

**A GUIDE TO THE ESTABLISHMENT OF
CUSTODY OPERATIONS (DEPOSITARIES) IN MALTA**

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

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1. Introduction

Malta became a Member State of the European Union in 2004 and consequently benefits from the harmonisation of EU financial services regulation and from the single market passporting rights under freedom of services and freedom of establishment. It became a member of the European Monetary Union (“EMU”) in 2008 thus adopting the Euro as its currency.

Since 2004, Malta has gained a reputation for its robust regulatory regime coupled with a highly approachable regulatory authority. It has been internationally recognised that the Maltese legislative framework provides a stable environment for the prudential supervision of financial services, consumer protection, market surveillance and prevention of money laundering. The financial services sector has been consistently expanding by around 25% in recent years and direct intermediation contributes an amount of 8.5% to the GDP of Malta. The World Economic Forum Competitiveness Report 2015-2016¹ ranks Malta very highly in its review of 148 countries, with the following table providing an indication of Malta’s rankings along with those of two other comparable jurisdictions:

	Ireland	Luxembourg	United Kingdom	Malta
Soundness of the Banking System	126	12	63	15
Strength of Auditing & Reporting Standards	59	8	15	20
Regulation of Securities Exchanges	53	5	21	25

Source: World Economic Forum Competitiveness Report 2015-2016

Although Malta’s integration within the EU and the EMU has certainly served to enhance its establishment within the field of financial services, Malta has in fact been developing as a financial services jurisdiction since 1994. In 2002, the Malta Financial Services Authority (“MFSA”) became the single regulator for financial services regulated through the Malta Financial Services Authority Act². The MFSA is an autonomous public institution and is self-funded. In 2002, the MFSA took over banking supervision from the Central Bank of Malta (“CBM”) whilst also assuming the supervision of Recognised Investment Exchanges. The MFSA is the competent authority regulating credit institutions, financial institutions, insurance companies and intermediaries, investment services firms, securities, trust management companies, corporate services providers and pension schemes. It also approves admissibility to listing on Recognised Investment Exchanges.

¹ http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2014-15.pdf

² Chapter 330 [Laws of Malta]

The Maltese regulatory framework is robust whilst at the same time providing space for promoters to be innovative and develop new products to meet the changing needs of the industry. It is the policy of the MFSA that staff meet directly with operators to discuss their requirements. This proactive and transparent approach coupled with regular contact with the regulator is appreciated by the financial services industry. Operators have generally shown satisfaction with Malta's approach based on:

- emphasis on disclosure;
- reliance on the “fit and proper” status of directors, senior management, service providers and qualifying shareholders; and
- continuous contact with the regulator.

2. The Investment Services Sector

2.1. Introduction

Malta has become an established location for investment firms intending to carry out international business for a number of reasons, amongst which:

- Malta as an EU Member State transposes and implements all the Directives of the European Union. European Regulations are directly applicable in all Member States whereas Guidelines or Technical Standards are transposed within the national legislation;
- Investment firms are established in Malta and licenced in terms of the Investment Services Act³. Once licensed, these firms may passport to all EU or EEA States under freedom of services or freedom of establishment in terms of the Markets in Financial Instruments Directive (“MiFID”);
- The MFSA has signed Memoranda of Understanding (“MoUs”) with 27 jurisdictions and signed the European Securities and Markets Authority (“ESMA”) MoUs with 50 Securities Regulators. These MoUs provide for the exchange of information between EU and third country supervisory authorities. The Authority has also signed the Multilateral MoU with IOSCO concerning consultation and cooperation and the exchange of information in securities.

The transposition of EU Directives, particularly the UCITS IV Directive⁴ [“UCITS”] and subsequently the Alternative Investment Fund Managers Directive⁵ [“AIFMD”], have further contributed to the robustness of the Maltese financial services framework

³ Chapter 370 [Laws of Malta]

⁴ 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.

⁵ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers.

applicable to fund managers. The AIFMD has also brought about radical changes in the custody sector. These changes will be further consolidated through the transposition and implementation of the UCITS V Directive⁶. The end result pursued by both the AIFMD and UCITS V is that of increasing the responsibility of custodians.

