

Attachment 3 to CP 296: Draft regulatory guide



ASIC

Australian Securities & Investments Commission

REGULATORY GUIDE 132

Funds management: Compliance and oversight

October 2017

About this guide

This guide is for operators of:

- registered managed investment schemes (registered schemes) and retail corporate collective investment vehicles (retail CCIVs) (together, investment funds);
- wholesale CCIVs;
- Australian passport funds;
- wholesale managed investment schemes;
- investor directed portfolio services (IDPSs); and
- managed discretionary accounts (MDAs).

It also applies to those with oversight responsibilities, including compliance committees, independent oversight entities, compliance plan auditors, annual implementation reviewers and depositaries of CCIVs.

It gives guidance on the compliance and oversight obligations for these entities to comply with the Corporations Act and other legal obligations.

Note: This draft guide is based on the exposure drafts of the Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2017 and Corporations Amendment (Asia Region Funds Passport) Bill 2017, released 25 August 2017.

About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

Consultation papers: seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

Regulatory guides: give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

Information sheets: provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

Reports: describe ASIC compliance or relief activity or the results of a research project.

Document history

This draft guide was issued in October 2017 and is based on legislation and regulations as at the date of issue.

This guide replaced:

- Superseded Regulatory Guide 132 *Managed investments: Compliance plans*, issued August 1998, updated November 1998
- Superseded Regulatory Guide 116 *Commentary on compliance plans: Agricultural industry schemes*, issued April 2004
- Superseded Regulatory Guide 117 *Commentary on compliance plans: Financial asset schemes*, issued April 2004
- Superseded Regulatory Guide 118 *Commentary on compliance plans: Contributory mortgage schemes*, issued April 2004
- Superseded Regulatory Guide 119 *Commentary on compliance plans: Pooled mortgage schemes*, issued April 2004
- Superseded Regulatory Guide 120 *Commentary on compliance plans: Property schemes*, issued April 2004

Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

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A Overview

Key points

An effective and responsive compliance management system that is planned, implemented, evaluated and improved as needed will allow an Australian financial services (AFS) licensee to demonstrate its commitment to complying with its obligations under the *Corporations Act 2001* (Corporations Act) and *Australian Securities and Investments Commission Act 2001* (ASIC Act).

Compliance plans for registered managed investment schemes (registered schemes) and retail corporate collective investment vehicles (retail CCIVs) ('investment funds'), must meet the requirements of the Corporations Act. This is one part of an investment fund operator's compliance management system.

Oversight of the operation of investment funds is primarily through:

- for registered schemes, the compliance committee (or the independent directors of the responsible entity) and compliance plan audit;
- for CCIVs, the depositary and compliance plan audit; and
- for Australian passport funds, the independent oversight entity and annual implementation review.

The compliance and oversight arrangements should reflect the values and purpose of the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider.

Who this guide applies to

RG 132.1 This guide is for:

- (a) responsible entities of registered schemes;

Note: This guide applies to all types of registered schemes, even if we have given other guidance about specific compliance obligations for that type of registered scheme.

- (b) corporate directors of CCIVs;

- (c) operators of managed investment schemes that are unregistered because of s601ED(2) who hold an AFS licence in relation to the operation of the scheme ('wholesale scheme operators');

- (d) Australian passport fund operators;

- (e) investor directed portfolio service (IDPS) operators; and

Note: See [Regulatory Guide 148](#) *Platforms that are managed investment schemes and nominee and custody services* (RG 148) for additional guidance for IDPS operators.

- (f) managed discretionary account (MDA) providers.

Note: See [Regulatory Guide 179](#) *Managed discretionary accounts* (RG 179) for additional guidance for MDA providers.

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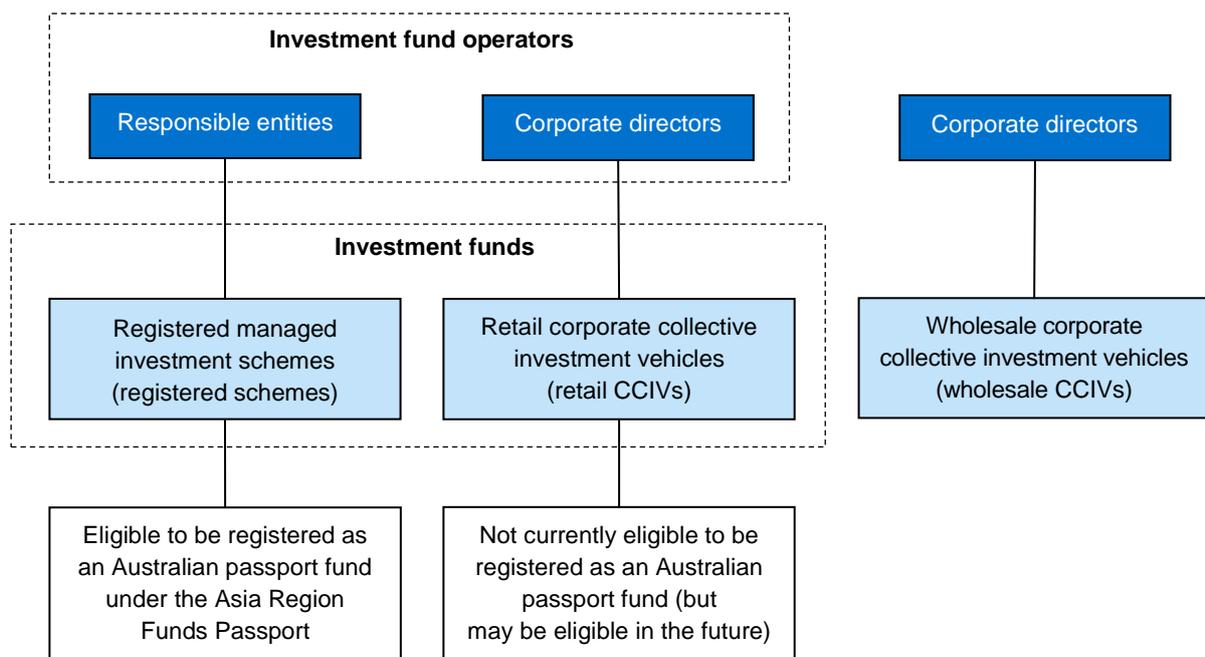
- RG 132.2 This guide also applies to those with oversight responsibilities, such as:
- (a) directors of the responsible entity of a registered scheme or corporate director of a CCIV;
 - (b) staff involved in undertaking or monitoring compliance activity;
 - (c) members of compliance committees and independent oversight entities;
 - (d) compliance plan auditors;
 - (e) annual implementation reviewers; and
 - (f) depositaries of CCIVs performing an oversight role.

Note: See draft updated Regulatory Guide 133 *Funds management and custodial services: Holding assets* for guidance on a depositary’s responsibilities in relation to custody and asset holding.

- RG 132.3 In this guide, as illustrated in Figure 1:
- (a) ‘investment fund’ refers to registered schemes and retail CCIVs;
 - (b) ‘investment fund operator’ refers to responsible entities of registered schemes and corporate directors of retail CCIVs; and
 - (c) ‘Australian passport fund’ refers to an investment fund that is also registered as a passport fund under the Asia Region Funds Passport.

Note: Under the draft legislation, only registered schemes are eligible to be Australian passport funds. If the legislation is changed to also allow retail CCIVs to be Australian passport funds, we will amend our guidance accordingly.

Figure 1: Overview of investment funds and Australian passport funds



Note: Investment funds, investment fund operators and Australian passport funds are described in RG 132.3 (accessible version).

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Compliance and oversight obligations

Broad compliance obligation

- RG 132.4 An Australian financial services (AFS) licensee has an obligation to:
- (a) do all things necessary to ensure its financial services are provided efficiently, honestly and fairly: see s912A(1)(a) of the Corporations Act;
 - (b) comply with the financial services laws: see s912A(1)(c); and
 - (c) comply with the conditions on its AFS licence: see s912A(1)(b).

Note: [Regulatory Guide 104](#) *Licensing: Meeting the general obligations* (RG 104) sets out our guidance on compliance arrangements generally expected of AFS licensees.

- RG 132.5 A responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider must have measures in place for ensuring it complies with its obligations as an AFS licensee, including the broad compliance obligations, on an ongoing basis: see condition 4 of the standard licence conditions in [Pro Forma 209](#) *Australian financial services licence conditions* (PF 209).

- RG 132.6 An effective and responsive compliance management system that is planned, implemented, evaluated and improved (as needed) will allow a responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider to demonstrate its commitment to complying with its obligations under the Corporations Act and ASIC Act.

Compliance plan

- RG 132.7 In addition to its broad compliance obligation as an AFS licensee, an investment fund operator has a duty to:
- (a) ensure that the investment fund's compliance plan meets the requirements of the Corporations Act; and
 - (b) comply with the compliance plan: see s601FC and draft s1156 of the Corporations Act.

- RG 132.8 The compliance plan must set out adequate measures that the investment fund operator will apply in operating the investment fund to ensure compliance with the Corporations Act and the fund's constitution: see s601HA and draft s1161A of the Corporations Act.

- RG 132.9 The Corporations Act does not specify what constitutes adequate measures. An investment fund operator will need to develop and implement an appropriate set of compliance controls to address the compliance risks faced by that investment fund. This approach is intended to provide flexibility for investment fund operators to create compliance controls that are tailored for the particular investment fund.

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Note: In this guide, we use the term ‘compliance controls’ instead of ‘compliance measures’, as this reflects Australian Standard [AS ISO 19600:2015](#) *Compliance management systems—Guidelines*.

- RG 132.10 Compliance plans and the compliance controls set out in them are an integral component of effective compliance management systems, and play a key role in protecting investors and promoting their interests.
- RG 132.11 Section C of this guide sets out the matters that an investment fund operator should address in its compliance plan. The particular compliance controls adopted will depend on the specific nature of the investment fund and its business.

Compliance plan auditor

- RG 132.12 An investment fund operator must ensure that at all times a registered company auditor, an audit firm or an authorised audit company is engaged to audit compliance with the investment fund’s compliance plan: see s601HG(1) and draft s1162 of the Corporations Act.
- RG 132.13 Under s601HG(3) and draft s1162A of the Corporations Act, the auditor of a compliance plan must:
- (a) examine the compliance plan;
 - (b) carry out an audit of the investment fund operator’s compliance with the compliance plan during the financial year; and
 - (c) give the investment fund operator a report that states the auditor’s opinion on whether:
 - (i) the investment fund operator has complied with the compliance plan during the financial year; and
 - (ii) the plan continues to meet the requirements of the Corporations Act.
- RG 132.14 The appointment of a compliance plan auditor, who audits the compliance plan annually, serves as an independent external oversight of the investment fund operator’s compliance arrangements to ensure the compliance plan is current at all times.
- RG 132.15 Section D of this guide sets out our expectations about the professional standards to be exercised by a compliance plan auditor in auditing an investment fund’s compliance plan.

Compliance committee

- RG 132.16 A responsible entity of a registered scheme must establish a compliance committee if less than half of its directors are external directors: see s601JA of the Corporations Act. The compliance committee must have at least three

members, and the majority must be external members: see s601JB of the Corporations Act.

Note: At least half of the directors of the corporate director of a retail CCIV must be external directors: see draft s1156B. This means that a retail CCIV is not required to establish a compliance committee.

- RG 132.17 Section 601JC of the Corporations Act provides that the compliance committee must:
- (a) monitor to what extent the responsible entity complies with the compliance plan, and report on its findings to the responsible entity;
 - (b) report to the responsible entity any breaches of the Corporations Act or the constitution that the compliance committee becomes aware of or suspects;
 - (c) report to ASIC if the committee is of the view that the responsible entity has not taken, or does not propose to take, appropriate action to deal with a reported breach of the Corporations Act or the constitution; and
 - (d) assess at regular intervals whether the compliance plan is adequate, report to the responsible entity on that assessment and make recommendations to the responsible entity about any changes that it considers should be made to the compliance plan.
- RG 132.18 Regardless of whether there is a compliance committee, the board of directors remains ultimately responsible for ensuring that the responsible entity complies with its obligations. The compliance committee assists the board by operating, in part, as an intermediary between the operational compliance unit and the board in relation to compliance monitoring, assessment and reporting. However, it is important that the compliance function has a direct reporting line to the board to ensure that the board is made fully aware of any compliance issues so that the board can effectively carry out its governance responsibilities.
- RG 132.19 If an investment fund does not have a compliance committee, the external directors should be particularly vigilant and actively engage with compliance issues.
- RG 132.20 Section D sets out our guidance on the appointment and conduct of compliance committees.

Australian passport funds

- RG 132.21 For Australian passport funds, in addition to the compliance plan requirements under the Corporations Act, the Australian Passport Rules require the fund to have a compliance framework that ensures adequate compliance with relevant laws and regulations: see section 8(2)(d) of the Australian Passport Rules.

Note: The Australian Passport Rules will be made by the relevant Minister as a legislative instrument under draft s1211(1) and s1211A of the Corporations Act. Under draft s1211(2), the Australian Passport Rules must be substantially the same as the Passport Rules set out in Annex 3 to the [Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport](#).

- RG 132.22 Section C of this guide sets out the matters that should be addressed in an Australian passport fund's compliance plan.
- RG 132.23 An Australian passport fund is also subject to oversight by an independent oversight entity: see section 14 of the Australian Passport Rules. For Australian passport funds, the independent oversight entity is each of the external directors of the Australian passport fund operator or, if there is a compliance committee, the compliance committee.
- RG 132.24 In addition to the compliance plan audit requirements under the Corporations Act, an Australian passport fund is subject to an annual implementation review: see section 15 of the Australian Passport Rules.
- RG 132.25 Section D of this guide sets out our expectations for the conduct of the annual implementation review and the oversight functions of the independent oversight entity.

Depositories

- RG 132.26 A retail CCIV must have a depository: see draft s1163 of the Corporations Act.

Note: It is optional for a wholesale CCIV to have a depository. However, if a wholesale CCIV has appointed a depository and has given ASIC notice of the appointment of the depository, the depository provisions are applicable to the depository of the wholesale CCIV.

- RG 132.27 Under draft s1164B of the Corporations Act, the depository of a CCIV has a supervisory responsibility to take reasonable care to ensure that the corporate director's activities comply with the Corporations Act and the constitution in relation to:
- (a) issuing, redeeming and cancelling shares in the CCIV;
 - (b) valuing shares in the CCIV;
 - (c) allocating assets and liabilities of the CCIV to sub-funds of the CCIV; and
 - (d) allocating and distributing income of the CCIV.
- RG 132.28 In addition to its supervisory responsibilities, the depository has a duty to safeguard the assets of the CCIV.

