointed to carry out the functions referred to in regulations 31, 32(1) and 33.

(2) A Category 4b Investment Services Licence Holder as referred to in sub-regulation (1) shall also comply with regulations 43 and 44.

43. (1) A depositary lite which provides custody services to the AIFs referred to regulation 38(1)(b) shall be liable for any loss or prejudice suffered by the AIFM, the AIF or the investors of the AIF due to the depositary's fraud, wilful default or negligence, including the unjustifiable failure to perform in whole or in part its obligations pursuant to:

Liability of the
depositary.
Amended by:
L.N. 189 of 2026.

- (a) the provisions of the Act, the regulations and the Rules issued thereunder;
- (b) the depositary agreement appointing the depositary;
- (c) any other requirements prescribed by the competent authority.

Cap. 370.

(2) A depositary lite as referred to in sub-regulation (1) shall not be liable for any loss or prejudice suffered by the AIF or the unit-holders of the AIF as a result of the acts or omissions of the AIFM, except where and to the extent that the depositary has failed to perform its functions and duties in terms of the provisions of the Act, the regulations and the Rules issued thereunder:

Cap. 370.

Provided that the term "depositary" shall be deemed to include such third party to whom functions, duties or assets may be delegated or entrusted in terms of regulation 44.

(3) Liability to the investors of the AIF may be invoked directly or indirectly through the AIFM, depending on the legal nature of the relationship between the depositary, the AIFM and the unit-holders.

44. (1) A depositary lite which provides custody services to the AIFs referred to regulation 38(1)(b) may delegate to third parties in whole or in part the functions referred to in regulations 31 to 33 subject to the following conditions:

Delegation of
functions by the
depositary to third
parties.
Amended by:
L.N. 189 of 2026.

- (a) the tasks are not delegated with the intention of circumventing the provisions of the Act or the regulations and the Rules issued thereunder;
- (b) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it wants to delegate its tasks, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated its tasks and of the arrangements of the third party in respect of the matters delegated to it; and
- (c) the depositary ensures that the third party meets the following conditions at all times during the performance of the tasks delegated to it:
 - (i) the third party has structures and the expertise that are adequate and proportionate to the nature and complexity of the assets of the AIF or the

Cap. 370.

AIFM acting on behalf of the AIF which have been entrusted to it;

- (ii) as far as the custody tasks referred to in regulation 32(1)(a) are concerned, the third party is subject to effective prudential regulation, including minimum capital requirements and supervision in the jurisdiction concerned and the third party is subject to an external periodic audit to ensure that the financial statements are in its possession:

Provided that where the law of a third country requires that certain instruments be held in custody by a local entity and no local entities satisfy the delegation requirements prescribed above, the depositary may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements subject to the following requirements:

- (a) the investors of the relevant AIF must be duly informed that such delegation is required due to legal constraints in the law of the third country and of the circumstances justifying the delegation, prior to their investment; and
- (b) the AIF or the AIFM on behalf of the AIF shall instruct the depositary to delegate the custody of such financial instruments to such local entity:

Provided further that the third party may in turn sub-delegate those functions subject to the same requirements;

- (iii) the third party 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 any time be clearly identified as belonging to the clients of a particular depositary;
- (iv) the third party 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
- (v) the third party complies with the general obligations and prohibitions prescribed in regulations 30(2) and (3), 31 to 33.

(2) The provision of services as specified by Directive 98/26/EC by securities settlement systems as designated for the purposes of that Directive or the provision of similar services by third country securities settlement systems shall not be considered a delegation of the depositary's functions.

Part 5

Requirements applicable to depositaries of collective investment schemes other than UCITS and AIFs

45. (1) Depositaries of collective investment schemes which are not AIFs as defined in terms of the AIFMD or UCITS shall be regulated by the regulations prescribed in Part 2 together with the regulations prescribed in this Part:

Applicability of Part 5.

Provided that for the purposes of this Part, the term "collective investment scheme" shall be understood as referring to collective investment schemes which are licensed as non-UCITS retail schemes and Professional Investor Funds established in terms of the Act and in terms of the Rules issued thereunder both of which are not managed by an AIFM falling within the scope of the AIFMD.

Cap. 370.

(2) The depositary of a collective investment scheme as referred to in sub-regulation (1) shall also be guided by the rules prescribed in the applicable Investment Services Rules.

