

Chapter 16

Scope of the Alternative Investment Fund Managers Regime

16.4 Acting as a depositary of an AIF

G Question 4.1: What does acting as a depositary of an AIF involve?

Acting as:

- (1) the depositary of an *AIF* managed by a full-scope UK AIFM; or
 - (2) the depositary of a UK *AIF* managed by an EEA AIFM; or
 - (3) the depositary of any other *AIF*, if the *FCA* or an authority in another *EEA State* has permitted a *person* with its registered office or a branch in the *UK* to be appointed as a depositary of that *AIF* under article 61.5 of *AIFMD*; or
 - (4) the *trustee* of an *AIF* that is an *authorised unit trust scheme* but is not an *AIF* to which (1) to (3) apply; or
 - (5) the depositary of an *AIF* that is an *open-ended investment company* or *authorised contractual scheme* but is not an *AIF* to which (1) to (3) apply.
- (3) only applies until 22 July 2017.

Question 4.2: What does depositary mean?

For the purposes of paragraphs (1) to (3) of the answer to Question 4.1, depositary means:

- (1) a *person* appointed in compliance with the requirement for the *AIFM* to appoint a depositary in the *UK* provisions which implemented article 21.1 of *AIFMD*; or
- (2) an Article 36 custodian as defined in regulation 57(5)(a) of the *AIFMD UK Regulation*.

For the purpose of paragraph (5) of the answer to Question 4.1, depositary has the meaning in section 237 of the *Act*.

Question 4.3: The *AIFMD* allows the depositary to delegate some functions to a third party. Is that third party acting as the depositary of an *AIF*?

No. The *UK* provisions which implemented article 21 of *AIFMD* envisage that a *depositary* remains the sole depositary even if, in accordance with that article, it delegates certain of its functions.