2.2. *The Funds Industry*

Malta offers a range of fund vehicles to suit different investor requirements and investment policies. Provision is also made for the possibility of establishing either externally managed collective investment schemes or self-managed schemes. The following are the scheme structures which can be established in terms of the sectoral legislation:

- Investment companies with fixed share capital (INVCO) or investment companies with variable share capital (SICAV) established in terms of the Companies Act⁷, the Companies Act (Investment Companies with Fixed Share Capital) Regulations⁸ and the Companies Act (Investment Companies with Variable Share Capital) Regulations⁹ respectively;
- Incorporated Cell Companies established in terms of the Companies Act (SICAV Incorporated Cell Companies) Regulations¹⁰ or the Companies Act (Recognised Incorporated Cell Companies) Regulations¹¹;
- Unit trusts established in terms of the Trusts and Trustees Act¹²;
- Contractual Funds established in terms of the Civil Code¹³ and the Investment Services Act (Contractual Funds) Regulations¹⁴. Provision is also made for the possibility of setting up Special Investment Vehicles regulated as part of the same scheme;
- Limited Partnerships established in terms of the Tenth Schedule of the Companies Act¹⁵. The capital may or may not be divided into shares.

⁶ Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions.

⁷ Chapter 386 [Laws of Malta]

⁸ S.L. 386.04

⁹ S.L. 386.02

¹⁰ S.L. 386.14

¹¹ S.L. 386.15

¹² Chapter 331 [Laws of Malta]

¹³ Chapter 16 [Laws of Malta]

¹⁴ S.L. 370.16

¹⁵ Chapter 386 [Laws of Malta]

The majority of funds currently licenced are hedge funds. These are licenced either as Professional Investor Funds “PIFs” or Alternative Investor Funds (“AIFs”). The total number of schemes amounts to 253 with around 615 sub-funds¹⁶. The assets under management of the fund managers established in Malta as at June 2014 amounts to € 30.7 billion¹⁷.

2.3. *Categories of Investment Firms*

The MFSA does not apply a “one-size fits all” approach to investment firms. Instead, provision is made for 4 different categories of investment services licences depending on the type of investment service provided. The following are the categories of investment services licences issued in terms of the Investment Services Act:

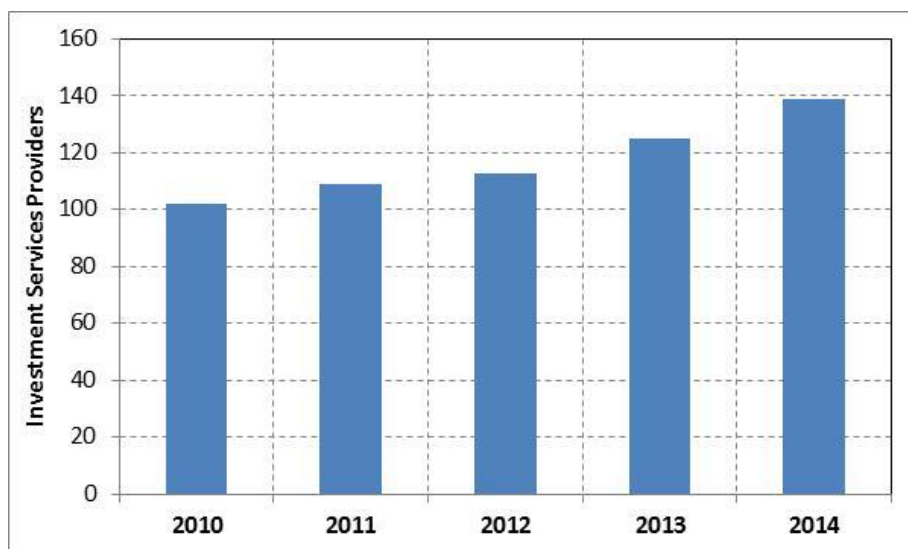
- *Category 1a:* Licence holders authorised to receive and transmit orders in relation to one or more instrument and/or provide investment advice and/or place instruments without a firm commitment basis but not to hold or control clients’ money or customers’ assets.
- *Category 1b:* Licence holders authorised to receive and transmit orders and/or provide investment advice in relation to one or more instrument and/or place instruments without a firm commitment basis solely for professional clients and/or eligible counterparties but not to hold or control clients’ money or customers’ assets.
- *Category 2:* Licence holders authorised to provide any investment service and to hold or control clients’ money or customers’ assets, but not to operate a multilateral trading facility or deal for their own account or underwrite or place instruments on a firm commitment basis.
- *Category 3:* Licence holders authorised to provide any Investment Service and to hold and control clients’ money or customers’ assets.
- *Category 4:* Licence holders authorised to act as trustees or custodians of collective investment schemes. The Category 4 can be either a Category 4a or Category 4b as indicated in the following sections.