46. (1) The scheme or the fund manager on behalf of the scheme which is licensed as a non-UCITS retail scheme or as a Professional Investor Fund targeting Experienced Investors shall appoint a depositary to provide depositary services to such scheme.

Appointment of the depositary.
Amended by:
L.N. 189 of 2026.

(2) The scheme, or the fund manager on behalf of a scheme which is licensed as a Professional Investor Fund targeting Qualifying or Extraordinary Investors, may appoint a depositary or a depositary lite to provide depositary services to such scheme:

Provided that such scheme may alternatively provide for other safekeeping arrangements as accepted by the competent authority:

Provided further that a depositary which is appointed to provide custody services as provided in sub-regulation (2) shall be required to comply with the applicable provisions of this Part.

47. (1) The depositary of a non-UCITS retail scheme shall have an established place of business in Malta.

Eligibility criteria.
Amended by:
L.N. 189 of 2026.

(2) Where a scheme which is licensed as a Professional Investor Fund appoints a depositary, such depositary shall be:

- (a) an entity having an established place of business in Malta;
- (b) an entity constituted in a Member State or EEA State other than Malta providing the services of depositary to collective investment schemes;
- (c) an entity constituted outside Malta and operating from outside Malta providing the services of a depositary to collective investment schemes, where the competent authority is satisfied that such entity is of sufficient standing and repute and having the business organisation, systems, experience and expertise deemed necessary for it to act as depositary.

Cap. 370. (3) The following entities shall be eligible to provide custody services to the collective investment schemes referred to in sub-regulations (1) and (2):

Cap. 371. (a) a credit institution authorised in accordance with the CRD and in possession of a licence issued in terms of the Banking Act;

(b) a branch established in Malta of a credit institution authorised in a Member State or EEA State;

(c) a branch established in Malta of an overseas credit institution which is subject to prudential requirements at least equivalent to the requirements applicable to Maltese credit institutions;

(d) a company incorporated in Malta, which is wholly owned by a credit institution, provided that the liabilities of the company are guaranteed by the credit institution and the credit institution is either a Maltese credit institution or a credit institution established in a Member State or EEA State and authorised in accordance with the CRD:

Provided that, in such a case, the depositary shall be required to have a minimum of one director on its board of directors who is resident in Malta;

(e) a company incorporated in Malta which is wholly owned by a Maltese or foreign institution or company which is deemed by the competent authority to be an institution or company which provides unit-holders with protection equivalent to that provided by a depositary fulfilling the requirements of paragraphs (a), (b), (c) or (d) and provided the liabilities of the company acting as depositary are guaranteed by the institution or company and the institution or company has paid-up share capital of five million euro (€5,000,000) or its equivalent in foreign currency; or

(f) an investment firm in Malta or a branch of an investment firm established in a Member State or EEA State other than Malta, subject to capital adequacy requirements in accordance with the IFD and the IFR including capital requirements for operational risks and authorised in accordance with MIFID and which also provides the ancillary service of safe-keeping and administration of financial instruments for the account of clients, including custody and related services such as cash or collateral management in accordance with point (1) of Section B of Annex I of MIFID:

Provided that such investment firms shall in any case have own funds not less than the amount of initial capital referred to in Article 9(1) of the IFD, as transposed in the Investment Services Rules.

48. A depositary which provides custody services to a non-UCITS retail collective investment scheme shall also comply with regulations 30 to 36:

Provided that, for the purposes of this Part, references in regulations 30 to 36 to "AIFM" and "AIF" shall be construed to refer to the "fund manager or management company" and the "non-UCITS Retail Scheme" respectively.

Applicability of Part 4a to depositaries providing custody services to non-UCITS Retail Schemes.
Amended by: L.N. 189 of 2026.

49. A depositary which provides custody services to a Professional Investor Fund which is marketed to Experienced Investors, shall also comply with regulations 30 to 36:

Provided that, for the purposes of this Part, reference in regulations 30 to 36 to "AIFM" and "AIF" shall be construed to refer to the "fund manager or management company" and the "Professional Investor Fund marketed to Experienced Investors" respectively.

Applicability of Part 4a to Professional Investor Funds marketed to Experienced Investors.
Amended by: L.N. 189 of 2026.

50. A Professional Investor Fund which is marketed to Qualifying or Extraordinary Investors may appoint one or more entities being depositaries or depositaries lite to provide safekeeping of the assets of the scheme and such entities shall ensure compliance with regulations 51 to 58.