Note: See draft updated Regulatory Guide 133 *Funds management and custodial services: Holding assets* for guidance on a depository's responsibilities in relation to custody and asset holding. The draft new and updated regulatory guides are available on our website at www.asic.gov.au/cp under CP 296.

- RG 132.29 Section D of this guide sets out guidance about the depositary's oversight functions and duties.

Summary of our guidance

Compliance management systems

- RG 132.30 An effective and responsive compliance management system that is planned, implemented, evaluated and improved (as needed) will allow a responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider to demonstrate its commitment to complying with its obligations under the Corporations Act and ASIC Act.
- RG 132.31 Key features of an effective compliance management system include:
- (a) an understanding of the context in which the managed investment scheme, CCIV, IDPS or MDA operates;
 - (b) clear articulation of the values, purpose and strategy of the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider. The compliance management system should reflect the values, purpose and strategy of the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider;
 - (c) identification of compliance obligations, risks and objectives;
 - (d) clarity of roles and responsibilities of those people involved in the compliance management system;
 - (e) organisational support for the compliance management system;
 - (f) implementation of compliance controls which respond to the identified compliance obligations, risks and objectives;
 - (g) appropriate documentation and record keeping;
 - (h) monitoring and reporting of performance against the compliance management system; and
 - (i) procedures where non-compliance occurs and for continual improvement of the compliance management system.
- RG 000.32 See Section B for our detailed guidance on compliance management systems.

Compliance plans

- RG 132.33 A compliance plan is one part of an investment fund operator's overall compliance management system. In planning, establishing, evaluating and improving a compliance plan, the investment fund operator should ensure:
- (a) the compliance controls in the compliance plan are aligned with the investment fund operator's values, objectives and strategy, taking into

account the nature, scale and complexity of the particular investment fund and, for a CCIV, each sub-fund of the CCIV;

- (b) there is a clear and demonstrated nexus between the compliance obligations and compliance controls, and the compliance controls reflect the actual procedures, processes and practices of the investment fund operator and the investment fund;
- (c) the compliance controls are set out with enough certainty to allow the investment fund operator, ASIC and the auditor of the compliance plan to assess whether the investment fund operator has complied with the compliance plan;
- (d) the compliance plan is written in a clear manner so that it is usable by its target audience;
- (e) the compliance plan provides for separate people to have responsibility for carrying out a particular compliance control and the monitoring of that compliance control;
- (f) the frequency and quantity of compliance controls, and their monitoring, are sufficient to effectively manage the compliance risks;
- (g) compliance with the compliance controls is monitored, the processes for monitoring compliance with the compliance controls are described with sufficient details and certainty to ensure whether they will be or have been complied with, and any non-compliance is reported to the compliance committee, the board or ASIC as required; and
- (h) the compliance plan is maintained so that it is up to date at all times.

RG 132.34 Group compliance risks to be addressed in a compliance plan generally arise from issues relating to:

- (a) requirements that apply because the investment fund operator is an AFS licensee, including requirements in relation to financial resources, conflicts of interest, complaints handling, breach reporting and competency;
- (b) management of staff, finances and other processes at the investment fund operator level, such as directors or the compliance committee, training, recruitment and experience, cyber resilience, accounts and record keeping, and disclosure and reporting; or
- (c) for a CCIV, processes that are common across the various sub-funds of the CCIV.

RG 132.35 Different types of compliance risks will exist for different types of registered schemes or sub-funds of CCIVs, and should also be addressed in a compliance plan. These registered scheme or sub-fund level compliance risks are largely driven by the nature, diversity and structure of assets invested in by the registered scheme or sub-fund and the investment strategy the investment fund operator employs.

RG 132.36 See Section C for our detailed guidance on compliance plans for investment fund operators.

Oversight

RG 132.37 In addition to the directors of the responsible entity or corporate director, who remain ultimately responsible for ensuring that the operator complies with its obligations, oversight of the operation of a registered scheme or CCIV is primarily through:

- (a) for registered schemes, the compliance committee, which is responsible for assessing whether the compliance plan remains adequate, monitoring the responsible entity's compliance with the compliance plan, reporting breaches to the responsible entity and, if the responsible entity is not taking action to adequately deal with a reported breach, reporting the matter to ASIC; and
- (b) for CCIVs, the depositary, which has a supervisory responsibility to ensure that the corporate director's activities in relation to transactions in shares in the CCIV, valuations and investments comply with the Corporations Act, the constitution and Product Disclosure Statement (PDS); and
- (c) the compliance plan auditor, who conducts an annual audit to assess whether the investment fund operator has complied with the compliance plan and whether the compliance plan continues to meet the requirements of the Corporations Act.

RG 132.38 Australian passport funds are also required to have an independent oversight entity and annual implementation review.

RG 132.39 See Section D for our detailed guidance on oversight of investment funds and Australian passport funds.

Related guidance

RG 132.40 The compliance and oversight obligations set out in this guide interact with other obligations under the Corporations Act for an investment fund operator and, where applicable, a responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider. This guide should be read in conjunction with other regulatory guides that address specific compliance issues. Table 1 identifies related guidance that may be relevant.

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Table 1: Related guidance

| Topic | Guidance |
|---|--|
| Establishing and registering a fund | Draft Regulatory Guide 000 <i>Funds management: Establishing and registering a fund</i> |
| Requirements for the constitution of an investment fund | Draft updated Regulatory Guide 134 <i>Funds management: Constitutions</i> |
| Risk management | Regulatory Guide 259 <i>Risk management systems of responsible entities</i> (RG 259) |
| Compliance obligations of AFS licensees | Regulatory Guide 104 <i>Licensing: Meeting the general obligations</i> (RG 104) |
| Compliance with financial resource requirements for AFS licensees | Regulatory Guide 166 <i>Licensing: Financial requirements</i> (RG 166) |
| Compliance with the organisational competence obligation of AFS licensees | Regulatory Guide 105 <i>Licensing: Organisational competence</i> (RG 105) |
| Conflicts of interest | Regulatory Guide 181 <i>Licensing: Managing conflicts of interest</i> (RG 181) |

B Compliance management systems

Key points

We consider an effective and responsive compliance management system that is planned, implemented, evaluated and improved (as needed) will allow a responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider to demonstrate its commitment to complying with its obligations under the Corporations Act and ASIC Act (see RG 132.41–RG 132.43).

Key features of an effective compliance management system include:

- an understanding of the context in which the managed investment scheme, CCIV, IDPS or MDA operates (see RG 132.44–RG 132.46);
- clear articulation of the values, purpose and strategy of the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider. The compliance management system should reflect the values, purpose and strategy of the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider (see RG 132.47–RG 132.48);
- identification of compliance obligations, risks and objectives (see RG 132.49–RG 132.52);
- clarity of roles and responsibilities of those people involved in the compliance management system (see RG 132.53–RG 132.63);
- organisational support for the compliance management system (see RG 132.64);
- implementation of compliance controls which respond to the identified compliance obligations, risks and objectives (see RG 132.65);
- appropriate documentation and record keeping (see RG 132.66–RG 132.68);
- monitoring and reporting of performance against the compliance management system (see RG 132.69–RG 132.70); and
- procedures where non-compliance occurs and for continual improvement of the compliance management system (see RG 132.71–RG 132.72).

What is a compliance management system?

RG 132.41 We consider an effective and responsive compliance management system that is planned, implemented, evaluated and improved (as needed) will allow a responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider to demonstrate its commitment to complying with its obligations under the Corporations Act and ASIC Act. This includes the broad compliance obligation applicable to all AFS licensees, as well as compliance obligations specific to investment fund operators.

RG 132.42 The international standard for compliance management systems regards ‘compliance’ as ‘an outcome of an organisation meeting its obligations’: see [AS ISO 19600:2015](#). AS ISO 19600:2015 is based on the principles of good governance, proportionality, transparency and sustainability.

Key features of a compliance management system

RG 132.43 Developing a compliance management system that reflects AS ISO 19600:2015 involves consideration of issues such as:

- (a) an understanding of the context in which the managed investment scheme, CCIV, IDPS or MDA operates: see RG 132.44–RG 132.46;
- (b) clear articulation of the values, purpose and strategy of the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider. The values, purpose and strategy of the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider should be reflected in the compliance management system: see RG 132.47–RG 132.48;
- (c) identification of compliance obligations, risks and objectives: see RG 132.49–RG 132.52;
- (d) clarity of roles and responsibilities of those people involved in the compliance management system: see RG 132.53–RG 132.63;
- (e) organisational support for the compliance management system: see RG 132.64;
- (f) implementation of controls which respond to the identified compliance obligations, risks and objectives: see RG 132.65;
- (g) appropriate documentation and record keeping: see RG 132.66–RG 132.68;
- (h) monitoring and reporting of performance against the compliance management system: see RG 132.69–RG 132.70; and
- (i) procedures where non-compliance occurs and for continual improvement of the compliance management system: see RG 132.71–RG 132.72.

Operational context

RG 132.44 We do not take a ‘one-size-fits-all’ approach to what is required for a compliance management system. Rather, we acknowledge that what a responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider needs to do to comply with its compliance and oversight obligations will vary according to the nature, scale and complexity of its organisation.

- RG 132.45 In assessing that nature, scale and complexity, the following should at least be taken into account:
- (a) the number of managed investment schemes, CCIVs (and sub-funds of CCIVs), IDPSs or MDAs managed and the size of funds under management;
 - (b) whether the fund is a managed investment scheme, CCIV (or a sub-fund of a CCIV), IDPS or MDA and whether it is also registered as an Australian passport fund;
 - (c) the investment strategies of the managed investment scheme, CCIV, IDPS or MDA, including the extent to which it will employ leverage;
 - (d) whether the managed investment scheme, CCIV, IDPS or MDA is listed, traded or unlisted;
 - (e) the types of investments and investment location;
 - (f) the distribution model and investor base;
 - (g) the activities, including investment approach, the managed investment scheme, CCIV, IDPS or MDA engages in;
 - (h) the extent to which the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider delegates material operational activities;
 - (i) the diversity and structure of the operations (including the geographical spread of operations and the extent to which the operator outsources any of its functions);
 - (j) the volume and size of the transactions the operator is responsible for;
 - (k) whether the operator's main business is undertaking funds management; and
 - (l) the number of people in the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider's organisation.
- RG 132.46 The responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider should also consider the external environment in which it, and the fund, operates, including:
- (a) business, financial, competitive, political, economic, social, cultural, technological and environmental factors the business faces;
 - (b) expectations of external stakeholders (including members) about the operation of the business;
 - (c) legal and regulatory changes that affect the operation of the business and the fund; and
 - (d) new product offerings in the market that compel an operator to compete more effectively.

Values, objectives and strategy

- RG 132.47 A responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider should be able to clearly articulate its values, purpose and strategy, how these are reflected its compliance management system, and how this functions in practice.
- RG 132.48 This may involve taking steps such as:
- (a) fostering an awareness of, and organisational response to, compliance issues, so that compliance requirements are ‘front of mind’ for directors and all employees and are included in decision making across the organisation;
 - (b) tailoring compliance processes and structures to the managed investment scheme, CCIV, IDPS or MDA and its operator, rather than generic policies designed merely to satisfy a regulatory requirement; and
 - (c) training staff to understand the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider’s compliance framework, ensuring they are adequately resourced to monitor compliance, and are encouraged to report non-compliance and errors more broadly. The operator cannot outsource responsibility for compliance.

Identifying compliance obligations, risks and objectives

- RG 132.49 In planning its compliance management system, a responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider should:
- (a) undertake a structured and systematic process that considers its compliance obligations;
 - (b) identify the risks of non-compliance; and
 - (c) establish compliance controls designed to meet these risks.
- RG 132.50 This will involve considering the following general questions:
- (a) what are the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider’s obligations under the Corporations Act, the constitution and PDS? What outcomes are the Corporations Act and constitution designed to deliver?
 - (b) what risks to ongoing compliance are posed by the operations of this particular managed investment scheme, CCIV, IDPS or MDA given the nature of the funds, its environment, its size, its members, its asset types and investment strategy?
 - (c) what is the likelihood and impact of failing to deliver this outcome against other outcomes? How should compliance efforts be focused?

- (d) what compliance controls will deliver the intended outcome?
- (e) how will the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider ensure any service provider meets its compliance objectives, compliance standards and commitment to compliance?
- (f) how will the compliance controls and outcomes be assessed? What does success look like?

RG 132.51 It is important that compliance controls to address compliance risks are tailored for, and embedded into every aspect of, the business. This is more than just a 'tick the box' exercise.

RG 132.52 As the business evolves over time, it may face a range of new or changed compliance obligations and risks. The previous compliance management system may no longer remain appropriate, and should be updated to remain current in addressing the new obligations or risks faced by the managed investment scheme, CCIV, IDPS or MDA.

Roles and responsibilities for compliance management systems

RG 132.53 An important aspect of compliance is the 'three lines of defence' model, which involves:

- (a) taking responsibility at the operational level for carrying out appropriate compliance controls to ensure compliance with the law, the compliance plan and the constitution;
- (b) an independent compliance function within the organisation having oversight of compliance throughout the organisation; and
- (c) independent oversight, including internal and external audit functions providing independent assurance over the compliance framework.

RG 132.54 The responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider should establish clear roles and responsibilities for persons involved in planning, implementing and overseeing the compliance management system.

The directors

RG 132.55 The active involvement of, and supervision by, the directors of the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider in the compliance management system is important to it being effective and responsive. In setting out the role and responsibilities of the directors in the compliance management system, the operator should consider issues such as:

- (a) how will the directors be involved in the planning and approval of the compliance management system?

- (b) are the resources allocated to implement, evaluate and improve the compliance management system adequate and appropriate?
- (c) how are expectations around compliance communicated clearly, proactively and regularly across all levels to ensure that they are ‘front of mind’? How is the performance of senior management and relevant staff against compliance obligations measured and rewarded? How is an environment where staff feel safe to report non-compliance or raise weak compliance issues promoted?
- (d) how do the directors ensure that non-compliance is dealt with appropriately?
- (e) how do the directors ensure that roles in relation to the compliance management system have clearly defined responsibilities and authority?
- (f) are the reporting procedures clear, timely, effective and regularly reviewed?

Compliance committee

RG 132.56 Where a compliance committee exists, its functions and responsibilities as part of the compliance management system should be clearly explained and documented.

Note: See Section D for further guidance on the role of the compliance committee.

Depositaries of CCIVs

RG 132.57 The depositary has an important role in a compliance management system by providing oversight of the actions of a CCIV and the corporate director. The compliance management system should make clear the relationship between the depositary and the corporate director.

Note: See Section D for further guidance on the role of the depositary.