The diagram below shows the total investment services licences held during the last 5 years¹⁸:

¹⁶ Source: Malta Financial Services Authority. 2014 figures are as at December 2014

¹⁷ Source: Malta Financial Services Authority

¹⁸ Source: Malta Financial Services Authority. 2014 figures are as at December 2014



Recognised Fund Administrators are not required to have an investment services licence issued in terms of the Investment Services Act but a recognition certificate issued in terms of Article 9A of the Act. As at December 2014, the number of recognised fund administrators stood at 27.

3. Category 4: A Custody Operation

The provision of custody services in Malta requires a Category 4a or a Category 4b Investment Services Licence issued in terms of the Investment Services Act depending on the type of custody service being provided.

3.1. Category 4a Investment Services Licence

A Licence Holder in possession of a Category 4a Investment Services Licence is eligible to act as custodian of all types of collective investment schemes.

A Category 4a Licence Holder shall be either of the following:

- a. A credit institution, constituted and licensed in terms of the Laws of Malta;
- b. A branch, established in Malta, of a credit institution authorised in an EU Member State/EEA Member State;
- c. A branch, established in Malta, of an overseas credit institution which is subject to prudential supervision 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 Licence Holder are guaranteed by a credit

institution and the credit institution is either a Maltese credit institution or is an overseas credit institution which is subject to prudential supervision requirements at least equivalent to the requirements applicable to Maltese credit institutions;

- e. A company incorporated in Malta which is wholly owned by a Maltese or foreign institution or company which is deemed by the MFSA to be an institution or company which provides unit-holders with protection equivalent to that provided by a Licence Holder fulfilling the requirements of (a), (b), (c) or (d) above and provided the liabilities of the company acting as Custodian are guaranteed by the institution or company and the institution or company has a minimum paid-up share capital of EUR 5 million or its equivalent in foreign currency;
- f. An investment firm in Malta or a branch of an investment firm established in another Member State or EEA State subject to capital adequacy requirements in accordance with Directive 2013/36/EU and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 including capital requirements for operational risks and authorised in accordance with Directive 2004/39/EC 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 to Directive 2004/39/EC; such investment firms shall in any case have own funds not less than the amount of initial capital referred to in Article 28 (2) of Directive 2013/36/EU.

Accordingly, for an entity to be eligible to obtain a Category 4a Investment Services Licence, it would need to fall under one of the classifications identified in paragraphs (a) to (f) above. Furthermore, a licence holder would be required to ensure compliance with the Standard Licence Conditions (“SLCs”) applicable to custodians of collective investment schemes outlined in Part BIV of the Investment Services Rules for Investment Services Providers.

3.2. *Category 4b Investment Services Licence (“Depositary Lite”)*

A Licence Holder in possession of a Category 4b Investment Services Licence is eligible to act as a custodian to one of the following:

- (a) Alternative Investment Funds (“AIFs”) which:
 - i. have no redemption rights exercisable during the period of 5 years from the date of the initial investments; and
 - ii. which, in accordance with their core investment policy, generally do not invest in assets that must be held in custody according to Article 21(8)(a) of the AIFM Directive; or
 - iii. which generally invest in issuers or non-listed companies in order to acquire control of such companies according Article 26 of the AIFM Directive; or

- (b) Third country AIFs managed by an EU AIFM, which are marketed in the EU/EEA in terms of Article 36 of the AIFM Directive.

