



**ASIC**  
Australian Securities &  
Investments Commission

## REGULATORY GUIDE 133

# Funds management and custodial services: Holding assets

December 2024

### About this guide

This guide is for:

- responsible entities of registered managed investment schemes (registered schemes);
- licensed providers of custodial services (licensed custody providers);
- managed discretionary account (MDA) providers that are responsible to clients for assets held under an MDA; and
- investor directed portfolio service (IDPS) operators that are responsible to clients for assets held under an IDPS.

It explains the Australian financial services (AFS) licence obligations that apply to these entities in relation to holding assets and sets out minimum standards for asset holders.













## B Minimum standards and related requirements for asset holders

### Key points

An asset holder must meet minimum standards and related requirements if it holds, directly or indirectly, the assets of a registered scheme, MDA or IDPS.

If a responsible entity, licensed custody provider, MDA provider or IDPS operator engages another asset holder it must also ensure that the asset holder, including an asset holder who holds assets under its AFS licence, meets these minimum standards: see Section C.

To meet the minimum standards, asset holders must:

- have an adequate organisational structure (see RG 133.34–RG 133.42);
- have adequate staffing capabilities (see RG 133.44–RG 133.47);
- have adequate capacity and resources to perform core administrative activities (see RG 133.48–RG 133.50); and
- hold assets on trust for the client, which includes the obligation to separate assets (see RG 133.51–RG 133.54).

An asset holder must keep records for seven years demonstrating compliance with the minimum standards for organisational structure, staffing capabilities, and capacity and resources: see RG 133.55.

We expect an asset holder that is an AFS licensee to conduct checks on its clients before providing the service and then, as appropriate, to ensure that it meets its obligations: see RG 133.56–RG 133.59.

### Specific obligations for registered schemes

RG 133.12 The responsible entity of a registered scheme must hold scheme property on trust for members: see s601FC(2) of the *Corporations Act 2001* (Corporations Act).

Note: In this guide, references to sections (s), chapters (Chs) and parts (Pts) are to the Corporations Act, unless otherwise specified.

RG 133.13 Under s601FB(2), the responsible entity has the power to appoint an agent, or otherwise engage a person, to do anything that the responsible entity is authorised to do in relation to the scheme, including holding scheme property.

RG 133.14 The agent, or person otherwise engaged, must comply with any directions of the responsible entity in performing the delegated function or exercising the delegated power.

RG 133.15 A responsible entity or another person engaged by it to hold assets of a registered scheme does not need to hold an AFS licence authorising it to





















- RG 133.53 In the case of a deposit-taking facility, the rights under the facility (rather than any money that has been deposited in the account) are the client assets. It is these rights that should be held on trust. For example, this can be achieved by establishing the account on the basis that the account is recorded in the issuer's records as 'X Ltd as trustee for Y registered scheme'. In this example, X Ltd may be the responsible entity or a custodian. We consider an issuer of a deposit-taking facility cannot hold the facility on trust.
- RG 133.54 Except where permitted for certain omnibus accounts, an asset holder must also:
- (a) identify the assets, as far as is reasonably practicable, that are held for a client; and
  - (b) keep the assets of a client held on trust separate from the assets of:
    - (i) the asset holder; and
    - (ii) any other person or scheme (in the case of managed investment schemes).

## Keeping compliance records

- RG 133.55 An asset holder must keep records demonstrating how it has done all things necessary to ensure the minimum standards are met for organisational structure, staffing capabilities, and capacity and resources (as set out in RG 133.34–RG 133.50). These records must be kept for seven years.

## Making client inquiries

- RG 133.56 Businesses regulated under the AML/CTF Act have obligations to conduct certain 'know your client' risk-based due diligence inquiries, to the extent that they are 'designated service providers' under the AML/CTF Act.
- RG 133.57 In addition, we expect asset holders that are AFS licensees to conduct pre-contract inquiries—and subsequent inquiries, when appropriate—about their clients. In conducting these inquiries, we expect the asset holder to take into account the client's circumstances and other circumstances. These inquiries will help ensure that AFS licensees meet their obligations to provide financial services efficiently, honestly and fairly. They will also reduce the risk of unexpected differences in capabilities or service requirements, which could lead to potentially avoidable operational risks and other issues. Such inquiries may form part of the adequate risk management systems that AFS licensees must have in place under s912A(1)(h).

