

Subsidiary Legislation made under s. 53 of the Financial Services (Investment and Fiduciary Services) Act as read with section 23(g)(i) and (ii) of the Interpretation and General Clauses Act.

**FINANCIAL SERVICES (ALTERNATIVE INVESTMENT FUND MANAGERS) (DEPOSITARIES) REGULATIONS  
2013**

**(LN. 2013/199)**

*Commencement*                      **1.1.2014**

Amending  
enactments

Relevant current  
provisions

Commencement  
date

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**ARRANGEMENT OF REGULATIONS**

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**FINANCIAL SERVICES (ALTERNATIVE INVESTMENT FUND MANAGERS) (DEPOSITARIES) REGULATIONS 2013**

*In exercise of the powers conferred by section 53 of the Financial Services (Investment and Fiduciary Services) Act as read with section 23(g)(i) and (ii) of the Interpretation and General Clauses Act, the Minister has made the following Regulations—*

**Title.**

1. These Regulations may be cited as the Financial Services (Alternative Investment Fund Managers) (Depositaries) Regulations 2013.

**Commencement.**

2. These Regulations come into operation on 1 January 2014.

**Overview.**

3. These Regulations supplement regulation 27 of the AIFM Regulations (depositaries) by making provision about the regulation of depositaries appointed for AIFs in accordance with subregulation (1) of that regulation.

**Interpretation.**

4.(1) In these Regulations—

an “AIF depositary” is a depositary appointed for an AIF in accordance with regulation 27(1) of the AIFM Regulations;

“the AIFM Regulations” means the Financial Services (Alternative Investment Fund Managers) Regulations 2013;

“the CIS Act” means the Financial Services (Collective Investment Schemes) Act 2011; and

“the CIS Regulations” means the Financial Services (Collective Investment Schemes) Regulations 2011.

(2) Expressions used in these Regulations and in the AIFM Regulations have the same meaning in these Regulations as in those Regulations.

**Restricted activities.**

5.(1) Regulation 127 of the CIS Regulations (activities deemed to constitute “restricted activities” for the purposes of section 7 of the CIS Act) is amended as follows.

(2) After paragraph (b) omit the word “and”.

(3) After paragraph (c) insert—

“; and

- (d) acting as a depositary appointed for an Alternative Investment Fund in accordance with regulation 27(1) of the Financial Services (Alternative Investment Fund Managers) Regulations 2013, whether the depositary is—
  - (i) a credit institution of the kind specified in regulation 27(3)(a),
  - (ii) an investment firm of the kind specified in regulation 27(3)(b),
  - (iii) an institution of the kind specified in regulation 27(3)(c), or
  - (iv) an institution of another kind which is permitted to act as a depositary in accordance with regulation 27(4) or (6).”

**Capital requirement.**

6.(1) This regulation applies to an AIF depositary under the CIS Act, of the kind referred to in regulation 127(d)(iv) of the CIS Regulations.

(2) An authorisation of an AIF depositary to which this regulation applies is subject to an automatic condition that the AIF depositary complies with the capital requirement under this regulation.

(3) The AIF depositary shall maintain and be able to demonstrate sufficient financial resources commensurate with the nature and volume of its business.

(4) The AIF depositary is required to be solvent and to be able to meet the risks which it faces.

(5) The AIF depositary shall be expected to maintain a minimum level of financial resources equivalent to 3 months' worth of operating expenses and the measure of these financial resources shall be the net asset figure in the AIF depositary's balance sheet.

(6) In this regulation “net assets” means the total assets of any type less the total liabilities of any type except for—

- (a) intangible fixed assets; and

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- (b) related party balances (e.g. shareholders and directors and associated companies) unless in the ordinary course of business, outstanding balances are being settled under normal commercial terms.

(7) The AIF depositary shall calculate the requirement in this regulation as appropriate to the business, at least once every 3 months.

(8) The AIF depositary shall, unless previously agreed in writing by the FSC, have a paid-up share capital of substance depending on its business which shall not be less than £125,000.

**Fees.**

7. In Part 3 of the Schedule to the Financial Services (Alternative Investment Fund Managers) (Fees) Regulations 2013 (other fees) after paragraph 3 (branches) insert—

*“Depositaries*

- 4. A firm which provides services as a depositary in respect of an AIF in accordance with regulation 27 of the AIFM Regulations must pay—
  - (a) an authorisation application fee of £2,000, and
  - (b) an annual fee of £2,000.”.