Compliance and assurance staff

RG 132.58 Many responsible entities, corporate directors, wholesale scheme operators, IDPS operators and MDA providers have a discrete compliance function, such as a compliance officer or manager, with responsibility for reporting and monitoring on obligations. This compliance function may be responsible for:

- (a) identifying compliance obligations;
- (b) integrating compliance obligations and relevant compliance controls into existing processes and procedures;
- (c) providing training and guidance on compliance obligations and the compliance management system for other staff;

- (d) assisting to embed the compliance management system into the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider's operations;
- (e) responding to non-performance, including escalating to senior management, the compliance committee and the directors, where appropriate;
- (f) analysing compliance performance indicators and identifying compliance trends; and
- (g) providing advice and guidance on compliance.

RG 132.59 Given the importance of a discrete compliance function, we consider that a robust conflicts management process and demonstrating compliance competence, integrity and a high commitment to compliance is integral to performing this role to a high standard. We also consider that it is important for the discrete compliance function to have direct access to the directors and, where one exists, any compliance committee to ensure it has sufficient authority with respect to the rest of the organisation.

RG 132.60 The internal compliance function will generally be responsible for day-to-day monitoring of the compliance management system and checking adherence to the compliance management system. Because of this, we consider there is substantial risk in the same person carrying out a specific compliance function and being responsible for auditing, reviewing or monitoring adherence to that compliance function. Generally, a clear separation should exist between these roles and be documented in the compliance management system.

RG 132.61 Many responsible entities, corporate directors, wholesale scheme operators, IDPS operators and MDA providers will also have an internal audit, review or monitoring role in their compliance management system. Both roles play valuable and distinct roles in ensuring that the compliance management system is effective and responsive.

Responsibility for outsourced operations

RG 132.62 Many responsible entities, corporate directors, wholesale scheme operators, IDPS operators and MDA providers outsource some part of their operations. Where this occurs, the operator remains responsible for meeting its compliance obligations. If any operations are outsourced, we consider that the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider should undertake effective due diligence to ensure that its compliance objectives, compliance standards and commitment to compliance will be achieved.

RG 132.63 We encourage all responsible entities, corporate directors, wholesale scheme operators, IDPS operators and MDA providers to include provisions in their

service agreements to ensure their compliance objectives, compliance standards and commitment to compliance will be met.

Organisational support for the compliance management system

- RG 132.64 Appropriate organisational support is necessary to ensure that the compliance management system achieves its objectives. Organisational support encompasses a range of areas that the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider should consider, including resources, training, mentoring, communication and guidance. The level of support required will depend on the nature, scale and complexity of the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider, the managed investment scheme, CCIV, IDPS or MDA, and its compliance management system.

Compliance controls

- RG 132.65 The compliance management system should include compliance controls which respond to the identified compliance obligations, risks and objectives. In deciding what compliance controls to adopt, the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider should consider the extent to which:
- (a) the compliance controls are aligned with its values, objectives and strategy, taking into account the nature, scale and complexity of the particular managed investment scheme, CCIV (and each sub-fund of the CCIV), IDPS or MDA;
 - (b) there is a clear and demonstrated nexus between the compliance obligations and compliance controls, and the compliance controls reflect the actual procedures, processes and practices of the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider and the managed investment scheme, CCIV, IDPS or MDA;
 - (c) the compliance controls are set out with enough certainty to assess whether the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider has complied with the compliance plan;
 - (d) the compliance controls are written in a clear manner so that they are usable by the target audience;
 - (e) the compliance controls establish identified functional roles responsible for carrying out a particular compliance control and the monitoring of that compliance control;
 - (f) the frequency and quantity of compliance controls, and their monitoring, are sufficient to effectively manage the compliance risks;

- (g) compliance with the compliance controls is monitored, the processes for monitoring compliance with the compliance controls are described with sufficient details and certainty to ensure whether they will be or have been complied with, and any non-compliance is reported to the compliance committee, the directors or ASIC as required; and
- (h) the compliance controls are regularly reviewed so that they are up to date at all times.

Note: See Section C for more information about the compliance controls to be addressed in a compliance plan.

Documentation and record keeping

RG 132.66 We consider that appropriate documentation of a compliance management system will give the system the best chance of being effective. Documenting compliance controls and responsibilities and ensuring that that documentation is easily accessible by staff and management should assist in embedding the compliance management system within the organisation.

RG 132.67 When creating and updating the documented compliance management system, the responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider should put in place appropriate procedures and processes for version control, review, approval and protection from corruption or unauthorised amendment.

RG 132.68 The responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider should maintain up-to-date records of its compliance activities, as this will assist in the evaluation of the compliance management system.

Monitoring performance

RG 132.69 It is important for a responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider to regularly monitor and evaluate the performance and effectiveness of its compliance management system to ensure its compliance objectives are achieved.

RG 132.70 In developing procedures for monitoring the performance and effectiveness of the compliance management system, a responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider should:

- (a) determine what information it will need in order to measure and evaluate the performance of the compliance management system in achieving its compliance objectives, and the best method, including timing, for obtaining that information;
- (b) analyse any feedback to determine the root causes of any non-compliance;

- (c) monitor the compliance management system to ensure it is up to date, working to meet compliance objectives, and has addressed previously identified issues or actions;
- (d) determine whether responsibilities of employees involved in the compliance management system are appropriate and are being carried out appropriately;
- (e) determine whether the resources deployed in the compliance management system are adequate;
- (f) identify opportunities to improve the performance of the compliance management system;
- (g) determine what reporting arrangements are necessary to ensure that senior management and the directors are adequately informed about the performance of the compliance management system; and
- (h) consider whether any additional mechanisms, such as audits, are required in order to monitor the performance of the compliance management system.

Non-compliance and continual improvement

RG 132.71 A responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider should have a clear procedure and process to follow where non-compliance occurs. To be effective, we consider the compliance management system should include procedures and processes to:

- (a) require timely escalation where non-compliance is identified;
- (b) consider whether the non-compliance needs to be reported to ASIC;
- (c) require the operator to take action to control and rectify any non-compliance issues, and manage the consequences;
- (d) identify the root cause and assess whether similar non-compliance could occur; and
- (e) review the effectiveness of the action taken and, if necessary, make changes to the compliance management system.

RG 132.72 The responsible entity, corporate director, wholesale scheme operator, IDPS operator or MDA provider should aim to continually reflect on and improve its compliance management system. It should use the information that is gathered and evaluated to identify opportunities for improvement. We encourage operators to benchmark their compliance management system against industry best practice.

C Compliance plans

Key points

A compliance plan is one part of an investment fund operator's overall compliance management system. The compliance plan for an investment fund is required to set out adequate measures to ensure compliance with the Corporations Act and the investment fund's constitution. In order to establish compliance controls that will be adequate, the investment fund operator should ensure the compliance plan addresses certain things (see RG 132.73–RG 132.107).

Group compliance risks, which exist because the investment fund operator is an AFS licensee or result from management of staff, finances and other processes at the group level, should be addressed in the compliance plan (see RG 132.108–RG 132.137).

Different types of compliance risks will exist for different types of investment funds. These registered scheme or sub-fund level compliance risks are largely driven by the nature, diversity and structure of assets invested in by the registered scheme or sub-fund of the retail CCIV and the investment strategy the investment fund operator employs, and should also be addressed in the compliance plan (see RG 132.138–RG 132.163).

For investment funds that are also registered as Australian passport funds, there are specific compliance risks that should be addressed in the compliance plan (see RG 132.164–RG 132.168).

Establishing adequate compliance controls in the compliance plan

- RG 132.73 A compliance plan is one part of an investment fund operator's overall compliance management system.
- RG 132.74 The compliance plan must set out adequate measures that the investment fund operator is to apply in ensuring compliance with the Corporations Act and constitution: see s601HA and draft s1161A. When we consider whether the measures in the compliance plan are adequate, we will take into account the purpose behind a compliance plan and the needs of its users.
- RG 132.75 We consider that, in order to establish measures that will be adequate, the investment fund operator must ensure the compliance plan:
- (a) aligns the compliance controls in the compliance plan with the investment fund operator's values, objectives and strategy and the nature, scale and complexity of the particular investment fund and, for a retail CCIV, each sub-fund;
 - (b) demonstrates a clear nexus between the investment fund operator's compliance obligations and the compliance controls to address those obligations, and the compliance controls reflect the actual procedures,

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- processes and practices of the investment fund operator and the investment fund;
- (c) sets out the compliance controls with enough certainty to allow the investment fund operator, ASIC and the auditor of the compliance plan to assess whether the investment fund operator has complied with the compliance plan;
 - (d) is written in a clear manner so that it is usable by its target audience;
 - (e) provides for identified functional roles responsible for carrying out a particular compliance control and the monitoring of that compliance control;
 - (f) provides for sufficient frequency and quantity of compliance controls, and their monitoring, to effectively manage the compliance risks;
 - (g) provides for monitoring of compliance with the compliance controls and describes the processes for monitoring compliance with the compliance controls with sufficient details and certainty to ensure whether they will be or have been complied with, and any non-compliance is reported to the compliance committee, the board or ASIC as required; and
 - (h) is maintained so that it is up to date at all times.

Alignment with the investment fund operator's values, objectives and strategy

- RG 132.76 The compliance plan must align with the investment fund operator's identified values, purpose and strategy. The compliance plan sets the overarching principles and commitment to compliance for the investment fund operator to achieve compliance with its compliance obligations.
- RG 132.77 The investment fund operator should ensure that compliance is more than a 'box ticking' exercise across the organisation. The investment fund operator should ensure that all staff understand their compliance obligations, the compliance plan, are adequately trained and resourced to monitor compliance, and are encouraged to report non-compliance and weaknesses in compliance.

Nexus to the compliance obligation

- RG 132.78 There must be a clear and demonstrated nexus between the compliance obligations, the compliance risks and the compliance controls. This will give the best possible chance of the compliance plan meeting the investment fund operator's compliance objectives.
- RG 132.79 The level of content detail in a compliance plan may vary depending on the nature, scale and complexity of the investment fund and its investment fund

operator. However, as a minimum, we expect a compliance plan for any investment fund to include content about:

- (a) the scope of the compliance plan;
- (b) the application and context of the compliance plan in relation to the nature, scale and complexity of the investment fund operator and investment fund—this should include a description of the investment fund operator and its operations and the investment fund and its investment strategy or, for a retail CCIV, the investment strategy of each sub-fund;
- (c) the specific compliance obligations that apply to the investment fund operator and the investment fund;
- (d) the identified compliance risks—including compliance risks applying to the investment fund operator at the group level, as well as those that apply because of the particular type of registered scheme or sub-fund of a retail CCIV;

Note: Where the investment fund is an Australian passport fund, additional compliance obligations and compliance risks may exist that should also be addressed.

- (e) compliance controls that are in place to satisfy the compliance obligations and address the compliance risks, including:
 - (i) who is responsible for performing the compliance control;
 - (ii) the frequency with which the compliance control must be performed;
 - (iii) how compliance with the compliance control is monitored;
 - (iv) who carries out that monitoring;
 - (v) who is responsible for reporting on whether or not the compliance control has been followed; and
 - (vi) when and how reporting takes place;
- (f) when the compliance plan will be reviewed and how it will remain fit for purpose; and
- (g) how the investment fund operator will ensure that necessary changes are identified and that the compliance plan is updated.

Incorporating parts of other compliance plans

RG 132.80 A compliance plan can incorporate parts of a previously lodged compliance plan as that first plan is amended from time to time: see s601HB, draft s1161B and [ASIC Corporations \(Chapter 5C—Miscellaneous Provisions\) Instrument 2017/125](#).

RG 132.81 However, the compliance plan must be prepared specifically by reference to the type of investment fund and its investment strategy. We consider that the compliance controls in a compliance plan that is a standard or model plan

(e.g. an ‘off the shelf plan’) or primarily based on an off the shelf plan are less likely to adequately target the risks of the specific investment fund.

- RG 132.82 Where a compliance plan incorporates parts of another plan, the incorporated plan should be for the same type of investment fund. For example, incorporating all of a compliance plan for a mortgage fund into an agribusiness fund plan will not be appropriately tailored to addressing the specific risks of the second fund.

Certainty of compliance controls

- RG 132.83 A compliance plan must describe compliance controls and the processes for monitoring them with enough detail and certainty for the investment fund operator, auditor and ASIC to assess, at the point of assessment or a later time, whether or not the plan will be or has been complied with.
- RG 132.84 This does not necessarily mean that a compliance plan should detail each and every step, check, detailed procedure or action. However, compliance controls, and processes to monitor them, should be specific and measurable to identify an output or outcome. They should be described in a way that represents more than mere platitudes or broad ambitions of compliance. This means that compliance with the compliance plan can be assessed by us and audited against these measurable standards.
- RG 132.85 Timeframes should also be set out with sufficient certainty for the investment fund operator, auditor and ASIC to understand how frequently a compliance control, or monitoring of compliance with it, will be carried out. In our view, this means that an auditor or ASIC should be able to ascertain when something will be done on face value, and without needing further details.
- RG 132.86 For the compliance plan to be specific and measurable, it should:
- (a) use clear, definite and meaningful words to describe what is actually done as the compliance control and to monitor compliance with it;
 - (b) avoid the use of words such as ‘appropriate’, ‘adequate’ or ‘sufficient’;
 - (c) describe the timeframes attached to a compliance control and monitoring activities with sufficient certainty in terminology to enable as assessment of whether it has occurred within that specified timeframe. This could include using terminology such as ‘monthly’ or ‘no less than yearly’, rather than ‘regularly’ or ‘periodically’; and
- Note: We recognise that some compliance controls are driven by an event on an ad hoc basis. In our view, the language for these compliance controls will be specific and measurable where the trigger for the compliance control is clear and certain.
- (d) allow a user to easily find out who performs a compliance control, when or how often that compliance control must be performed, who monitors compliance with the compliance control, when or how often that

monitoring must be performed, and what records are required to be kept.

Clear and easy to understand

- RG 132.87 A compliance plan must be written so that it is clear and easy to understand for the end users of the document. Users could include compliance and operational staff, internal audit and review, the compliance committee, senior management, directors, the compliance plan auditor, and ASIC. Each of these end users may have similar or different requirements and needs that should be considered as part of the planning for a compliance management system.
- RG 132.88 A compliance plan may be easier to understand if it:
- (a) uses plain English and avoids legal or industry jargon. This will assist staff, particularly those who do not have a legal or compliance background, to understand their responsibilities and what is expected of them;
 - (b) adopts a simple structure, including a contents list and clear headings;
 - (c) includes an overview about the compliance plan, its scope, aims and where it sits in the investment fund operator's compliance management system and risk management framework. This could also include a flowchart of the compliance reporting structure to provide a clear picture of the compliance process and allow staff to quickly ascertain where they fit into the overall framework;
 - (d) includes a section explaining 'how to use' the plan; and
 - (e) presents details of compliance controls in a table format, including details of the function, the risks of non-compliance, the relevant policies and the compliance measures and controls. Grouping together tables covering compliance procedures overseen by the same officer can also allow staff to quickly locate information on all areas of compliance they are responsible for.
- RG 132.89 Regardless of how the compliance plan is presented, we expect the content to reflect the actual procedures, processes and practice of the investment operator and the investment fund. Those who are monitoring the compliance plan should ensure that the content is actually carried out in practice, and any breaches in implementation of the plan are reported to the compliance committee, the board or ASIC as required.