Note: Bodies regulated by APRA are excluded from the requirement in s912A(1)(h) unless they are responsible entities that are also trustees of regulated superannuation funds (in which case, the exclusion is limited to risks arising solely from the operation of a regulated superannuation fund by the trustee).

RG 133.58 These inquiries may also produce information that forms part of the factual background against which the AFS licensee can meet its obligations to report to ASIC in certain circumstances.

RG 133.59 We suggest that asset holders engaged to provide services to another person consider making the following inquiries about their clients:

- (a) when assets are to be held by the asset holder—identification of these assets (from at least the client), clarification of the sources of pricing for assets that are to be applied by the asset holder, and reconciliation of holdings against relevant counterparties (such as unit registries) and on transition from a retiring asset holder;
- (b) when acting as a licensed custody provider—verification of the wholesale status of the client, unless the licensed custody provider complies on the basis that the client is a retail client;
- (c) review of the scope of the business and breadth of the operation for which custody is provided, including what assets the asset holder may be called on to hold and what transactions it may be called on to undertake;
- (d) understanding the process for provision of instructions to the asset holder, including from a third-party fund manager or investment administrator;
- (e) an assessment of whether the asset holder is able to carry out the mandate of the client (e.g. can the asset holder hold the type of assets involved and provide the reporting required by the client for these assets?); and
- (f) review of public registers concerning a corporate client's status and licences.

## C Requirements when engaging another asset holder

### Key points

Responsible entities, licensed custody providers, MDA providers or IDPS operators that arrange for another person to hold client assets must take certain steps to protect clients.

When engaging an asset holder, they must:

- ensure that they have a basis to be confident that the asset holder will meet the minimum standards in Section B, and document how they do this; and
- monitor ongoing compliance with the minimum standards and deal appropriately with any deficiencies that arise (see RG 133.65–RG 133.80).

They must ensure that there is a legally enforceable agreement, which addresses certain issues, with any asset holder they engage (see RG 133.81–RG 133.108) or any master custodian they engage (see RG 133.120–RG 133.123).

The agreement must also address certain issues: see RG 133.109–RG 133.119. For retail clients, we expect the engagement of the asset holder to be disclosed and the role of the asset holder to be properly explained: see RG 133.124–RG 133.125.

If a responsible entity changes the asset holder, it must consider whether it is appropriate to obtain an independent report on the transfer of assets: see RG 133.126.

### Specific obligations for registered schemes

- RG 133.60 The responsible entity of a registered scheme has power to appoint an asset holder to hold scheme property under s601FB(2).
- RG 133.61 A responsible entity that engages an asset holder to hold scheme property is liable to members for the acts and omissions of the asset holder under s601FB(2).

### Obligations for all AFS licensees who engage asset holders

- RG 133.62 An AFS licensee may engage another asset holder because:
- (a) it is not permitted to hold assets:
    - (i) under its AFS licence (e.g. because it cannot meet the financial requirements in [RG 166](#)); or

- (ii) under the Australian Passport Rules; or

Note: The Australian Passport Rules are the [Corporations \(Passport\) Rules 2018](#) made under s1211(1) and 1211A by the Australian Minister responsible for the Asia Region Funds Passport. Under 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](#) (Memorandum of Cooperation).

- (b) it does not wish to be an asset holder for the relevant assets.

If a responsible entity engages another asset holder because it does not meet the financial requirements under [ASIC Corporations \(Financial Requirements for Responsible Entities, IDPS Operators and Corporate Directors of Retail CCIVs\) Instrument 2023/647](#), it must ensure that all the relevant assets are held by another person. This is apart from any exceptions permitted under ASIC Instrument 2023/647. For responsible entities, these exceptions are ‘Tier \$500,000 class assets’ and ‘special custody assets’.