Professional Investor Funds marketed to Qualifying and Extraordinary Investors.
Amended by: L.N. 189 of 2026.

51. (1) The scheme or the fund manager on behalf of the scheme shall appoint a depositary. The scheme or the fund manager on behalf of the scheme shall entrust the assets of the scheme to the depositary for safekeeping in the interests of the scheme and in the interests of the unit-holders thereof.

Functions and duties of the depositary.

(2) The depositary shall carry out such functions and duties as shall be required in accordance with these regulations, the terms of the depositary agreement entered into with the scheme, the conditions of the depositary's investment services licence and such other requirements as may be laid down by the competent authority. The terms of the depositary agreement shall distinguish between financial instruments that can be held in custody and other assets.

(3) The depositary shall maintain proper and adequate records and accounts of the assets of all the schemes with which it has entered into a custody agreement. The records and accounts shall identify the schemes to which such assets belong and shall clearly indicate that the assets of every scheme are separate and distinct from the assets belonging to the depositary and from the assets of other schemes with which the depositary has entered into a custody agreement.

(4) The records and accounts shall, upon due notice being given by the depositary, indicate the instances where any pledge or other right over assets has been given by the respective schemes to any third parties and where any order by any Court has been made in connection with such assets.

(5) The depositary entrusted with the safekeeping of the assets belonging to a scheme shall, to every extent reasonably possible, segregate in a proper manner the assets of each scheme from the

assets belonging to the depositary and from the assets of other schemes:

Provided that the depositary may, with the written consent of the scheme and in accordance with the terms and conditions of the depositary agreement entered into with the scheme, the conditions of any investment services licence and such other requirements as may be prescribed by the competent authority and without prejudice to the scheme's right of ownership over the assets held under control, place and keep such assets in a common pool of identical assets or otherwise deposit them in a clients' or common account.

(6) The depositary shall make appropriate arrangements for the protection of assets held and shall ensure that such assets are placed under adequate systems to safeguard them from damage, misappropriation or other loss and which permit the delivery of such assets only in accordance with the terms and conditions of the depositary agreement entered into with the scheme.

(7) Where it is not reasonably possible for the depositary to carry out any of the duties specified in these regulations due to the nature of the assets and of the custody agreement, the said duties may be varied with the written consent of the scheme and in accordance with the terms and conditions of the depositary agreement entered into with the scheme, the conditions of the investment services licence and such other requirements as may be prescribed by the competent authority.

(8) The depositary shall carry out monitoring, oversight, administrative and such other functions where applicable in accordance with the terms and conditions of the custody agreement.

Use of clearing,
settlement and de-
materialised
systems and
settlement risk.

52. (1) Where reasonably required by the nature of the assets and of the arrangements whereby the custody function is to be exercised, a depositary may, with the written consent of the scheme and in accordance with the terms and conditions of the depositary agreement entered into with the scheme, the conditions of any investment services licence and such other requirements as may be laid down by the competent authority, make use of any market clearing system, settlement system, dematerialised book entry system, centralised custodial depositary or similar system for the purpose of the control of assets in terms of these regulations.

(2) Such systems as are provided for in sub-regulation (1) may also be used to effect all transactions including conveyance, assignment, transfer, transmission and pledging of assets held in custody by the depositary and the law of the country in which the system is maintained shall apply to the validity of such transactions, notwithstanding the provisions of any other law.

(3) The depositary agreement with the scheme shall clearly define the extent of liability of the depositary for any losses that may be incurred by the scheme as a result of the use of such systems.

53. In the exercise of its functions, duties and responsibilities, the depositary shall act independently of the fund manager and of the management of the scheme and solely in the interest of the unit holders and of the scheme itself:

Independence of the depositary from the management of the collective investment scheme.

Provided that the depositary shall act upon the instructions of the manager and the manager shall act upon the instructions of the depositary to the extent required by the conditions of any investment services licence, such other requirements as may be prescribed by the competent authority, and the conditions of the scheme's constitutional documents.

54. Except as may be authorised by the competent authority, a person shall not act as member of the board of directors or similar organ or as an officer responsible for the administration and management of the manager acting on behalf of the scheme and at the same time hold a similar position with the depositary entrusted with the safekeeping of the assets of any scheme managed by the manager.

Administration and management of the fund manager and depositary.

55. (1) The depositary shall be liable for any loss or prejudice suffered by the scheme or the unit-holders 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 pursuant to:

Liability of the depositary.