Note: We will not assess this as part of considering the compliance plan when we register an investment fund. However, if we undertake a surveillance, we may test whether the compliance plan does reflect the actual procedures, processes and practice of the operator and the investment fund.

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Roles and responsibilities for carrying out and monitoring compliance controls

- RG 132.90 Along with certainty in how the compliance control is described, the compliance plan must clearly identify the person responsible for a compliance control or monitoring process so that there is sufficient accountability for actions under the compliance plan.
- RG 132.91 We consider that compliance plans that state who (or what position) is responsible for certain compliance controls or monitoring processes create a sense of ownership of these compliance controls and processes. This also makes it easier to monitor such compliance plans. It may be helpful for responsibilities to be described in a compliance plan in terms of position title or description, rather than the name of a specific individual, so that the plan does not need to be updated when organisational changes occur.
- RG 132.92 Where a compliance control is automated, it is important that this is set out in the compliance plan.
- RG 132.93 The investment fund operator should ensure that responsibility for monitoring compliance with a compliance control is allocated to one or more persons who have adequate time and experience to carry out the monitoring task. There may be situations, such as where a person is required to monitor compliance with too many compliance controls or has other significant obligations, where the person performing a monitoring role becomes too stretched to adequately perform that role. The person responsible for monitoring compliance should have sufficient authority within the organisation to call on additional resources if a significant issue emerges.
- RG 132.94 It is important that the interests, duties or obligations of the person who monitors compliance with a compliance control do not conflict with that role.
- RG 132.95 We generally consider that separate people should be allocated responsibility for carrying out compliance controls and the monitoring of the same compliance controls. Having the same person carry out a compliance control and monitor their compliance with it would compromise the effectiveness of the compliance plan in addressing compliance obligations and compliance risks.

Frequency and quantity of compliance controls and monitoring

- RG 132.96 The frequency with which compliance controls are performed should be appropriate to the nature of the compliance control, the compliance risk and the compliance objectives of the investment fund operator. The compliance plan is unlikely to be effective if the frequency of the compliance control compromises the compliance objective being met or is a threat to preventing, detecting or correcting non-compliance.

- RG 132.97 Similarly, the frequency of the processes for monitoring performance of a compliance obligation should be appropriate to the compliance control.
- RG 132.98 We would generally expect that there is more than one compliance control in place to address a compliance risk. We consider this will create a robust compliance plan that is better able to withstand non-compliance with an individual compliance control.

Monitoring

- RG 132.99 A process of monitoring compliance with compliance controls allows the investment fund operator to gather information for the purposes of evaluating the effectiveness of the compliance plan and performance against its compliance objectives. Because of this, we consider that an effective compliance plan must include appropriate procedures to monitor compliance with the compliance controls, including to:
- (a) evaluate the effectiveness of compliance controls;
 - (b) ensure that the allocation of roles is appropriate for meeting compliance obligations;
 - (c) ensure the compliance obligations are accurate and up to date;
 - (d) ensure the effectiveness in addressing compliance failures previously identified;
 - (e) identify and address instances where compliance controls were not complied with or there were 'near misses';
 - (f) assess the attitude and behaviour of directors and employees in relation to compliance and the perceived competence of employees in relation to dealing with issues that arise;
 - (g) assess compliance performance against the compliance controls; and
 - (h) keep records of the compliance controls, results of testing and remediation undertaken.
- RG 132.100 The types of processes an investment fund operator may use to monitor compliance with compliance controls will vary depending on the nature, scale and complexity of the investment fund and the investment fund operator. We understand some commonly used processes include sample testing, reports (including exception reports), reviewing activity records, internal review, interview or discussion, direct observation, surveys and training.

Maintained up to date

- RG 132.101 The compliance plan is required to be maintained so that it is adequate and up to date at all times.

- RG 132.102 The compliance risks should be reassessed periodically and whenever there are:
- (a) new or changed activities, products or services;
 - (b) changes to the structure or strategy of the organisation;
 - (c) significant external changes, such as financial-economic circumstances, market conditions, liabilities and client relationships;
 - (d) changes to compliance obligations; or
 - (e) examples of material or repeated non-compliance.
- RG 132.103 A compliance plan must state how and when the plan will be reviewed so that it continues to comply with the Corporations Act and the constitution.
- RG 132.104 The compliance plan should set out the investment fund operator's responsibility to review the adequacy of the plan at least annually and after any significant event that it is aware would impact the plan. This can include consideration of reasons for any breaches and the impact on the compliance plan of any issues raised.
- RG 132.105 Where the investment fund operator modifies the compliance plan, or repeals it and replaces with a new compliance plan, the investment fund operator must lodge a copy of the modification or new compliance plan with ASIC within 14 days: see s601HE and draft s1161E.
- RG 132.106 We also have the power to direct the investment fund operator to modify the compliance plan or to lodge a consolidated copy of the compliance plan: see s601HD and 601HF and draft s1161D and 1161F. We will generally only exercise this power if the investment fund operator has failed to make appropriate changes to its compliance plan or implement appropriate procedures during registration or following breach reports, adverse audits or adverse surveillance findings.
- RG 132.107 Ensuring that a compliance plan remains adequate is an ongoing obligation. We expect that, where a compliance plan incorporates parts of other plans, the investment fund operator will regularly review whether an incorporated plan remains adequate.

Group compliance risks and controls

- RG 132.108 We recognise that some compliance risks exist irrespective of the nature and characteristics of the investment fund. They can apply across all of the investment funds the investment fund operator operates. For a CCIV, they can also apply to all sub-funds of a CCIV. We refer to these types of risks as group compliance risks.

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- RG 132.109 Group compliance risks generally arise from issues related to:
- (a) requirements that apply because the investment fund operator is an AFS licensee, including financial resource requirements, conflicts of interest, complaints handling, breach reporting and competency requirements;
 - (b) management of staff, finances and other processes at the group level, such as directors or the compliance committee, training, recruitment and experience, cyber resilience, accounts and record keeping, or disclosure and reporting; and
 - (c) for a CCIV, processes that are common across the various sub-funds of the CCIV.
- RG 132.110 Where group compliance risks exist, we consider that compliance controls can apply across the investment funds or sub-funds operated by the investment fund operator. It is not necessary for these compliance controls to be tailored and individualised to each specific registered scheme or sub-fund of a retail CCIV operated by the investment fund operator. However, the compliance controls must be appropriate for the operator, rather than generic.
- RG 132.111 We do not intend to provide a checklist of compliance controls for investment fund operators. However, this section provides some illustrative guidance to assist investment fund operators plan and establish their compliance plans.

Management and oversight

- RG 132.112 In establishing compliance controls that address management and oversight, the investment fund operator could consider:
- (a) What procedures ensure that directors or the compliance committee (as appropriate) are appropriately skilled and have access to all information, reports and resources necessary for them to fulfil their responsibilities?
 - (b) If a compliance committee is required, what arrangements (such as for remuneration, tenure and frequency of meetings) ensure that the committee functions as required by s601HA(1)(b)?
 - (c) If a compliance officer is appointed, what arrangements ensure that that person has adequate authority to escalate matters if necessary? What arrangements ensure that compliance staff are adequately trained and independent?
 - (d) What role will internal audit have in the compliance process and to what extent will the external auditor report beyond the annual compliance audit requirement?

Training, recruitment and experience

- RG 132.113 In establishing compliance controls to address competence risk, the investment fund operator could consider:
- (a) What procedures ensure that staff, including operational, management and compliance staff, have appropriate experience and adequate resources?
 - (b) What training is performed to ensure that existing and new staff are familiar with the compliance plan and continue to remain competent to perform their roles?
 - (c) What procedures are in place to ensure that only appropriate personnel hold positions of trust and that key staff are competent to perform their relevant roles?

Accounts and record keeping

- RG 132.114 In establishing compliance controls to address the risk of failing to keep appropriate accounts and records, the investment fund operator could consider:
- (a) What arrangements ensure that accounting records and other evidence about the investment fund operator's operation of the investment fund will be adequate to allow the operator and ASIC to conduct reviews of the fund's activities? What procedures ensure that appropriate accounting and taxation requirements are adhered to? What procedures ensure that all statutory deadlines for reporting are adhered to?
 - (b) What arrangements ensure that IT and accounting systems used by the investment fund operator are secure and meet the operational requirements of the investment fund?
 - (c) If the investment fund operator holds the assets or scheme property of the fund, what arrangements ensure that the IT systems used for identifying and recording fund property are secure and meet ASIC's standards?
 - (d) If the investment fund operator holds the assets or scheme property of the fund, what arrangements ensure that any omnibus accounts are conducted under the terms of ASIC relief?
 - (e) Where the investment fund operator manages self-custody in accordance with RG 133, what procedures are in place for record keeping and to ensure robust verification of compliance with the operator's self-custody requirements?
 - (f) What are the investment fund operator's plans for ensuring its ability to resume operations if a disaster occurs (e.g. a computer systems failure)?
 - (g) What are the procedures to ensure that records are maintained for the statutory period? What procedures ensure that records are kept of all compliance monitoring?

Use of external service providers

- RG 132.115 In establishing compliance controls to manage compliance risks associated with use of external service providers, the investment fund operator could consider:
- (a) What are the procedures to ensure that the use of third parties will be appropriately evaluated?
 - (b) What are the procedures to ensure that contracts with external service providers are appropriate?
 - (c) What arrangements are in place to ensure that any external custodian used meets ASIC standards?
 - (d) What procedures will the investment fund operator use to monitor the activities of external service providers to ensure that the service provider is complying with the constitution, the Corporations Act and any other regulatory requirements?
 - (e) What procedures ensure that external service providers are meeting the terms of the contractual arrangements?
 - (f) What procedures ensure completeness and timeliness of income and that expenditure is appropriately authorised and in accordance with the constitution?
 - (g) How does the investment fund operator ensure that the delegate employs an appropriate standard of care when performing the delegated function?
 - (h) How does the investment fund operator monitor the activities of the delegate and evaluate the performance of the delegate in relation to the delegated function?

Related party issues

- RG 132.116 In establishing compliance controls to address related party risk, the investment fund operator could consider:
- (a) What are the arrangements to ensure that information flows between companies within a group are appropriately protected?
 - (b) What are the arrangements to ensure that the decision to use a related party service provider is in the best interests of the investment fund?
 - (c) What are the arrangements to ensure that if the investment fund operator or a related party underwrite the issue of securities, any allocation to an investment fund is in the best interests of the investment fund, particularly in relation to the allocation of shortfalls?
 - (d) What are the arrangements to ensure that information obtained about the investment fund operator's intentions to trade in specific securities is not used by employees for their own benefit?

- (e) What arrangements ensure that dealings by the investment fund operator or its employees do not disadvantage the investment fund or ‘free ride’ on it in any way?
- (f) What arrangements ensure that any potential conflicts of interest caused by the investment fund operator, its affiliates, or directors owning interests in the investment fund are appropriately managed?

Cyber resilience and business continuity

- RG 132.117 Cyber resilience is the ability to prepare for, respond to and recover from a cyber attack. Resilience is more than just preventing or responding to an attack—it also takes into account the ability to adapt and recover from such an event.
- RG 132.118 Customarily, organisations have focused on protection against cyber attacks. However, a resilience-based approach to cyber attacks is vital for organisations to better adapt to change, reduce exposure to risk and learn from incidents when they occur.
- RG 132.119 In establishing compliance controls to address cyber risk and the risk of business interruption, the investment fund operator could consider:
- (a) What procedures are in place to provide for regular cyber resilience health checks?
 - (b) What procedures are in place to monitor current industry and international guidance and update policies and procedures to reflect any changes?
 - (c) What procedures ensure that IT systems are regularly tested?
 - (d) What procedures are in place for disaster recovery and business continuity?
 - (e) What arrangements are in place to manage any risks arising from, or posed to, other entities as a result of technology interdependencies?

Note: See [Report 429](#) *Cyber resilience: Health check* (REP 429) for further information about cyber resilience among ASIC’s regulated population.

Applications, redemptions and distributions

- RG 132.120 In establishing compliance controls to address the risks associated with incorrect processing of applications, redemptions and distributions, the investment fund operator could consider:
- (a) What procedures ensure that applications are processed in a timely manner and are invested in the correct investment fund at the correct price? What arrangements protect application monies before they become fund property?

- (b) What are the arrangements to ensure that withdrawal prices are set so as not to disadvantage remaining members?
- (c) What procedures ensure that distributions to members are calculated correctly and made in a timely manner?
- (d) What procedures ensure that the fund has sufficient liquidity to meet redemptions?

Disclosure and reporting

- RG 132.121 In establishing compliance controls to address the risk of defective disclosure and reporting, the operator could consider:
- (a) What procedures ensure that publicity (including advertising and media releases) that includes performance information is not misleading?
 - (b) What procedures ensure that the PDS contains all relevant information and is not misleading? What due diligence is carried out in preparation and review of PDSs? In particular, what procedures ensure that forecasts in a PDS have a reasonable basis and that the disclosure of fees and expenses is adequate? What are the procedures to ensure that representations made in the offer document are carried out?
 - (c) What are the procedures to ensure that the financial statements are true and fair and, when relevant, appropriate continuous disclosure is made?
 - (d) What procedures ensure that disclosure and reporting to fund members is not misleading?
- RG 132.122 Where ASIC has established disclosure benchmarks for certain types of managed investment schemes, compliance plans should contain compliance controls to ensure that responsible entities comply with their upfront and ongoing disclosure obligations. For example, the compliance plan should include procedures to assess the scheme's performance against 'if not, why not' benchmarks before issuing a PDS, as well as compliance controls for regularly monitoring the benchmarks and updating the PDS when required.

Note: See [Regulatory Guide 45](#) *Mortgage schemes: Improving disclosure for retail investors* (RG 45), [Regulatory Guide 46](#) *Unlisted property schemes: Improving disclosure for retail investors* (RG 46), [Regulatory Guide 231](#) *Infrastructure entities: Improving disclosure for retail investors* (RG 231), [Regulatory Guide 232](#) *Agribusiness managed investment schemes: Improving disclosure for retail investors* (RG 232) and [Regulatory Guide 240](#) *Hedge funds: Improving disclosure* (RG 240).