Note: For definitions of these terms, see ASIC Instrument 2023/647 and [RG 166](#).

RG 133.63 A responsible entity, licensed custody provider, MDA provider or IDPS operator must also ensure that client assets are held on trust and segregated from:

- (a) its own property; and  
(b) in the case of a registered scheme—the property of any other scheme.

Note: Omnibus accounts are excepted from this requirement (see Section G).

RG 133.64 If a person applies for an AFS licence as a responsible entity, licensed custody provider, MDA provider or IDPS operator and plans to engage another asset holder, it will need to demonstrate that it will ensure that any asset holder that holds client assets on its behalf meets the minimum standards in Section B.

## Ensuring the asset holder meets the minimum standards

RG 133.65 The minimum standards in Section B apply to all asset holders. This is regardless of whether the asset holder is engaged by a responsible entity, licensed custody provider, MDA provider or IDPS operator directly or is a sub-custodian engaged by another person (a master custodian) authorised by the responsible entity, licensed custody provider, MDA provider or IDPS operator. The minimum standards also apply if there are further links in a chain (e.g. in the case of a sub-sub-custodian).

RG 133.66 A responsible entity, licensed custody provider, MDA provider or IDPS operator does not routinely need to explain to us how its choice of asset holder or master custodian will meet the minimum standards when it applies for an AFS licence or otherwise. However, when applying for an AFS

licence it will need to explain the process it will use. If the responsible entity, licensed custody provider, MDA provider or IDPS operator plans to engage another person as asset holder directly, or indirectly through a master custodian, it must be able to demonstrate how it will:

- (a) ensure any asset holder that is engaged meets the minimum standards;
- (b) monitor ongoing compliance with the minimum standards and deal with any deficiencies that arise; and
- (c) achieve the outcomes in RG 133.66(a)–RG 133.66(b) where the assets are outside Australia, except where exceptions are recognised.

RG 133.67 Where appropriate, the responsible entity, licensed custody provider, MDA provider or IDPS operator may be able to meet the obligations in RG 133.66 in relation to an asset holder that is appointed by a master custodian by seeking appropriate information or assurance from the master custodian.

RG 133.68 To check compliance, we may ask for written evidence at any time about how the responsible entity, licensed custody provider, MDA provider or IDPS operator is satisfied that a particular person should be appointed or remain as the asset holder.

RG 133.69 A responsible entity, licensed custody provider, MDA provider or IDPS operator must ensure that any relevant master custodian has adequate processes. This includes adequate processes for selecting, monitoring and reviewing any other person engaged as asset holder (even if the asset holder is a related party) and taking appropriate action on any deficiency of performance.

RG 133.70 Key processes must be documented. This includes the processes the responsible entity, licensed custody provider, MDA provider or IDPS operator has followed or will follow for appointing, monitoring and reviewing the activities of the asset holder or master custodian. Where they engage an asset holder that is a related party, they must have adequate arrangements to manage any conflicts of interest under s912A(1)(aa) to ensure that it meets all its obligations. This includes its obligation to ensure that the minimum standards are met.

Note: For more information on managing conflicts of interest, see [RG 181](#).

### Selecting an asset holder

RG 133.71 A responsible entity, licensed custody provider, MDA provider or IDPS operator must follow a reasonable documented process in selecting an appropriate asset holder or master custodian. We expect it will consider, for example:

- (a) the adequacy of financial, human and technological resources, and risk management systems of the asset holder; and

- (b) where it engages a master custodian—the basis on which the master custodian will engage any sub-custodian.