A Category 4b Investment Services Licence Holder shall be either one of the entities which is eligible to obtain a Category 4a Investment Services Licence or alternatively one of the following entities:

- a. A Category 2 Licence Holder (excluding fund managers);
- b. A Recognised Fund Administrator.

The Authority expects a Category 4b Investment Services Licence Holder to ensure compliance with the applicable SLCs outlined in Part BIV of the Investment Services Rules for Investment Services Providers. In particular, provision is made in the Rules for the depositary's exemption from strict liability in terms of the provisions of the AIFMD, as outlined in Section 4 of this Guide.

Reference must be made to Appendix II of this Brochure providing information on the provision of custody services through the establishment of a branch or subsidiary in Malta.

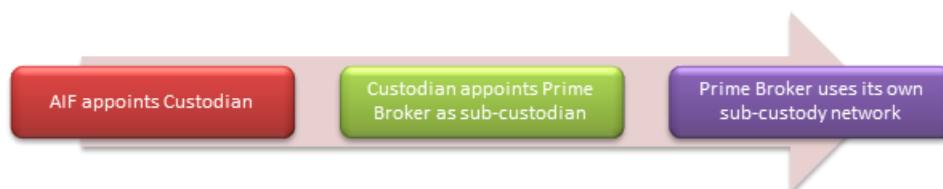
4. Depositary Function and the AIFMD

4.1. Category 4a Investment Services Licence Holders

The MFSA will consider any model proposed by an applicant for a Category 4a Investment Services Licence, amongst which the following models:

- **Model 1**

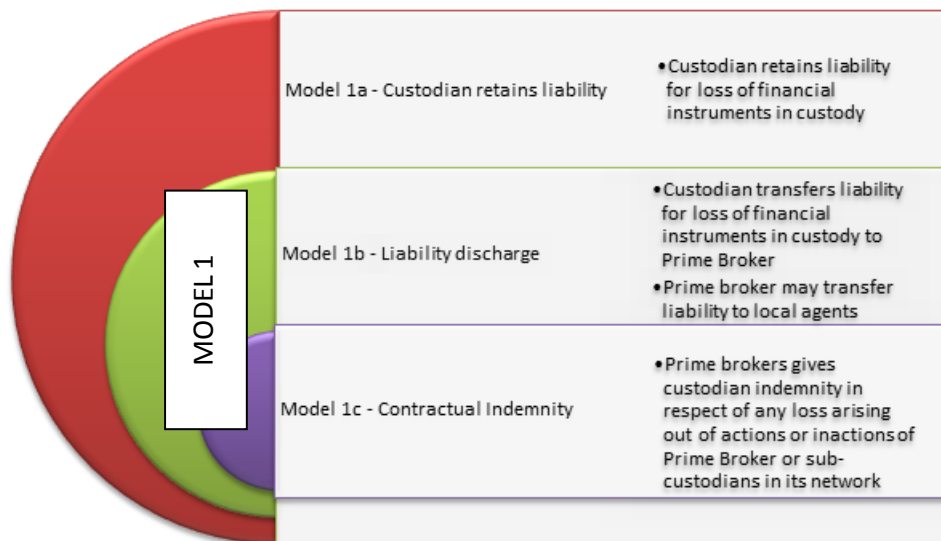
Under Model 1, the Fund appoints a Custodian. The Custodian appoints a Prime Broker as sub-Custodian. The Prime Broker uses its own sub-custody network, as illustrated in the diagram below:



There are three possible scenarios related to the use of this Model namely:

- (a) The Custodian retains liability for the loss of financial instruments held in custody.

- (b) The Custodian transfers liability for the loss of financial instruments held in custody to the Prime Broker. The Prime Broker in turn may also transfer liability to its local agents.
- (c) The Custodian retains liability for the loss of financial instruments held in custody but receives a contractual indemnity from the Prime Broker in respect of any loss arising directly out of the actions or inactions of the Prime Broker or sub-Custodians within its network.