Distribution channels

- RG 132.123 In establishing compliance controls to address the risks of failing to supervise distributors of the investment fund, the operator could consider:
- (a) What procedures ensure that sales/distribution staff comply with 'know your client'/'know your product' rules?

- (b) What due diligence is conducted prior to the appointment/engagement of distributors?
- (c) What procedures are in place to monitor the activities of distributors for compliance with the Corporations Act and the distribution agreement?

Identifying, recording, rectifying and reporting of breaches

RG 132.124 As an AFS licensee, an investment fund operator must give ASIC a written report as soon as practicable, and in any case within 10 business days of becoming aware of a breach (or likely breach), if:

- (a) it breaches, or is likely to breach:
 - (i) its duties as an AFS licensee;
 - (ii) its duties as an investment fund operator, including the duty to comply with the compliance plan; or
 - (iii) the Corporations Act or the consumer protection provisions of the ASIC Act; and
- (b) that breach (or likely breach) is 'significant'.

Note: [Regulatory Guide 78](#) *Breach reporting by AFS licensees* (RG 78) provides further guidance on when a person must report a breach and how ASIC deals with breach notifications.

RG 132.125 Although the requirement under the Corporations Act to report breaches to ASIC applies to 'significant' breaches, we expect that more information about breaches will be reported internally by the investment fund operator to the board of directors and/or the compliance committee. The compliance plan must include procedures for checking that breaches of plans are reported by the investment fund operator. We expect that this would include, for example, maintaining a breach register.

RG 132.126 Breaches in aggregate should be internally reported, even if they have been rectified during the period. This enables the directors and compliance committee to have a full picture of the level of breaches that are taking place. Internal reports should contain sufficient information to allow understanding of the significance of the breaches. This may include such information as impact on investors, remediation, whether there is a systemic issue and the source of breaches. This will allow the directors and compliance committee oversight of how the investment fund operator assesses 'significance' for the purposes of reporting to ASIC and enables a focus on higher risk breaches.

RG 132.127 In establishing compliance controls to address the risk of failing to meet breach reporting obligations, the investment fund operator could consider:

- (a) How are breaches identified and rated and by whom?
- (b) What are the procedures to ensure that all breaches are reported to the appropriate level of management, the compliance committee and the directors?

- (c) What are the procedures to ensure that all breaches are appropriately rectified?

Breach reporting by the compliance committee and depositary

- RG 132.128 The compliance committee has a responsibility to report to ASIC if the compliance committee considers that the investment fund operator is not taking adequate action to deal with a breach. The compliance plan must include compliance controls to ensure that these breaches are reported to ASIC as required.
- RG 132.129 The depositary of a CCIV must report to ASIC as soon as practicable after it becomes aware of a breach of the Corporations Act that relates to the CCIV and that has had, or is likely to have, a materially adverse effect on the interests of members. The compliance plans for both the investment fund operator and the depositary (in the case of a CCIV) must include compliance controls to ensure that these breaches are reported to ASIC as required.

Breach reporting by Australian passport funds

- RG 132.130 In addition to the normal obligations of an AFS licensee to report breaches to ASIC (see RG 78), the Australian passport fund operator of an Australian passport fund has stricter breach reporting obligations under section 12 of the Australian Passport Rules. This includes a requirement to report to ASIC within seven days after becoming aware of a significant breach of the Australian Passport Rules. We expect an Australian passport fund operator to have compliance controls which ensure it meets its breach reporting obligations under both the Corporations Act and the Australian Passport Rules.

Complaints handling

- RG 132.131 In establishing compliance controls to address complaints handling obligations, the investment fund operator could consider:
- (a) What procedures ensure that complaints are accurately recorded?
 - (b) Who is responsible for taking, recording and responding to complaints? What procedures are in place for escalating complaints to senior management and/or the directors where appropriate?
 - (c) What procedures ensure that any rectification as a result of a complaint is carried out?

Licence conditions

- RG 132.132 In establishing compliance controls to manage compliance with licence conditions, the investment fund operator could consider:

- (a) What procedures are in place to ensure relevant staff are aware of the investment fund operator's licence conditions and other regulatory obligations?
- (b) What arrangements provide for the training and monitoring of authorised representatives?
- (c) What procedures ensure that the investment fund operator complies with the compliance plan and that the plan remains appropriate? How will the investment fund operator ensure that necessary changes are identified and that the compliance plan is updated? What arrangements are in place to ensure that the compliance plan adequately deals with new investment products and the changing regulatory environment? How will the investment fund operator ensure that changes are reported to ASIC?

Compliance risks and controls for CCIVs

RG 132.133 Given the nature of a CCIV as an umbrella structure with one or more sub-funds, we consider that some compliance risks associated with a CCIV will be group level risks which can be addressed through group level compliance controls. This includes, for example, compliance controls in relation to the allocation of assets and liabilities to a sub-fund of the CCIV and the relationship between the depositary and corporate director.

RG 132.134 Where compliance risks exist for a CCIV because of the nature of the investment strategy of the CCIV (or a sub-fund of the CCIV), these compliance risks should be addressed through compliance controls tailored for the specific sub-fund: see RG 132.138–RG 132.163.

New sub-fund

RG 132.135 Where a new sub-fund of a CCIV is established, the corporate director should consider whether the compliance plan is adequate to cover that sub-fund (specifically taking into account the nature of the assets held by the sub-fund) before it is created.

Allocation of assets and liabilities to a sub-fund

RG 132.136 The corporate director must comply with requirements in relation to allocation of all assets and liabilities of the CCIV to a sub-fund: see draft Ch 7A Pt 2 Div 3 of the Corporations Act. The compliance plan should include compliance controls to ensure that the corporate director complies with these requirements, including keeping records to document the identification of assets and liabilities and their allocation to a sub-fund.

Note: See RG 132.148–RG 132.157 for further guidance on compliance controls relating to asset holding.

Relationship between the depositary and the corporate director

RG 132.137 As noted at RG 132.57, the depositary has an important compliance role by providing oversight of the actions of the CCIV and the corporate director. The contract between the depositary and the corporate director should include at least:

- (a) a description of the services to be provided by the depositary and the procedures to be adopted by the depositary for each type of asset in which the CCIV may invest and which are entrusted to the depositary;
- (b) a description of the way in which the custodial and oversight functions are to be performed depending on the types of assets and the geographical regions in which the CCIV plans to invest, including in respect to the custodial duties, country lists and procedures for adding or withdrawing countries from the lists. This must be consistent with the information provided in the CCIV's constitution and PDS regarding the assets in which the CCIV may invest;
- (c) the period of validity and the conditions for amendment and termination of the contract, including the situations that could lead to the termination of the contract, details regarding the termination procedure and the procedures by which the depositary sends all relevant information to its successor;
- (d) the confidentiality obligations applicable to the parties in accordance with relevant laws and regulations. Those obligations must not impair the ability of ASIC and other relevant authorities to have access to relevant documents and information;
- (e) the means and procedures by which the depositary transmits to the corporate director all relevant information that it needs in order to perform its duties, including the exercise of any rights attached to assets, and to allow the corporate director to have a timely and accurate overview of the accounts of the CCIV;
- (f) the means and procedures by which the corporate director transmits all relevant information or ensures the depositary has access to all the information it needs to fulfil its duties, including the procedures ensuring that the depositary will receive information from other parties appointed by the corporate director;
- (g) the procedures to be followed when an amendment to the CCIV's constitution or PDS is being considered, detailing the situations in which the depositary is to be informed, or where the prior agreement of the depositary is needed to proceed with the amendment;
- (h) all necessary information that needs to be exchanged between the corporate director or a third party acting on behalf of the CCIV and the depositary related to the sale, subscription, redemption, issue, cancellation and re-purchase of shares of the CCIV;

- (i) all necessary information that needs to be exchanged between the corporate director or a third party acting on behalf of the CCIV and the depositary related to the performance of the depositary's duties;
- (j) where parties to the contract envisage appointing third parties to carry out parts of their respective duties, a commitment to provide, on a regular basis, details of any third party appointed and, upon request, information on the criteria used to select the third party and the steps envisaged to monitor the activities carried out by the selected third party;
- (k) information on the tasks and responsibilities of the parties to the contract in respect of obligations relating to the prevention of money laundering and the financing of terrorism;
- (l) information on all cash accounts opened in the name of the corporate director acting on behalf of the CCIV and the procedures ensuring that the depositary will be informed when any new account is opened;
- (m) details regarding the depositary's escalation procedures, including the identification of the persons to be contacted within the corporate director by the depositary when it launches such a procedure;
- (n) a commitment by the depositary to notify the corporate director that the segregation of assets is no longer sufficient to ensure protection from insolvency of a third party to whom safekeeping has been delegated;
- (o) the procedures ensuring that the depositary, in respect of its duties, has the ability to inquire into the conduct of the corporate director and to assess the quality of information received, including by way of having access to the books of the corporate director and onsite visits; and
- (p) the procedures ensuring that the corporate director is enabled to review the performance of the depositary in respect of the depositary's duties.

Registered scheme or sub-fund level compliance risks and controls

- RG 132.138 To contain measures that are adequate, we consider that the compliance plan must identify compliance controls that are tailored to the nature, scale and complexity of the investment fund (and sub-fund of a retail CCIV where applicable).
- RG 132.139 We recognise that, for different types of registered schemes or sub-funds of retail CCIVs, there will be different areas of focus in the development and implementation of appropriate compliance controls. These differences are largely driven by the nature, diversity and structure of assets invested in by the registered scheme or sub-fund and the investment strategy the investment fund operator employs. We refer to these as scheme or sub-fund level compliance risks.

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RG 132.140 Table 2 identifies the key areas that ASIC will typically focus on for different types of registered schemes or sub-funds. We consider that a compliance plan should address the compliance risks associated with these areas of focus. When we focus on these areas, we will take into account the nature of the investment fund type and how the area is shaped by that fund type.

Table 2: Areas of focus by investment fund type

| Investment fund type | Typical areas of ASIC focus |
|---|--|
| Derivatives | Trading, collateralisation, leverage, risks of the underlying asset, expertise, investment strategy (approval and monitoring), outsourcing, financial, custodial arrangements, jurisdictional |
| Financial assets | Business, market, expertise, investment strategy (approval and monitoring), valuation, outsourcing, financial, custodial arrangements, jurisdictional |
| Foreign exchange | Trading, foreign exchange rate, macroeconomic, expertise, investment strategy (approval and monitoring), valuation, outsourcing, financial, custodial arrangements |
| Managed funds—bonds—Australian | Liquidity, credit, market, expertise, investment strategy (approval and monitoring), valuation, outsourcing, financial, custodial arrangements |
| Managed funds—bonds—offshore | Liquidity, credit, market, expertise, investment strategy (approval and monitoring), valuation, outsourcing, financial, custodial arrangements, foreign exchange |
| Managed funds—cash | Liquidity, credit, expertise, investment strategy (approval and monitoring), custodial arrangements, financial, valuation |
| Managed funds—equities—Australian | Business, market, expertise, investment strategy (approval and monitoring), valuation, outsourcing, financial, custodial arrangements, jurisdictional |
| Managed funds—equities—offshore | Business, market, expertise, investment strategy (approval and monitoring), valuation, outsourcing, financial, custodial arrangements, jurisdictional, foreign exchange |
| Managed funds—equities—special | Business, market, expertise (in particular in the specific sector), investment strategy (approval and monitoring), valuation, outsourcing, financial, custodial arrangements, jurisdictional, foreign exchange |
| Managed funds—multi-sector | Business, market, expertise, investment strategy (approval and monitoring), valuation, outsourcing, financial, custodial arrangements, jurisdictional, foreign exchange, liquidity |
| Managed funds—yield | Business, market, expertise, investment strategy (approval and monitoring), valuation, outsourcing, financial, custodial arrangements, jurisdictional, foreign exchange, interest rate |
| Unlisted property investment scheme—property securities | Business, market, expertise, investment strategy (approval and monitoring), valuation, outsourcing, financial, custodial arrangements, jurisdictional, liquidity |
| Film scheme | (High) performance, business, market, expertise, consumer tastes, contractual, intellectual property rights |

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| Investment fund type | Typical areas of ASIC focus |
|---|--|
| Fractional investment property platform | Market and economic risk, limited history, leverage, reliability of the platform technology, liquidity |
| IDPS-like scheme | Structure, risks of the underlying assets, operational, investment strategy (approval and monitoring), expertise, financial |
| Marketplace lending | Credit risk, market and economic risk, limited history, leverage, reliability of the platform technology, liquidity |
| Time-sharing scheme | Contractual, legal, market, liquidity, expertise, sales practices, disclosure, financial |
| Exchange traded fund—listed | Tracking error, operational, expertise, valuation, financial, investment strategy (approval and monitoring), efficacy of the authorised participants and the market makers (risk is dependent upon the underlying asset type) |
| Exchange traded fund—AQUA market traded | Tracking error, operational, expertise, valuation, financial, investment strategy (approval and monitoring), efficacy of the authorised participants and the market makers (risk is dependent upon the underlying asset type) |
| A-REIT stand alone | Performance, financial, business, liquidity, expertise, valuation, outsourcing, investment strategy (approval and monitoring), leverage, related party arrangements |
| A-REIT stapled | Performance, financial, business, liquidity, expertise, valuation, outsourcing, investment strategy (approval and monitoring), leverage, related party arrangements |
| Agribusiness scheme—aquaculture | Production, environmental (weather, fire, floods), gestation, financial, liquidity, expertise, ownership structure, valuation, related party arrangements, medical |
| Agribusiness scheme—forestry | Production, environmental (weather, fire, floods), gestation, financial, liquidity, expertise, ownership structure, valuation, related party arrangements |
| Agribusiness scheme—horticulture | Production, environmental (weather, fire, floods), gestation, financial, liquidity, expertise, ownership structure, valuation, related party arrangements, medical |
| Agribusiness scheme—land | Production, environmental (weather, fire, floods), gestation, financial, liquidity, expertise, ownership structure, valuation, related party arrangements |
| Agribusiness scheme—livestock | Production, environmental (weather, fire, floods), gestation, financial, liquidity, expertise, ownership structure, valuation, related party arrangements, medical |
| ASX-listed investment trust | Performance, financial, business, liquidity, expertise, valuation, outsourcing, investment strategy (approval and monitoring), leverage, related party arrangements |
| Environmental—infrastructure | Maturity, operational, legal, contractual, sovereign, liquidity, expertise, valuation, outsourcing, leverage, usage, financial, production, environmental, gestation |
| Horse breeding scheme | Production, environmental (weather, fire, floods), gestation, financial, liquidity, expertise, ownership structure, valuation, related party arrangements, medical |