- RG 133.72 For a responsible entity, licensed custody provider, MDA provider or IDPS operator, the engagement must be in accordance with a documented policy approved by the directors. The policy must address any conflict of interest that might arise from the engagement and, in the case of a responsible entity, any other considerations relevant to the best interests of members.
- RG 133.73 The appropriateness of the policy must be reviewed at least every 13 months. At our request, a responsible entity, licensed custody provider, MDA provider or IDPS operator must, at its own expense, arrange for a report on the effectiveness or reasonableness of the policy. The written direction may specify who is to prepare the report and when.
- RG 133.74 We expect that the risks arising from engaging an asset holder will be addressed in the risk management arrangements of a responsible entity, licensed custody provider, MDA provider or IDPS operator. We also expect responsible entities, licensed custody providers, MDA providers or IDPS operators to apply appropriate resources to ensure that any arrangements for holding assets are consistent with their obligations. This includes ensuring that the minimum standards are met.

### Monitoring ongoing compliance

- RG 133.75 A responsible entity, licensed custody provider, MDA provider or IDPS operator must have an established process to monitor and assess an asset holder's performance of the asset holder's obligations.
- RG 133.76 If the responsible entity, licensed custody provider, MDA provider or IDPS operator delegates decisions to the asset holder about which authorised deposit-taking institution (ADI) or foreign equivalent are used, or how foreign exchange transactions are entered, they must be satisfied about the asset holder's written processes for:
- (a) determining which account to use;
  - (b) monitoring performance of the issuer's obligations; and
  - (c) taking action in case of a deficiency arising from the failure of the issuer of the account.
- RG 133.77 In addition, if the asset holder is permitted to choose to use its associate, a responsible entity, licensed custody provider, MDA provider or IDPS operator will need to check the adequacy of the process to ensure that the conflict is managed so outcomes are no less favourable than if there was not an association.

Note: A responsible entity of a registered scheme must also comply with Pt 5C.7 about related party transactions.

RG 133.78 A responsible entity, licensed custody provider, MDA provider or IDPS operator must ensure that records of the relevant assets are kept in a way that enables the holding of the assets to be audited. It should also ensure that it enforces contractual rights to a written annual acknowledgement by the asset holder that any relevant assets are held in compliance with the minimum standards. This includes that the assets are held on trust when required and separated, subject to the permitted use of omnibus accounts. This also applies where a master custodian engages an asset holder.

Note: For the use of omnibus accounts, see Section G.

RG 133.79 In addition, we expect a responsible entity, licensed custody provider, MDA provider or IDPS operator to seek:

- (a) information to satisfy itself that the asset holder's internal processes and controls are adequate and continue to operate effectively, and that they are subject to appropriate independent checking; and
- (b) periodic information from the asset holder about the effectiveness of such controls, and actions taken or planned to address any concerns.

RG 133.80 We expect that, where appropriate, a responsible entity, licensed custody provider, MDA provider or IDPS operator will obtain a copy of and consider an independent audit of the effectiveness of the controls applying to the asset holding. This could be an audit based on [Guidance Statement GS 007 \*Audit implications of the use of service organisations for investment management services\*](#), issued by the Auditing and Assurance Standards Board (AUASB), or another appropriate international equivalent (e.g. Statement on Standards for Attestation Engagements [SSAE No. 18 \*Attestation standards: Clarification and recodification\*](#) (PDF 956 KB)). This audit may be performed on the basis of an engagement by the asset holder.

Note: GS 007 is designed to provide detailed and transparent reporting on relevant control frameworks of asset holders and other custodians. It includes guidance on how to apply the AUASB's relevant auditing and assurance standards when preparing audit and assurance reports on the description, design and operating effectiveness of the service organisation's controls over the investment management services.

## Requirements for the content of custody agreements

### Agreement with an asset holder

RG 133.81 A responsible entity, licensed custody provider, MDA provider or IDPS operator must ensure that there is a legally enforceable agreement with any asset holder it engages. There must be an agreement with any master custodian and also between any master custodian and asset holder (sub-custodian) that addresses the relevant issues. The agreement must generally be in writing, unless the criteria in RG 133.122–RG 133.123 are met.