- **Model 2**

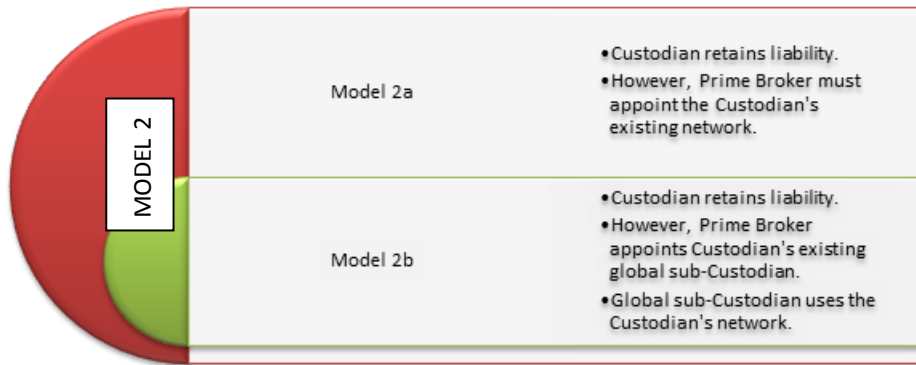
Under Model 2, the Prime Broker uses the Custodian’s sub-custody network and the Custodian thereby retains liability.



There are two possible scenarios related to the use of this model:

- (a) The Custodian retains liability on the basis that the Prime Broker directly appoints the Custodian’s existing network.
- (b) The Custodian retains liability on the basis that the Prime Broker appoints the Custodian’s existing global sub-Custodian which, in turn, uses its network.

The advantage of this approach is that the Custodian has control over the sub-custody network. However, the approach creates some additional timing and settlement inefficiencies due to the addition of a global sub-Custodian.



• **Model 3**

Under Model 3, the Custodian holds long assets in custody. Financing is done on swap (the “UCITS model”).

In this case, the Custodian holds all long assets of the Fund and financing is achieved via collateralised derivatives.

Note: Licence Holders are to ensure compliance with the interpretations provided by ESMA with regards to the obligations of custodians in the Q&A on the Application of the AIFMD issued by ESMA [ESMA/2014/868].

4.2. *Category 4b Investment Services Licence Holders*

A Category 4b Investment Services Licence Holder is eligible to provide custody services only in specific circumstances as outlined above in Section 3.2.

The table below seeks to indicate the varied applicability of the provisions of the AIFMD in relation to the appointment of the Category 4b Licence Holder:

Appointment of Category 4b Licence Holder in relation to specific categories of AIFs such as private equity funds, venture capital funds and real estate funds	<ol style="list-style-type: none"> 1) Applicability of general SLCs dealing with requirement to have a written contract evidencing the appointment of the depositary and the requirements relating to depositary functions; 2) Applicability of general liability provisions where Licence Holder does not hold financial instruments; 3) Applicability of strict liability provisions where the Licence Holder holds financial instruments in custody in relation to such instruments only.
Appointment of Category 4b Licence Holder in relation to Article 36 AIFMD	<ol style="list-style-type: none"> 1) Applicability of all provisions of the Directive with the exception of Article

	21 AIFMD; 2) Appointment of one or more entities to carry out the duties referred to in Article 21(7), (8) and (9) AIFMD; 3) No strict liability clauses apply.
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5. Fees Payable

In terms of the Investment Services Act (Licences and Fees) Regulations¹⁹, the following fees are payable with regards to a Category 4a and 4b Investment Services Licence:

Investment Services Licence	Application Fee	Supervisory Fee
Category 4a	€17,000	€15,000
Category 4b	€7,500	€5,000

¹⁹ S.L. 370.03

-FREQUENTLY ASKED QUESTIONS-

Q1) What approach does the MFSA adopt in relation to the due diligence process to be carried out in the case of branches of EU credit institutions/investment firms that passport into Malta?