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| Investment fund type | Typical areas of ASIC focus |
|--|--|
| Horse racing scheme | Production, environmental (weather, fire, floods), financial, liquidity, expertise, ownership structure, valuation, related party arrangements, medical |
| Listed infrastructure project | Maturity, operational, legal, contractual, sovereign, liquidity, expertise, valuation, outsourcing, leverage, usage, financial Additional for environmental infrastructure—production, environmental, gestation |
| Unlisted infrastructure project | Maturity, operational, legal, contractual, sovereign, liquidity, expertise, valuation, outsourcing, leverage, usage, financial |
| Unlisted property investment scheme—development | Performance, financial, business, liquidity, expertise, valuation, outsourcing, investment strategy (approval and monitoring), leverage, related party arrangements |
| Unlisted property investment scheme—direct real property | Performance, financial, business, liquidity, expertise, valuation, outsourcing, investment strategy (approval and monitoring), leverage, related party arrangements |
| Unlisted property investment scheme—retirement | Performance, financial, business, liquidity, expertise, valuation, outsourcing, investment strategy (approval and monitoring), leverage, related party arrangements |
| Contributory mortgage scheme | Credit, market, liquidity, expertise, valuation, withdrawal, investment strategy (approval and monitoring), security |
| Pooled mortgage scheme | Credit, market, liquidity, expertise, valuation, withdrawal, investment strategy (approval and monitoring), security |
| Serviced strata scheme | Operational, financial, market, liquidity, expertise, contractual, valuation, occupancy |
| Hedge fund | (High) performance, leverage, capital loss, expertise, valuation, liquidity, investment strategy (approval and monitoring), financial, custodial arrangements, jurisdictional |
| Managed funds—alternatives | Trading, collateralisation, leverage, risks of the underlying asset, expertise, investment strategy (approval and monitoring), outsourcing, financial, custodial arrangements, jurisdictional |
| Other | Dependent on asset types and investment strategy |

RG 132.141 We recognise there may be situations where the types of registered scheme or sub-fund level compliance risks are similar across different investment funds. In these situations, we consider there may be some benefits for the investment fund operator in having compliance controls and processes to monitor compliance with compliance controls that are standardised across these investment funds. In considering whether the compliance risks are sufficiently similar to warrant the same compliance controls, the investment fund operator should pay particular regard to:

- (a) the nature, scale and complexity of each registered scheme or sub-fund level compliance risk;

- (b) the similarity of the compliance obligations; and
- (c) the compliance objectives of the compliance controls, and whether they will be met to the same level for each registered scheme or sub-fund of a retail CCIV.

RG 132.142 We do not intend to provide a checklist of compliance controls for different types of registered scheme or sub-fund level compliance risks. However, this section provides some illustrative guidance to assist investment fund operators plan and establish their compliance plans.

Investment strategy

RG 132.143 In establishing compliance controls to address risks arising from the investment strategy of the registered scheme or sub-fund of the retail CCIV, the investment fund operator could consider:

- (a) What are the investment strategy, investment mandate and investment restrictions of the registered scheme or sub-fund? How will the investment fund operator ensure compliance with the investment strategy, mandate or restrictions?
- (b) What are the arrangements to ensure that the investment fund operator manages investment risks as specified in the constitution and/or PDS?
- (c) What procedures ensure that any performance forecasts included in the PDS have a reasonable basis?
- (d) Where the constitution, the PDS or the law restricts the type of assets the registered scheme or sub-fund may invest in (including any limits on investment), what procedures are in place to ensure that the investment fund operator only acquires permitted investments? How is compliance with the registered scheme or sub-fund's acquisition and disposal policy to be monitored?
- (e) Where the investment strategy depends on the specialised expertise of the investment fund operator and/or investment manager, what arrangements are in place to ensure that persons responsible for investment decisions have the necessary expertise?

Sovereign risk

RG 132.144 Where the investment strategy of a registered scheme or sub-fund of a retail CCIV is affected by sovereign risk, in establishing compliance controls the investment fund operator could consider:

- (a) What due diligence is undertaken prior to investing in another jurisdiction?
- (b) What arrangements are in place for ongoing monitoring of legal, regulatory and political developments which could impact on sovereign risk?

- (c) What procedures ensure that currency in which investments are made is appropriate for the registered scheme or sub-fund? What procedures are in place for monitoring foreign exchange rate changes?

Technology dependence

RG 132.145 Where the investment strategy of a registered scheme or sub-fund of a retail CCIV is dependent on a particular technology, in establishing compliance controls to address risks associated with that technology the investment fund operator could consider:

- (a) What procedures ensure that the technology adopted is reliable, fit for purpose and compliant with any legal requirements?
- (b) What procedures ensure that the investment fund operator holds any licences or permissions necessary to use the technology?

Agricultural and environmental risks

RG 132.146 Where the investment strategy of a registered scheme may be affected by risks associated with agricultural production or the environment, the responsible entity could consider:

- (a) What procedures are in place to ensure that the investment fund operator appropriately manages environmental risks (such as weather, fire or floods)?
- (b) What procedures are in place to ensure that plantation management related functions, including planting, maintenance, harvesting, sale of produce and monitoring and forecasting cash flows, are carried out appropriately?
- (c) Where agricultural business management functions are outsourced, what procedures ensure that the investment fund operator monitors the performance of the outsourced service provider?
- (d) What procedures ensure that production forecasts in the PDS have a reasonable basis?
- (e) What procedures are in place to ensure that the investment fund operator selects land suitable for the registered scheme or sub-fund and secures adequate title over that land for the life of the registered scheme or sub-fund?
- (f) What procedures ensure that land used by the registered scheme or sub-fund is properly identified and disclosed in the PDS, is appropriate for the use to which it will be put, has access to water for irrigation purposes, is not affected by any encumbrances which will adversely affect the registered scheme or sub-fund, and will not be subject to any consents or approvals which the investment fund operator cannot satisfy by the date of commencement of the registered scheme or sub-fund?

Fees and costs

- RG 132.147 In establishing compliance controls to address risks associated with fees and costs, the investment fund operator could consider:
- (a) What are the procedures to ensure that only authorised fees are charged to the registered scheme or sub-fund of the retail CCIV and that fees are calculated in accordance with the constitution and deducted correctly?
 - (b) How does the investment fund operator ensure that reasonable steps are taken to estimate amounts required to be included in fee and cost disclosures in PDSs and periodic statements?
 - (c) What are the procedures in place to ensure that fees and costs are disclosed in compliance with the Corporations Act?

Asset holding and custodial arrangements

- RG 132.148 In establishing compliance controls to address asset holding risk and ensure that the scheme property or assets of the registered scheme or sub-fund of the retail CCIV are appropriately segregated and safeguarded, the investment fund operator could consider:
- (a) What arrangements ensure that assets are identified appropriately?
 - (b) What arrangements ensure that assets are separated from those of the investment fund operator and other investment funds as required under the Corporations Act?
 - (c) What arrangements are in place to ensure that any person (other than the investment fund operator) holding assets or property of the registered scheme or sub-fund meets ASIC's standards for asset holding?
 - (d) What procedures ensure that appropriate insurance is in place for all identifiable risks relevant to the nature of the assets?
- RG 132.149 All assets of a CCIV must be allocated to a sub-fund: see draft s1142. The CCIV is required to keep assets of a sub-fund distinct and separate from assets of other sub-funds of the CCIV: see draft s1142B. We consider that the compliance plan must include compliance controls that identify, monitor and keep records of:
- (a) details of any unallocated assets or liabilities of the CCIV; and
 - (b) for each allocated asset and liability of the CCIV, the sub-fund to which the asset or liability has been allocated.
- RG 132.150 There will be different risks to members arising out of the different ways that the registered scheme or sub-fund's assets are held, including whether the investment fund operator is the asset holder or engages another asset holder to hold some or all of the assets.

RG 132.151 The appropriate compliance controls will also depend on the nature and amount of assets held. For example, more sophisticated compliance controls, processes and procedures may be required by a stand-alone custody business that provides services for a full range of financial products, compared to an AFS licensee that holds only a limited range and value of assets.

Compliance controls where the investment fund operator is the asset holder

RG 132.152 Where the investment fund operator is the asset holder, in preparing its compliance plan we expect that it will address risks to members that might arise from non-compliance by the investment fund operator in holding fund property. This includes consideration of issues such as:

- (a) What procedures ensure that all record keeping for client assets is carried out in a timely and accurate manner?
- (b) What procedures ensure that the minimum standards for asset holders under RG 133 are met?
- (c) What procedures ensure that the investment operator is complying with its asset holding obligations?
- (d) What procedures ensure that the audit of the compliance plan will provide an independent verification of the robustness of the asset holding arrangements in relation to material compliance risks, particularly any risks that apply more specifically to self-custody? We expect this to include, where applicable, procedures to ensure that the investment fund operator's risk management arrangements adequately address operational risks arising in relation to holding assets or scheme property.

RG 132.153 Where the investment fund operator holds assets and it may not be practicable to identify publicly that they are held on trust, we expect the compliance plan would generally include specific compliance controls to ensure the investment fund operator complies with its obligations to members for those assets. The plan might, for example, include special authorisation procedures.

Compliance controls for the investment fund operator where another person is the asset holder

RG 132.154 If the investment fund operator engages another person as an asset holder, we expect it to ensure that clients are protected from the possible compliance risks arising from this arrangement.

RG 132.155 The investment fund operator's compliance plan should set out the compliance controls it will take to minimise these risks. This would include consideration of issues such as:

- (a) What procedures ensure that a person is appointed to be the asset holder only if they meet the minimum standards for asset holders under RG 133?

- (b) What procedures are in place to actively monitor the activities of the asset holder and take appropriate action in case of deficiencies?
- (c) What procedures ensure that any agreement entered into with the asset holder remains compliant and current?

RG 132.156 Where the investment fund operator has engaged an asset holder that is a related body corporate or other associate, we expect that the compliance plan would include the same types of compliance controls that the investment fund operator would use if it was the asset holder.

Compliance controls required by third party asset holders

RG 132.157 Where a third party such as a licensed custody provider, IDPS operator or MDA provider is the asset holder, this third party also has a duty to establish and maintain adequate documented compliance controls to demonstrate that it is complying with its AFS licence obligations.

Note: See draft updated Regulatory Guide 133 *Funds management and custodial services: Holding assets* for more information about the asset holding requirements for custodians, IDPS operators and MDA providers.

Valuation

RG 132.158 In establishing compliance controls to address valuation risk, the investment fund operator could consider:

- (a) What are the procedures to ensure that the systems used to determine unit price are functioning consistently with the PDS or offer document, that the PDS or offer document is consistent with the constitution and that supporting systems (e.g. the system for processing interest or share buying and selling activities) are adequately operated? What procedures are in place to correct pricing errors?
- (b) How does the investment fund operator ensure that the assets and property of the registered scheme or sub-fund are valued at regular intervals appropriate to its nature? How does the investment fund operator ensure that the assets and property of the registered scheme or sub-fund are valued in a manner appropriate to the nature of the property?
- (c) What procedures ensure that income earned by assets is collected and recorded in a way that is timely, accurate and complete?
- (d) What arrangements ensure that the investment fund operator becomes aware of changes in security values or positions due to corporate actions on a timely basis so that changes in valuations, income accruals and positions can be evaluated?
- (e) What procedures ensure that the valuer has appropriate qualifications and experiences? Is the valuer a member of an appropriate professional body and the valuation conducted in accordance with the standards of that body?

- (f) What arrangements ensure that external valuations are prepared on the basis of appropriate and reasonable instructions for the purpose of determining the market value of an asset?
- (g) What arrangements ensure that an external valuer is independent from the investment fund operator and free of any conflict of interest?
- (h) What arrangements ensure that valuers rotate at regular intervals?
- (i) What procedures are in place for the frequency and practice of external valuation, taking into account the nature of the asset?

Pricing of interests and shares

RG 132.159 In establishing compliance controls to address pricing risk, the investment fund operator could consider:

- (a) What procedures ensure that prices of interests and shares are calculated in accordance with the constitution, PDS and the Corporations Act? What procedures ensure that exceptional movements in prices of interests and shares are noted and investigated? What procedures ensure that errors in pricing are identified and dealt with?
- (b) What procedures ensure that all income due to the registered scheme or sub-fund is collected and calculated correctly?

Securities trading

RG 132.160 In establishing compliance controls to address the risk of trading in securities that is not in the best interests of members, the investment fund operator could consider:

- (a) What are the procedures to ensure that trades executed on behalf of the registered scheme or sub-fund are performed on a timely basis (in real terms and in relation to other client accounts of the operator), and at the best price available?
- (b) What are the procedures to ensure that trades on behalf of the registered scheme or sub-fund receive fair allocations when block trades are made? How does the investment fund operator ensure that allocations are completed without bias for or against any particular client or fund?
- (c) What procedures ensure that the investment fund operator's levels of securities trading on behalf of the fund are appropriate and that assets are not wasted on brokerage?
- (d) What arrangements are in place to ensure that the investment fund operator does not make use of information acquired through being the investment fund operator in order to gain an improper advantage or cause detriment to members?
- (e) What procedures ensure that the investment fund operator does not create a false or misleading appearance of active trading in securities, or

a false or misleading appearance in the market for, or the price of, securities?

- (f) What procedures ensure that the investment fund operator does not buy or sell securities that do not involve any change in beneficial ownership of shares or by any fictitious transaction maintain, increase, reduce or cause fluctuations in the market price of any securities?

Leverage

RG 132.161 In establishing compliance controls to address leverage risk, the investment fund operator could consider:

- (a) What procedures ensure that appropriate disclosure is made to investors about the risks associated with leverage?
- (b) Where the registered scheme or sub-fund borrows for investment, what procedures are in place to ensure that borrowings are within defined limits as set out in the constitution?
- (c) What procedures are in place to ensure that the registered scheme or sub-fund will not lose assets from any securities lending arrangements?

Credit

RG 132.162 In establishing compliance controls to address credit risk, the investment fund operator could consider:

- (a) What procedures are in place to ensure that credit assessment procedures are followed?
- (b) What procedures are in place to ensure loans are only made in accordance with lending policies? What arrangements ensure mortgage investment securities are fully enforceable at all times and loan covenants are complied with?
- (c) What procedures are in place to monitor loan repayments and ensure all income due to the registered scheme or sub-fund of the retail CCIV is received? Are there consistent and fair procedures in place in the event of default in payment by a borrower?

Other business risks

RG 132.163 The guidance in this guide is not intended to be an exhaustive list of all investment risks and associated compliance risks that might be faced by every registered scheme or sub-fund of a retail CCIV. As part of the structured and systematic assessment of its obligations and the risks of non-compliance, the investment fund operator should establish compliance controls to address any additional compliance risks.