RG 133.82 The agreement with an asset holder must address the issues in RG 133.83–RG 133.108.

#### **Rights to review and monitor the asset holder**

RG 133.83 The agreement must provide the responsible entity, licensed custody provider, MDA provider or IDPS operator with reasonable rights for the ongoing review and monitoring of the asset holder and any sub-custodians. The agreement must also address the criteria against which their performance will be assessed. We expect that these rights and criteria must be adequate to ensure:

- (a) the responsible entity, licensed custody provider, MDA provider or IDPS operator can meet its obligations to its clients under the Corporations Act;
- (b) ASIC's minimum standards for asset holders are met; and
- (c) the services provided will at least meet the standards generally applying in the relevant markets for the assets held.

#### **Written certification**

RG 133.84 The agreement must require that the asset holder will give a certification to the responsible entity, licensed custody provider, MDA provider or IDPS operator in writing at least every 13 months. The asset holder must certify that, other than in any trivial respect or as previously disclosed to the responsible entity, licensed custody provider, MDA provider or IDPS operator in writing, it believes on reasonable grounds that, since the date of the previous statement in writing or the commencement of the agreement:

- (a) it has met, and has no reason to believe that it will not continue to meet, the minimum standards in the relevant ASIC legislative instrument that reflects the standards for asset holders (whether or not there is any explicit reference to the instrument in the agreement); and
- (b) it is complying with the agreement.

#### **Manner in which assets are held**

RG 133.85 The agreement must require that the asset holder, on request, will:

- (a) formally acknowledge the manner in which it holds assets; and
- (b) notify any other person where the asset holder is aware that to do so might protect the interest in the assets of the client for whom the assets are held. However, the responsible entity, licensed custody provider, MDA provider or IDPS operator may direct otherwise in writing.

#### **Giving of instructions**

RG 133.86 The agreement must set out how instructions will be given to the asset holder.



## Liability

- RG 133.87 The agreement must contain reasonable liability provisions. If appropriate, the agreement must also contain reasonable indemnity provisions for losses caused to the responsible entity, licensed custody provider, MDA provider or IDPS operator by the acts and omissions of the asset holder that relate to the agreement.
- RG 133.88 We expect that a responsible entity, licensed custody provider, MDA provider or IDPS operator would not compromise the interests of its clients in the presence of liability or indemnity provisions, unless it is satisfied that any additional cost would be disproportionate to the benefits to its clients. Clients have a significant interest in promoting compliance by the asset holder and, in the event of non-compliance, receiving compensation for loss by the asset holder. Without implying that it would be sufficient, at a minimum, a responsible entity, licensed custody provider, MDA provider or IDPS operator must:
- (a) not agree to any broad exclusion of any liability for direct losses that would apply for the failure to take reasonable care under general law; and
  - (b) only allow any limited exclusion if reasonable.

## Security interests, mortgages, liens or other encumbrances

- RG 133.89 The agreement must prohibit the asset holder from taking or granting to its associates a security interest, mortgage, lien or other encumbrance over, or in relation to, the assets held under the agreement. This is not required if the responsible entity, licensed custody provider, MDA provider or IDPS operator reasonably believes, for documented reasons, that any conflict that may arise as a result of the security interest, mortgage, lien or other encumbrance will not materially increase the risk that the asset holder will fail to meet its obligations. The responsible entity, licensed custody provider, MDA provider or IDPS operator should be satisfied that the asset holder would meet its obligations under the agreement, even if acting contrary to the agreement might maximise the value of the lien.
- RG 133.90 A responsible entity, licensed custody provider, MDA provider or IDPS operator must keep the written record of reasons for seven years after the security interest, mortgage, lien or other encumbrance has ceased. For example, an asset holder may have a lien over assets held to secure entitlement to expenses incurred and it may exercise that right in its own interest subject to the terms of, or legal rights under, the lien.