A1) In the case of branches of EU credit institutions/investment firms that passport into Malta, the MFSA will not carry out any due diligence on the directors, officers, senior managers and qualifying shareholders of these firms. However, the Authority will carry out a due diligence process on the Senior Manager, Compliance Officer, MLRO and personnel based in Malta who will effectively be managing the branch.

Q2) Are Category 2 Investment Services Licence Holders eligible to apply for a Category 4a Licence?

A2) As indicated in Article 21(3)(b) AIFMD, investment firms in terms of MiFID may act as depositary. A Category 2 Investment Services Licence Holder having an initial capital requirement of EURO 730,000 is eligible to apply for a Category 4a Investment Services Licence.

Q3) Is the appointment of a local auditor necessary for custodian branches?

A3) Yes. In terms of Section 2 of Part BIV of the Investment Services Rules for Investment Services Providers, a custodian must appoint a local auditor. This is also a requirement prescribed in terms of the Income Tax Act.

Q4) What systems are custodians required to have in place?

A4) A Custodian is required to have the business organization, systems, expertise and experience deemed necessary by the MFSA for it to carry out its functions. The nature and extent of required resources (particularly with regards to the local staff complement) will largely depend on the number, nature and extent of mandates to be taken over by the Custodian.

There are no prescriptive requirements relating to the nature of office premises and IT systems, including as regards the links with the Head Office which the local branch is expected to have in place, as the Authority considers these to be operational issues which are best left up to the company to decide. The 'rental' of office space on an office-sharing basis is permitted provided appropriate arrangements are in place to safeguard the confidentiality of documentation. As

regards services provided by the branch's Head Office, the Authority would expect the branch to have adequate communication and reporting arrangements in place to enable it to satisfy itself that these services are being properly performed as well as to enable it to report to the Authority as may be required.

Q5) What are the substance requirements usually requested by the Authority at application stage in the case of a Category 4a Licence Holder?

A5) For the purposes of the provision of custody services in Malta, the MFSA would generally accept the following minimum staffing arrangement:

- At least one full time employee acting as Senior Manager who has a good background in custody operations in order to manage the affairs of the local operations; and
- The appointment of a locally based Compliance Officer and Money Laundering Reporting Officer (both roles may be assumed by the same person) who should preferably be separate from the Senior Manager, although a transitional period may be permitted during which the Senior Manager may also assume the role of Compliance Officer and MLRO.

Furthermore, the Authority expects that any employee is totally dedicated to the operation and employed with the entity on a full-time basis.

During the 'transitional period' of the first six months following the granting of a licence, the roles of Compliance Officer, Money Laundering Reporting Officer and Senior Manager of the Malta branch may be assumed by one and the same person provided that this person is suitably qualified.

In the case of subsidiaries incorporated in Malta, the Licence Holder would also be required to have a minimum of one Board member who is resident in Malta. However, different operational requirements may be applicable in the case of Credit Institutions/Investment Firms/Recognised Fund Administrators established in Malta intending to also provide custody services.

For the purposes of exercising 'dual control', the Authority expects both branches and subsidiaries to have at least two individuals involved in the local operations.

Q6) Are the branches of EU credit institutions/investment firms which passport into Malta required to submit COREP Returns or Financial Returns?

A6) No, branches of EU credit institutions/investment firms passporting under freedom of establishment into Malta are not required to submit COREP Returns or

Financial Returns, since these are submitted to the Competent Authority of the home member state of the entity.

Q7) What are the requirements applicable to branches in relation submission of financial resources statements and financial forecasts?

A7) Branches are not required to submit financial resources statements. However, the standard 3-year financial forecasts must be submitted to the Authority upon application. These should be limited to the depositary/custody functions undertaken by the branches from Malta pursuant to the Category 4a/4b Investment Services Licence.

Q8) What obligations does the duty of segregation entail for the custodian?

A8) On 1st December 2014, ESMA launched a consultation exercise on the AIFMD asset segregation requirements. In this Consultation Document, ESMA is seeking feedback on two possible options asset segregation:

- Option 1 in which a delegated third party holding assets from various depositaries is not required to hold separate accounts for the AIFs assets of each delegating depositary ; and
- Option 2 in which the delegated third party holds accounts for different delegating depositaries. Therefore, each account would only hold assets of AIFs of the same delegating depositary. Assets of AIFs of other depositaries would have to be kept in separate accounts.