Additional compliance risks and controls for Australian passport funds

- RG 132.164 Under the Australian Passport Rules, the Australian passport fund operator of an Australian passport fund is required to have a compliance framework that ensures ongoing compliance with relevant laws and regulations: see section 8(d) of the Australian Passport Rules.
- RG 132.165 We consider an Australian passport fund will satisfy this requirement through complying with the relevant Corporations Act requirements and this guide (e.g. by having a compliance plan, compliance plan audit, and, if required, a compliance committee).
- RG 132.166 In addition, where the Australian Passport Rules impose obligations beyond those required of investment funds under the Corporations Act, we expect the compliance plan for an Australian passport fund to address those additional requirements.
- RG 132.167 We note that the particular requirements for Australian passport funds in the Australian Passport Rules mean that there will be some areas where we apply greater scrutiny to Australian passport funds. This includes areas such as pricing of interests and shares, conflicts management and effectiveness of arrangements for independent oversight. In particular, we will closely scrutinise the compliance controls in these areas before registering an investment fund as an Australian passport fund.
- RG 132.168 In establishing compliance controls to address specific risks of compliance with the Australian Passport Rules, the Australian passport fund operator should consider all of its compliance obligations under the Australian Passport Rules and identify whether any compliance obligations would require specific compliance controls that would not be part of its other controls. We consider the types of questions the Australian passport fund operator might need to consider include:
- (a) What procedures ensure that the Australian passport fund operator appoints persons with the necessary qualifications to prescribed positions (e.g. resume checking and due diligence)?
 - (b) Where the Australian passport fund operator has delegated some of its functions, what arrangements are in place to:
 - (i) ensure that ASIC is at all times able to access information about the delegated functions from the Australian passport fund operator, directly from a delegate or any person that was a delegate for a reasonable time after they have ceased to be a delegate;
 - (ii) ensure that the performance of the function by the delegate and any sub-delegate can be effectively monitored and reviewed to ensure compliance with the Australian Passport Rules as if done by the Australian passport fund operator; and

- (iii) ensure that the delegate is qualified as required under the Australian Passport Rules, including that the delegate is regulated in a participating economy under the Asia Region Funds Passport, or an equivalent jurisdiction approved by ASIC where required, and that officers or employees of the delegate have sufficient training and experience.
- (c) What procedures are in place to ensure that the Australian passport fund operator only acquires assets of a type permitted under the Australian Passport Rules?
- (d) What procedures ensure that the assets of the Australian passport fund do not exceed any limits or restrictions on portfolio allocation as prescribed under the Australian Passport Rules?
- (e) Where the Australian passport fund has exceeded a limit, what procedures are in place to bring the fund back within the limit as soon as practicable?
- (f) What procedures ensure that the basis for calculating any performance fee is aligned to the Australian passport fund's investment strategy and set out in disclosure to members?
- (g) What arrangements, including monitoring, ensure that any performance fee does not create a misalignment of incentives between the Australian passport fund operator, staff of the operator and the members?
- (h) What procedures does the Australian passport fund operator have to ensure that the independent oversight entity has access to accurate and timely information to allow it to carry out any required verification prior to payment of a performance fee?

D Oversight

Key points

In addition to the directors of a responsible entity or corporate director, who remain ultimately responsible for ensuring that the operator complies with its obligations, oversight of the operation of an investment fund is primarily through:

- for registered schemes, the compliance committee, which is responsible for assessing whether the compliance plan remains adequate, monitoring the responsible entity's compliance with the compliance plan, reporting breaches to the responsible entity and, if the responsible entity is not taking action to adequately deal with a reported breach, reporting the matter to ASIC (see RG 132.169–RG 132.179);
- for CCIVs, the depository, which has a supervisory responsibility to ensure that the corporate director's activities in relation to transactions in shares in the CCIV, valuations and investments comply with the Corporations Act and the CCIV's constitution and PDS (see RG 132.209–RG 132.219); and
- the compliance plan auditor, who conducts an annual audit to assess whether the investment fund operator has complied with the compliance plan and whether the compliance plan continues to meet the requirements of the Corporations Act (see RG 132.180–RG 132.193).

Investment funds that are also registered as Australian passport funds are required to have an independent oversight entity and annual implementation review, the functions of which can overlap with the compliance committee and compliance plan audit, respectively (see RG 132.194–RG 132.208).

Compliance committee

- RG 132.169 The responsible entity of a registered scheme must establish a compliance committee if less than half of its directors are external directors: see s601JA. The compliance committee must have at least three members, the majority of whom must be external members: see s601JB.

Note: At least half of the directors of the corporate director of a CCIV must be external directors: see draft s1156B. This means that a CCIV is not required to establish a compliance committee.

- RG 132.170 Regardless of whether the responsible entity has a compliance committee, the board remains ultimately responsible for ensuring that the responsible entity complies with its obligations. The compliance committee can operate, in part, as an intermediary between the operational compliance unit and board of directors in relation to compliance monitoring, assessment and reporting. However, it is also important that the compliance function has a direct reporting line to the board to ensure that the board is made fully aware

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of any compliance issues so that the board can effectively carry out its governance responsibilities.

- RG 132.171 If the registered scheme does not have a compliance committee, the external directors should be particularly vigilant and actively engage with compliance issues.

Functions and duties

- RG 132.172 Under s601JC, the compliance committee's functions are to:
- (a) monitor to what extent the responsible entity complies with the compliance plan and to report on its findings to the responsible entity;
 - (b) report to the responsible entity any breaches of the Corporations Act or the constitution of which the compliance committee becomes aware or that it suspects;
 - (c) report to ASIC if the committee is of the view that the responsible entity has not taken, or does not propose to take, appropriate action to deal with a reported breach of the Corporations Act or the constitution;
 - (d) assess at regular intervals whether the compliance plan is adequate, report to the responsible entity on that assessment and make recommendations to the responsible entity about any changes that it considers should be made to the compliance plan.

Experience, qualifications and competence

- RG 132.173 Given the important role that the compliance committee plays as a gatekeeper in monitoring the responsible entity's compliance with its duties, we consider it is important that compliance committee members have sufficient experience, qualifications and competence to carry out their duties and functions.
- RG 132.174 We expect that a responsible entity aiming for an effective compliance management system should engage compliance committee members who have:
- (a) relevant tertiary qualifications (e.g. in law, business, commerce or finance);
 - (b) current work experience over a number of years in undertaking compliance activities and investigations;
 - (c) experience in managing, or overseeing the management of, assets of the type invested in by the registered scheme or activities undertaken by the registered scheme; and
 - (d) an understanding of regulatory requirements and how they apply.
- RG 132.175 Where the responsible entity requires minimum standards of experience, qualifications and competence of its compliance committee members, we consider that the responsible entity should have procedures in place to conduct checks to confirm that these requirements are met. To ensure compliance committee members retain the necessary knowledge and skills to

continue to carry out their duties and functions, we also consider it is important that they complete adequate ongoing training and educational programs.

- RG 132.176 The responsible entity should take action when it becomes aware that a compliance committee member is not adequately performing their duties, or where it is not appropriate for that member to continue to sit on the committee.

Appointment of members

- RG 132.177 The terms of appointment for compliance committee members should set out clear requirements about:
- (a) the role and objectives of the compliance committee;
 - (b) the responsibilities of the compliance committee member;
 - (c) the independence of the compliance committee member;
 - (d) minimum standards of experience, qualifications and competence to be met and maintained; and
 - (e) ongoing competence, including training and educational programs.

Performance of functions

- RG 132.178 The compliance committee should meet regularly to ensure that it can detect instances of non-compliance and report to the responsible entity at an early stage. In keeping with its important gatekeeping role, we consider that the compliance committee should meet at least quarterly. We are concerned that meeting any less frequently would not allow the compliance committee to effectively fulfil its function. However, the compliance committee may need to meet more frequently depending on the nature, scale and complexity of the registered scheme and if non-compliance is detected.
- RG 132.179 The compliance committee should keep records to demonstrate that it is appropriately monitoring compliance with the compliance plan. Appropriate records would include meeting agendas, minutes, reports received by the compliance committee and reports made by the compliance committee to the board.

Compliance plan audit

- RG 132.180 An investment fund operator must ensure that at all times a registered company auditor, an audit firm or an authorised audit company is engaged to audit compliance with the compliance plan: see s601HG and draft s1162.
- RG 132.181 The auditor of a compliance plan must give the investment fund operator a report that states the auditor's opinion on whether:

- (a) the investment fund operator has complied with the compliance plan during the financial year; and
- (b) the plan continues to meet the requirements of the Corporations Act.

Guidance for compliance plan auditors

Auditing standards

RG 132.182 While the Corporations Act does not provide further standards for the performance of a compliance plan audit, we expect auditors to follow general auditing principles. Standards and guidance for auditors are provided by the Auditing and Assurance Standards Board, including:

- (a) Auditing Standard on Assurance Engagements [ASAE 3100](#) *Compliance engagements* (ASAE 3100); and
- (b) Guidance Statement [GS 013](#) *Special considerations in the audit of compliance plans of registered managed investment schemes* (GS 013).

Scope of audit

RG 132.183 Under s601HG the auditor is required provide an opinion on the investment fund operator's compliance with the compliance plan and the adequacy of the compliance plan. The report is not required to address the investment fund operator's compliance with the Corporations Act or the constitution. However, it will be essential in assessing the adequacy of the plan to determine whether there are systemic issues of non-compliance with the law or the constitution that are not addressed by the compliance plan.

RG 132.184 While the auditor's report as to the investment fund operator's compliance with the compliance plan covers the relevant financial year, the compliance plan's continued adequacy to meet the requirements of the Corporations Act is an ongoing requirement and the auditor's assessment of adequacy must apply at the time the auditor provides the report.

Testing of master compliance plans

RG 132.185 An investment fund operator might operate more than one investment fund, and choose to incorporate by reference parts of one compliance plan into other compliance plans, have the same provisions in different compliance plans, or operate under a master compliance plan. The investment fund operator may have group compliance controls and processes to monitor compliance with the compliance controls across several investment funds. Where this is the case, we consider that s601HG still requires the auditor to assess whether the compliance plan is adequate for each investment fund (including any sub-funds of a CCIV) and that the investment fund operator has complied with each compliance plan.

RG 132.186 We consider it may be sufficient in some cases to test compliance with common compliance controls across investment funds, rather than individually for each investment fund. However, it would not be sufficient to rely on a sample of the investment fund operator's compliance controls or testing across only some of the investment funds if there are important differences in the types of funds that affect the design or effective operation of a compliance control. Similarly, if there is an indication that compliance controls may be operating effectively for some investment funds and not others, this may affect the nature, timing and extent of compliance testing by the auditor.

Audit report

RG 132.187 Where there is a master compliance plan, we do not currently prescribe whether separate compliance plan audit reports may be lodged for each individual investment fund or in consolidated form for all the operated investment funds. However, we consider that s601HG requires that compliance plan audit reports must be prepared on the following bases:

- (a) a compliance plan audit must be undertaken in relation to each investment fund, regardless of similarities in the nature, phase of operations or registration dates of individual investment funds managed by the same investment fund operator; and
- (b) the auditor's opinion must be clear in relation to each investment fund.

RG 132.188 Whether the auditor prepares a consolidated report or individual fund reports, the audit report must be a complete and comprehensible document in its own right. Where the auditor issues a modified audit report, we consider that the audit report must include modifications with a clear description of all the reasons for the modification that allow users to understand the nature of concerns without reference to any other document. For example, a matter should not be described only by reference to a paragraph number in the compliance plan.

Period for which an opinion is provided

RG 132.189 In our view, s601HG and draft s1162A require the auditor to consider whether the compliance plan complied with the Corporations Act in all material respects during the relevant financial year. For example, the auditor should consider whether, at any time during this period, the compliance plan failed in a material respect to contain adequate compliance controls to ensure that the plan was continuously reviewed and updated according to changing circumstances.

RG 132.190 Any significant contravention subsequent to the end of the financial year and up to the date of the audit report may indicate that the plan does not comply at the date of signing the report, as the compliance controls contained in the plan may not have been sufficient to prevent the breach. Accordingly, if any

such breach comes to the attention of the auditor subsequent to year end, the auditor should re-evaluate whether the compliance plan continues to meet the requirements of the Corporations Act at the date of the report.

- RG 132.191 In preparing the audit report, the auditor should not assume that the compliance plan was necessarily compliant at any previous time. For example, the auditor should not assume that ASIC's registration of the investment fund implies that the compliance plan was compliant at the point of registration.

Resignation or removal of compliance plan auditor

- RG 132.192 A compliance plan auditor who wishes to resign, or an investment fund operator that wishes to remove an auditor from office, must apply in writing to ASIC for our consent: see s601HH(2) and draft s1162B(2) of the Corporations Act.

Note: Detailed guidance on how we apply the provisions of the Corporations Act relating to the resignation and removal of auditors of investment fund financial reports and compliance plans is in [Regulatory Guide 26 Resignation, removal and replacement of auditors](#) (RG 26), particularly RG 26.68–RG 26.76. See also [Information Sheet 64 Resignation and removal of auditors of registered scheme financial report or a compliance plan](#) (INFO 6) for more information.

Auditor's obligations to report to ASIC

- RG 132.193 The compliance plan auditor is obliged, as soon as practicable and in any case within 28 days, to notify ASIC in writing if it becomes aware of circumstances that give it reasonable grounds to suspect that there has been a contravention of the Corporations Act that is:

- (a) significant; or
- (b) not significant, but the auditor believes that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report or by bringing it to the attention of the directors: see s601HG.

Note: Further information about an auditor's obligation to report to ASIC is set out in [Regulatory Guide 34 Auditor's obligations: Reporting to ASIC](#) (RG 34).

Oversight of Australian passport funds

- RG 132.194 Oversight requirements for Australian passport funds under the Australian Passport Rules are similar to the requirements for registered schemes under the Corporations Act. That is, Australian passport funds are subject to:
- (a) oversight by an independent oversight entity, whose functions are similar to those of a compliance committee under the Corporations Act; and
 - (b) an annual implementation review.

RG 132.195 The oversight requirements under the Australian Passport Rules do not replace the requirements of the Corporations Act. This means that we expect an Australian passport fund to still meet the requirements of the Corporations Act in relation to compliance plans, compliance committees and compliance plan audits. However, we expect that where the obligations overlap, the operator can satisfy both sets of obligations at the same time.

Independent oversight entity

RG 132.196 For Australian passport funds, the independent oversight entity is each of the external directors of the Australian passport fund operator or, if there is a compliance committee, the compliance committee.