## Record keeping and reporting

- RG 133.91 The agreement must set out how records of the assets are held and how transactions are recorded including by whom, by what means and when they



- RG 133.95 The provisions for termination where the responsible entity, licensed custody provider, MDA provider or IDPS operator has reasonable grounds for holding that belief must include, at a minimum, provisions to the effect that it may terminate the agreement:
- (a) without payment, other than of entitlements previously accrued or the reasonable fees, costs and expenses involved in the transfer of the assets to the responsible entity, licensed custody provider, MDA provider or IDPS operator or another asset holder; and
  - (b) without limiting any right to damages the responsible entity, licensed custody provider, MDA provider or IDPS operator may have under the agreement, including recovering the expenses referred to in RG 133.95(a) if the asset holder is in breach.
- RG 133.96 The agreement must also require that, on termination, the assets will be transferred to the responsible entity, licensed custody provider, MDA provider or IDPS operator, or be transferred as they lawfully direct within a reasonable period. The agreement must provide for the obligations of the parties at termination. This includes the payment of outstanding fees and charges to the asset holder and any costs of the transfer.

#### **Breach reporting**

- RG 133.97 The agreement must require that material or systemic breaches of the agreement by the responsible entity, licensed custody provider, MDA provider or IDPS operator or the asset holder will be notified by the asset holder to:
- (a) the responsible entity, licensed custody provider, MDA provider or IDPS operator; and
  - (b) if the client is a responsible entity, its board of directors or the compliance committee of each relevant scheme.

Note: This is in addition to any other statutory breach reporting requirements.

- RG 133.98 The agreement must also require the notification to be in writing and given within a reasonable timeframe of the asset holder becoming aware of the breach.

#### **Arrangements with other parties**

- RG 133.99 The agreement must set out the terms on which the asset holder is authorised to directly or indirectly engage another party as asset holder and require provisions of the appointment in a written agreement in accordance with the requirements in this guide. This is subject to the exceptions in RG 133.122.

**Business continuity**

- RG 133.100 The agreement must require that the asset holder will establish and maintain business continuity arrangements that are reasonable for the nature, scale and complexity of its business.

**Confidentiality**

- RG 133.101 The agreement must require that the asset holder will keep in confidence any information of a confidential nature. However, any disclosure to ASIC or disclosure as permitted by law or by the client is excepted.

**Suspicious matter reporting for responsible entities**

- RG 133.102 For a responsible entity of a registered scheme, the agreement must provide that the asset holder will establish and maintain adequate arrangements to ensure that it will report to ASIC within 10 business days if it suspects the responsible entity has breached its obligations to report its own reportable situations under s912DAA.
- RG 133.103 The required arrangements relate only to what the asset holder does after the suspicion arises. This is regardless of whether the suspicion arise from:
- (a) inquiries it undertakes for another purpose (including in relation to other arrangements with the asset holder that reflect obligations applying under the AML/CTF Act);
  - (b) information obtained in the ordinary course of business; or
  - (c) information received from another source.
- RG 133.104 The required arrangements are not the source of any obligation to make inquiries.
- RG 133.105 We would expect the asset holder to use reasonable judgement in determining whether to discuss the suspicion with the responsible entity before reporting to ASIC. We accept that, under the required arrangements, if an employee or agent of the asset holder has such a suspicion, the asset holder may give reasonable consideration to determine if there are grounds for the suspicion before reporting to ASIC.
- RG 133.106 The agreement must not contain any provision that would require the asset holder to notify the responsible entity of suspicious matter reporting by the asset holder to ASIC about the responsible entity's activities. However, except as otherwise restricted by law or where it would be imprudent in light of the risk of tipping off a person engaged in misconduct, it may generally be appropriate to seek clarification from the responsible entity after the matter is considered under the internal governance arrangements of the asset holder.

RG 133.107 We consider that entities that are considering committing, or not reporting, significant breaches may be deterred if they know that the asset holder could identify such a breach and report it to ASIC.