The Consultation Exercise runs till 30 January 2015. The Consultation Document can be downloaded from the ESMA website at the following link: [http://www.esma.europa.eu/system/files/2014-1326_cp - guidelines on aifmd asset segregation.pdf](http://www.esma.europa.eu/system/files/2014-1326_cp_-_guidelines_on_aifmd_asset_segregation.pdf)

Q9) Article 21(11) AIFMD provides that where the depositary delegates its safe-keeping functions to third parties, it must be in a position to demonstrate that there is an objective reason for delegation. What approach does the Authority intend to adopt in this regard?

A9) With regards to delegation of the safe-keeping functions, the Authority intends using as guidance the following objective reasons when assessing the delegation structure:

- a) optimising of business functions and processes;
- b) cost saving; and
- c) expertise of the delegate.

Q10) Can an AIF open an account directly with a sub-custodian while the custodian enjoys sufficient control over the sub-custodian e.g. in the case of a parent-subsidiary relationship?

A10) Yes, as long as the custodian holds or has access to all the clients' records and will be in a position to carry out cash flow monitoring and oversight.

Q11) Which duties can the custodian delegate in terms of the AIFMD?

A11) The AIFMD provides that the custodian shall not delegate its functions to third parties save for the safekeeping functions prescribed in Article 21(8) AIFMD. However, by way of clarification, Recital 42 AIFMD provides that "delegation of supporting tasks that are linked to its depositary tasks, such as administrative or technical functions performed by the depositary as a part of its depositary tasks, is not subject to the specific limitation and requirements set out in the Directive" and can therefore be delegated.

PROVISION OF CUSTODY SERVICES THROUGH THE ESTABLISHMENT OF A BRANCH OR SUBSIDIARY

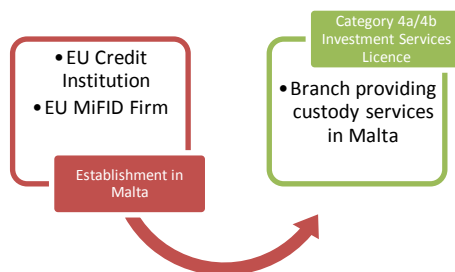
Introduction

Article 21 of the AIFMD provides for the following scenarios:

- *The depositary of an EU AIF shall be ESTABLISHED²⁰ in the HOME MEMBER STATE of the AIF²¹;*
- *The depositary of a non-EU AIF can be ESTABLISHED in the home member state of the EU AIFM managing such non-EU AIF²².*

The interpretation of Article 21(5) of the AIFMD can give rise to the scenarios outlined in the following paragraphs.

➤ Scenario 1: Malta branch of EU Credit Institution or MiFID Firm



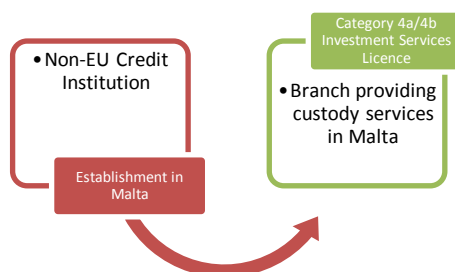
Scenario 1 contemplates the establishment of a branch in Malta by an EU Credit Institution or MiFID firm. In this case, the Malta branch of such EU Credit Institution or MiFID firm would be required to obtain a Category 4a and/or Category 4b Investment Services Licence (as applicable) in Malta in order to be able to provide depositary services to Maltese AIFs. The establishment of a branch would satisfy the definition of “established” prescribed in the AIFMD as SLC 1.02(b) or (f) of Part BIV of the Investment Services Rules for Investment Services Providers.

²⁰ Article 4(1)(j)(iii) of the AIFMD provides that “established” for depositaries means “having its registered office or branch in”.