RG 132.197 This means that we do not expect the Australian passport fund operator to appoint a separate person or group of people to act as the independent oversight entity separate from the compliance committee.

RG 132.198 The functions and duties of an independent oversight entity are substantially similar to those of a compliance committee. That is, under the Australian Passport Rules, the independent oversight entity must monitor the Australian passport fund operator for compliance with:

- (a) the constitution;
- (b) Australian laws administered by ASIC applying to responsible entities and Australian passport fund operators; and
- (c) the Australian Passport Rules governing restrictions on investments and portfolio allocations of the Australian passport fund.

RG 132.199 If the Australian passport fund operator is required to report a breach of the constitution or relevant Australian laws (including the Corporations Act and the Australian Passport Rules) but fails to do so, the independent oversight entity must notify ASIC and, in some cases, a relevant host regulator, as soon as practicable and in any event within seven days, including particulars of the breach: see section 14 of the Australian Passport Rules.

RG 132.200 The Australian Passport Rules also impose some specific obligations on the independent oversight entity. For example, the independent oversight entity must specifically certify that the Australian passport fund operator has complied with the compliance controls relating to performance fees before the Australian passport fund operator may be paid a performance fee.

RG 132.201 Similar to the requirements in relation to a compliance committee under the Corporations Act, the Australian passport fund operator must provide any assistance required by the independent oversight entity to perform its functions.

RG 132.202 We expect that a compliance plan for an Australian passport fund will provide for the operation of the compliance committee as the independent

oversight entity or, where the Australian passport fund has no compliance committee, describe the responsibilities and functions of the external directors of the Australian passport fund operator in their roles as the independent oversight entity.

Annual implementation review assurance report

- RG 132.203 An Australian passport fund operator must ensure that an implementation review of the operation of the Australian passport fund is conducted in relation to each period for which it prepares, or is required to prepare, a financial statement for the Australian passport fund: see section 15 of the Australian Passport Rules.
- RG 132.204 The implementation review for an Australian passport fund must be conducted by a registered company auditor, an audit firm or an authorised audit company under the Corporations Act. The implementation review must not be conducted by the Australian passport fund operator or its related party.
- RG 132.205 The implementation review must be conducted independently in accordance with standards acceptable to ASIC: see section 15(7) of the Australian Passport Rules. We consider that ASAE 3100 is an appropriate standard for the conduct of an implementation review in accordance with the Australian Passport Rules.
- RG 132.206 The assurance report from the implementation review must state:
- (a) whether any matter has come to the attention of the reviewer that causes them to believe that, or to believe that it is likely that, the Australian passport fund was not operated in accordance with the Australian Passport Rules during the review period in all respects that may be material to the Australian passport fund operator, the independent oversight entity, ASIC and each host regulator;
 - (b) particulars of each matter, including details explaining the reasons why the reviewer has reason to believe that the Australian passport fund was not operated in accordance with, or was not likely to have been operated in accordance with, the Australian Passport Rules during the period; and
 - (c) information about the basis for the statements made in RG 132.206(a) and RG 132.206(b) above.
- RG 132.207 The Australian passport fund operator must, within three months after the end of the review period, provide a copy of the implementation review assurance report to:
- (a) ASIC;
 - (b) each host regulator for a host economy where the Australian passport fund had, during the review period, members who became members following an application made in that economy;

- (c) each host regulator for each host economy where interests in the Australian passport fund were offered; and
- (d) the independent oversight entity of the Australian passport fund.

RG 132.208 As noted at RG 132.195, the requirement for an annual implementation review of an Australian passport fund is in addition to the requirement for a compliance plan audit. However in forming their opinion, the reviewer will need to take into account information available to them from any compliance plan audit they have conducted.

Depositories of CCIVs

RG 132.209 A retail CCIV must have a depository: see draft s1163.

Note: It is optional for a wholesale CCIV to have a depository. However, if a wholesale CCIV has appointed a depository and has given ASIC notice of the appointment of the depository, the depository provisions are applicable to the depository of the wholesale CCIV.

RG 132.210 Under draft 1164B, the depository has a supervisory responsibility to take reasonable care to ensure that the corporate director's activities comply with the Corporations Act, the constitution and any PDS issued by the CCIV in relation to:

- (a) issuing, redeeming and cancelling shares in the CCIV;
- (b) valuing shares in the CCIV;
- (c) allocating assets and liabilities to sub-funds of the CCIV; and
- (d) allocating and distributing income of the CCIV.

RG 132.211 In addition to its supervisory responsibilities, the depository has a duty to safeguard the assets of the CCIV.

Note: See draft updated Regulatory Guide 133 *Funds management and custodial services: Holding assets* for guidance on a depository's responsibilities in relation to custody and asset holding.

Depository must act on instructions

RG 132.212 The depository holds the assets of the CCIV on trust, but may only deal with those assets on instructions from the corporate director if the instructions are lawful and comply with the constitution and PDS: see draft s1164 and 1164A of the Corporations Act.

RG 132.213 To assist in meeting its duties, the depository should establish and implement:

- (a) appropriate procedures to verify that the instructions from the corporate director are lawful and comply with the constitution; and

- (b) an escalation procedure where the instructions are not lawful or do not comply with the constitution.

Supervisory duties of the depositary

- RG 132.214 At the time of its appointment, we consider a depositary should assess the compliance risks relating to the matters for which the depositary has oversight associated with the nature, scale and complexity of the CCIV's investment policy and strategy and with the operations of the corporate director. On the basis of that assessment, the depositary should establish oversight procedures that are appropriate to the CCIV and the assets in which it invests, and that are then implemented and applied. We consider those procedures should be updated at least annually.
- RG 132.215 In performing its oversight duties, we consider a depositary should test and verify the procedures that are the responsibility of the corporate director or its delegate. In our view, this testing and verification can occur after the fact, rather than at each point the corporate director performs the activity. The depositary should ensure that an appropriate testing, verification and reconciliation procedure is implemented and frequently reviewed.
- RG 132.216 We consider that a depositary should establish a clear and comprehensive escalation procedure to deal with situations where potential discrepancies are detected in the course of its oversight duties. The depositary is required to report to ASIC any breach of the Corporations Act that relates to the CCIV and has had, or is likely to have, a materially adverse effect on the interests of members as soon as practicable after it becomes aware of the breach: see draft s1164E of the Corporations Act.
- RG 132.217 We consider the corporate director must provide the depositary, on commencement of its duties and on an ongoing basis, with all the relevant information it needs to comply with its oversight obligations, including information to be provided to the depositary by third parties. The corporate director should particularly ensure that the depositary is able to:
- (a) have access to the books and perform onsite visits on the corporate director's premises and of any service provider appointed by the corporate director; and
 - (b) to review reports and statements of recognised external certifications by qualified independent auditors or other experts to ensure the adequacy and relevance of the procedures in place.
- RG 132.218 We also consider that the corporate director should ensure all instructions related to the assets and operations of the CCIV are sent to the depositary, so the depositary can perform its own verification or reconciliation procedure.

Oversight of outsourced services

RG 132.219 Where the corporate director has outsourced services, it is not sufficient for the depositary to simply rely on a report prepared by the auditor of the service provider. We expect the depositary to obtain sufficient and appropriate evidence on which to base its supervision of the corporate director and the outsourced service provider.

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Key terms

| Term | Meaning in this document |
|----------------------------|--|
| AFS licence | An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services Note: This is a definition contained in s761A. |
| AFS licensee | A person who holds an AFS licence under s913B of the Corporations Act Note: This is a definition contained in s761A. |
| Asia Region Funds Passport | An agreement between economies in the Asia region that allows passport funds established and regulated in one participating economy to offer interests to investors in another participating economy |
| ASIC | Australian Securities and Investments Commission |
| ASIC Act | <i>Australian Securities and Investments Commission Act 2001</i> |
| Australian passport fund | A registered scheme that is also registered as a passport fund under draft Pt 8A.3 of the Corporations Act |
| CCIV | A corporate collective investment vehicle—a company that is registered as a corporate collective investment vehicle under the Corporations Act Note: This is a definition contained in draft s9 of the Corporations Act. |
| corporate director | The company named in ASIC's record of the CCIV's registration as the corporate director or temporary corporate director of the CCIV Note: This is a definition contained in draft s9 of the Corporations Act. |
| Corporations Act | <i>Corporations Act 2001</i> , including regulations made for the purposes of that Act |
| depository | The company named in ASIC's record of the CCIV's registration as the depository or temporary depository of the CCIV Note: This is a definition contained in draft s9 of the Corporations Act. |
| host economy | A participating economy that is not a passport fund's home economy and either: <ul style="list-style-type: none"> permits the fund to offer interests in the fund in that economy under the Asia Region Funds Passport; or has accepted an application from the fund to offer interests in the fund in that economy under the Asia Region Funds Passport (but not to register the fund as a passport fund in that economy) |

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| Term | Meaning in this document |
|---------------------------|--|
| host regulator | The passport regulator in a passport fund's host economy |
| IDPS | An investor directed portfolio service as defined in Class Order [CO 13/763] <i>Investor directed portfolio services</i> or any instrument that amends or replaces that class order |
| IDPS-like scheme | An investor directed portfolio services-like scheme as defined in Class Order [CO 13/762] <i>Investor directed portfolio services provided through a registered managed investment scheme</i> , or any instrument that amends or replaces that class order |
| investment fund | A registered scheme or retail CCIV |
| investment fund operator | A responsible entity of a registered scheme or corporate director of a retail CCIV |
| managed investment scheme | Has the meaning given in s9 of the Corporations Act |
| member | A member of a registered scheme or a shareholder of a CCIV |
| MDA | A managed discretionary account |
| participating economy | An economy that is a participant under the Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport (while it is in effect) and has: <ul style="list-style-type: none"> • advised the Asia Region Funds Passport Joint Committee that it has implemented the Asia Region Funds Passport; and • not withdrawn from the Memorandum of Cooperation |
| passport fund | A regulated collective investment scheme, or sub-fund of a regulated collective investment scheme, registered as a passport fund in a participating economy |
| passport fund operator | An entity that operates a passport fund |
| passport regulator | The entity that regulates passport funds in a participating economy |
| Passport Rules | The requirements in Annex 3 to the Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport, as incorporated into the domestic law of a participating economy <p>Note: The Australian Passport Rules will be made by the relevant Minister as a legislative instrument under draft s1211 and 1211A of the Corporations Act.</p> |
| PDS | A Product Disclosure Statement—a document that must be given to a retail client for the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act <p>Note: See s761A for the exact definition.</p> |

| Term | Meaning in this document |
|---------------------------|--|
| registered scheme | A managed investment scheme that is registered under s601EB of the Corporations Act |
| responsible entity | A responsible entity of a registered scheme as defined in s9 of the Corporations Act |
| retail CCIV | <p>A CCIV promoted by a person, or associate of a person, who was, when the CCIV was promoted, in the business of promoting CCIVs to persons who are, or would be, retail clients or a CCIV that has at least one member that acquired one or more shares in the CCIV:</p> <ul style="list-style-type: none"> • as a retail client; or • under a custodial arrangement and a PDS had to be provided to the member before the acquisition <p>Note: See draft s1154A of the Corporations Act.</p> |
| s601HG (for example) | A section of the Corporations Act (in this case numbered 601HG), unless otherwise specified |
| sub-fund | <p>A part of a CCIV that:</p> <ul style="list-style-type: none"> • is established as a sub-fund in the records of the CCIV by assigning a unique name to the sub-fund and identifying one or more classes of shares in the CCIV that are to be referable to the sub-fund; and • either relates to the entire business of the CCIV (in the case where there is one sub-fund) or relates solely to a particular part of the business of the CCIV (in the case where there are two or more sub-funds) |
| wholesale CCIV | A CCIV that is not a retail CCIV |
| wholesale scheme operator | An operator of a managed investment scheme that is unregistered because of s601ED(2) of the Corporations Act, who holds an AFS licence in relation to operation of the scheme |

Related information

Headnotes

Asia Region Funds Passport, Australian passport fund, CCIV, compliance committee, compliance control, compliance management system, compliance plan, compliance plan audit, compliance plan auditor, compliance risk, corporate collective investment vehicle, corporate director, depository, implementation review, independent oversight entity, investment fund, managed investment scheme, operator, oversight

Legislative instruments and pro formas

[ASIC Corporations \(Chapter 5C—Miscellaneous Provisions\) Instrument 2017/125](#)

[PF 209](#) *Australian financial services licence conditions*

Regulatory guides

Draft RG 000 *Funds management: Establishing and registering a fund*

Draft updated RG 133 *Funds management and custodial services: Holding assets*

Draft updated RG 134 *Funds management: Constitutions*

[RG 26](#) *Resignation, removal and replacement of auditors*

[RG 34](#) *Auditor's obligations: Reporting to ASIC*

[RG 45](#) *Mortgage schemes: Improving disclosure for retail investors*

[RG 46](#) *Unlisted property schemes: Improving disclosure for retail investors*

[RG 78](#) *Breach reporting by AFS licensees*

[RG 104](#) *Licensing: Meeting the general obligations*

[RG 105](#) *Licensing: Organisational competence*

[RG 148](#) *Platforms that are managed investment schemes and nominee and custody services*

[RG 166](#) *Licensing: Financial requirements*

[RG 179](#) *Managed discretionary accounts*

[RG 181](#) *Licensing: Managing conflicts of interest*

[RG 231](#) *Infrastructure entities: Improving disclosure for retail investors*

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[RG 232](#) *Agribusiness managed investment schemes: Improving disclosure for retail investors*

[RG 240](#) *Hedge funds: Improving disclosure*

[RG 259](#) *Risk management systems of responsible entities*

Legislation

Corporations Act, s601ED, 601FC, 601HA, 601HB, 601HD, 601HE, 601HF, 601HG, 601HH, 601JA, 601JB, 601JC, 912A

Corporations Amendment (Asia Region Funds Passport) Bill 2017

Treasury Laws Amendment (Corporate Collective Investment Vehicle) Bill 2017 (exposure draft), draft Ch 7A, draft s1142, 1142B, 1156, 1156B, 1161A, 1161B, 1161D, 1161E, 1161F, 1162, 1162A, 1162B, 1163, 1164, 1164A, 1164B, 1164E

Information sheets

[INFO 52](#) *Guidance for whistleblowers*

[INFO 64](#) *Resignation and removal of auditors of registered scheme financial report or a compliance plan*

Consultation papers and reports

[CP 296](#) *Funds management*

[REP 429](#) *Cyber resilience: Health check*

Standards

[AS ISO 19600:2015](#) *Compliance management systems—Guidelines*

[ASAE 3100](#) *Compliance engagements*

[GS 013](#) *Special considerations in the audit of compliance plans of registered managed investment schemes*