- (a) the provisions of the Act, these regulations and the Rules issued under the Act;
- (b) the terms and conditions of the depositary agreement appointing the depositary;
- (c) the conditions of any investment services licence; or
- (d) such other requirements as may be prescribed by the competent authority.

Cap. 370.

(2) The depositary shall not be liable for any loss or prejudice suffered by the scheme or by the unit holders as a result of the acts or omission of the fund manager except where and to the extent that the depositary has failed to perform its functions and duties in terms of regulation 51.

(3) For the purposes of this regulation, "depositary" includes such other sub-depositary to whom functions, duties or assets may be delegated or entrusted in terms of regulation 56.

56. (1) The depositary may, with the consent of the scheme or the fund manager acting on behalf of the scheme, delegate all or part of the functions and duties referred to in regulation 51 to a sub-depositary, and may also entrust or deposit all or part of the assets of the scheme held in custody with such sub-depositary.

Delegation of function by the depositary to a sub-depositary.

(2) The liability of the depositary for its own acts or omissions pursuant to regulation 55 shall not be affected or reduced as a result of the depositary delegating functions and duties or entrusting all or part of the assets of the scheme to a sub-depositary.

(3) Where the depositary delegates or entrusts functions, duties or assets in terms of sub-regulation (1) to a person who is either a

group company or is the fund manager or associate of the fund manager, without prejudice to the liability of such person, the depositary shall be liable for any loss or prejudice suffered by the scheme or the unit-holders as a result of the acts, omissions or insolvency of such person:

Provided that the depositary may not delegate to the fund manager acting on behalf of the scheme any function of oversight in respect of the fund manager or any function of custody of the assets, nor may the depositary delegate to an associate of the fund manager any function of oversight in respect of such entity.

(4) Where the depositary delegates or entrusts functions, duties or assets in terms of sub-regulation (1) to a person which is not a group company nor the fund manager acting on behalf of the scheme nor associate of the fund manager, without prejudice to the liability of such person, the depositary shall be liable for any loss or prejudice suffered by the fund manager, the scheme or the unit-holders as a result of the acts or omissions of such person unless the depositary can prove that such person 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.

(5) The liability of the depositary pursuant to sub-regulations (3) and (4) may be varied or reduced with the written consent of the scheme or the fund manager acting on behalf of the scheme, and in accordance with the terms and conditions of the written depositary agreement appointing the depositary, the deed or other instrument establishing and regulating the scheme, the conditions of the collective investment scheme licence which may be held by the scheme, the conditions of any investment services licence and such other requirements as may be prescribed by the competent authority:

Provided that the depositary discloses fully to the scheme or the fund manager 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 depositary. Any such risks shall also be fully disclosed to the unit-holders in the scheme.

(6) For the purposes of this regulation, "associate" in relation to the fund manager means a body corporate which forms part of the same group of companies as the fund manager acting on behalf of the scheme.

(7) For the purposes of this regulation, "group company" in relation to the depositary, means any body corporate which is the depositary's subsidiary or parent company, or a subsidiary of the depositary's parent company; and the terms "parent" and "subsidiary" shall be construed in accordance with article 2(2) of the Companies Act.

Cap. 386.

Reporting
obligations of the
depositary.

57. The depositary of a collective investment scheme which is licensed as a non-UCITS Retail Scheme or a Professional Investor

Fund shall make available to the competent authority, on request, all information which it has obtained while performing its duties and that may be necessary for the competent authority of the fund manager or the scheme.

Part 6

Transitional arrangements

58. (1) Non-UCITS retail schemes and Professional Investor Funds targeting Experienced Investors or management companies on behalf of such schemes, which on the date of publication of these regulations appointed, as depositary, an entity which did not meet the requirements prescribed in Part 5, shall have a transitional period of eighteen months within which to comply with these regulations. This eighteen-month transitional period shall commence to run from the date of the coming into force of these regulations and shall expire within eighteen months thereafter.

Transitional
arrangements.

(2) Professional Investor Funds targeting Qualifying Investors or Extraordinary Investors or managers on behalf of such schemes, which on the date of the coming into force of these regulations appointed, as depositary, an entity which did not meet the requirements prescribed in Part 5 hereof, shall have a transitional period of eighteen months within which to comply with these regulations. This eighteen-month transitional period shall commence to run from the date of the coming into force of these regulations and shall expire within eighteen months thereafter.