²¹ Article 21(5)(a) AIFMD

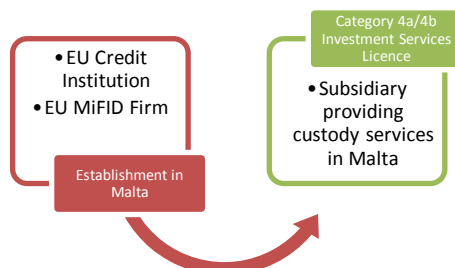
²² Article 21(5)(b) AIFMD

➤ **Scenario 2: Malta branch of non-EU Credit Institution**



Scenario 2 contemplates the establishment of a branch in Malta by a non-EU credit institution. In this case, the Malta branch of such a non-EU credit institution would be required to obtain a Category 4a and/or Category 4b Investment Services Licence (as applicable) in Malta in order to be able to provide depositary services to Maltese AIFs. Prior to the issue of the licence, the Authority must be satisfied that the non-EU credit institution is subject to prudential requirements at least equivalent to the requirements applicable to Maltese credit institution. Upon the issue of the relevant Investment Services Licence, the Malta branch would be an eligible depositary in terms of Article 21(3)(c) of the AIFMD in view of the fact that pre-July, 2011, such branches were eligible (subject to them being in possession of a Category 4 Licence) to act as custodians for Maltese funds.

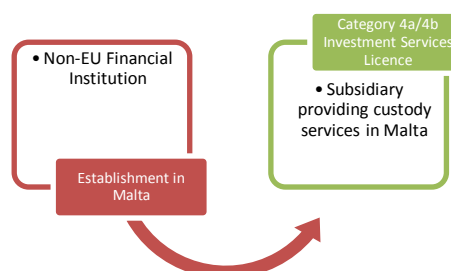
➤ **Scenario 3: Malta subsidiary of an EU credit institution or EU MiFID Firm**



Scenario 3 contemplates the establishment of a subsidiary in Malta by an EU Credit Institution or EU MiFID firm. In this case, where the Maltese subsidiary satisfies the requirements prescribed in SLC 1.02(d) or (e) of Part B IV of the Investment Services Rules for Investment Services Providers, it would be required to obtain a Category 4a and/or Category 4b Investment Services Licence for the purpose of qualifying within the list of eligible entities to provide depositary services in terms of Article 21(3)(c) of the AIFMD. The Maltese subsidiary would qualify as an eligible depositary in view of

the fact that pre-July, 2011, such subsidiaries were eligible (subject to them being in possession of a Category 4 Licence) to act as custodians for Maltese funds.

➤ **Scenario 4: Malta subsidiary of a non-EU Financial Institution**



This scenario contemplates the establishment of a subsidiary in Malta by a non-EU financial institution. In this case where the Maltese subsidiary satisfies the requirements prescribed in SLC 1.02(d) or (e) of Part B IV of the Investment Services Rules for Investment Services Providers, it would be required to obtain a Category 4a and/or Category 4b Investment Services Licence for the purpose of qualifying within the list of eligible entities to provide depositary services in terms of Article 21(3)(c) of the AIFMD. Prior to the issue of the licence, the Authority must be satisfied that the non-EU financial institution is subject to prudential requirements at least equivalent to the requirements applicable in Malta. The Maltese subsidiary would qualify as an eligible depositary in view of the fact that pre-July, 2011, such subsidiaries were eligible (subject to them being in possession of a Category 4 Licence) to act as custodians for Maltese funds.

Regulatory Treatment of Subsidiaries and Branches

	Subsidiary	Branch
Due diligence	On all directors of subsidiary and direct or indirect shareholders	Checks on governance and due diligence carried out on the senior people of the branch e.g. the branch manager
Outsourcing of monitoring and supervisory duties	Debatable. Can obtain 'support services' from parent company.	Not relevant if monitoring and supervisory duties are done by head office since branch is not separate legal entity
Outsourcing of safekeeping	Yes	Yes

duties		
Own funds	At least Euro 730,000	Can rely on own funds of head office
Substance in Malta	At least two full timers	Allowed to start business with two individuals