RG 133.108 We also consider that asset holders that provide services under contract, and their employees, can report suspicious matters to ASIC under the whistleblower protection in Pt 9.4AAA, including where the AML/CTF Act may not apply.

Note: For information on whistleblower protection, see Information Sheet 238 *Whistleblower rights and protections* ([INFO 238](#)) and Information Sheet 239 *How ASIC handles whistleblower reports* ([INFO 239](#)).

### **Agreement as a retail client**

RG 133.109 If the asset holder is engaged by a retail client, the agreement must set out the issues in RG 133.110–RG 133.119, as relevant.

#### **Manner in which assets are held**

RG 133.110 The agreement with the retail client must require that the asset holder will tell the retail client, on request, the manner in which it holds the assets.

#### **Giving of instructions**

RG 133.111 The agreement with the retail client must set out how instructions will be given to the asset holder.

#### **Liability**

RG 133.112 The agreement with the retail client must state that the asset holder is liable to the client if there is a loss to the client because of a failure by the asset holder, or any sub-custodian engaged by them, to comply with the duties under the agreement or to observe reasonable standards generally applied by providers of custodial services. This is subject to provision for the asset holder to limit its liability resulting from the failure of a sub-custodian it has appointed if that sub-custodian is insolvent and the asset holder (as master custodian) has taken reasonable care in appointing and monitoring the sub-custodian's compliance.

#### **Security interests, mortgages, liens or other encumbrances**

RG 133.113 The agreement with the retail client must prohibit the asset holder from taking or granting a security interest, mortgage, lien or other encumbrance over, or in relation to, the assets held under the arrangement. The exception to this is a security interest, mortgage, lien or other encumbrance:

- (a) for expenses and outlays made within the terms of the agreement other than any of its unpaid fees; or

- (b) entered into in accordance with the client's written instructions.

### **Record keeping and reporting**

- RG 133.114 The agreement with the retail client must address how records of the assets are held and any transactions recorded, including how, by whom and when they were authorised. These records must be kept and maintained by the asset holder and made available to the client. This includes:
- (a) the verification procedures for the appropriately frequent reconciliation and checking of the balances of client assets held by the asset holder; and
  - (b) the requirements for reporting by the asset holder.

### **Identity of any agents**

- RG 133.115 Where practicable, the agreement with the retail client must provide that the asset holder will provide the client, with written notice of the identity of, and contact information for, each agent:
- (a) before arranging for the assets to be held by another person as agent; and
  - (b) in any event, before the assets are held, except in exceptional circumstances identified in the agreement.

### **Termination**

- RG 133.116 The agreement with the retail client must require that on termination the assets will be transferred to the client, or otherwise transferred as the client lawfully directs within a reasonable time.
- RG 133.117 The agreement must provide for other obligations of the parties at termination. This includes the payment of outstanding fees and charges to the asset holder and any costs of the transfer.

### **Business continuity**

- RG 133.118 The agreement with the retail client must state that the asset holder will establish and maintain arrangements to enable it to provide the services under the agreement in any contingency for which it should reasonably plan. Those arrangements must be reasonable for the nature, scale and complexity of the asset holder's business.

### **Confidentiality**

- RG 133.119 The agreement with the retail client must require that the asset holder will keep any information of a confidential nature in confidence. However, any disclosure to ASIC or disclosure as permitted by law or by the client is excepted.

## Agreement with a master custodian

- RG 133.120 In many cases, a responsible entity, MDA provider or IDPS operator will not directly engage an asset holder, but will engage a master custodian that engages the asset holder (or sub-custodian). As far as possible, the same minimum standards should apply for an asset holder that is a sub-custodian engaged by a master custodian. However, in the case of a responsible entity, the provisions referred to in RG 133.102–RG 133.108 on suspicious matter reporting do need to be included if the master custodian holds a beneficial interest in the client assets for the responsible entity.
- RG 133.121 If a responsible entity, MDA provider or IDPS operator engages a master custodian that appoints a sub-custodian, it must enter into a written agreement with the master custodian reflecting the terms required in an agreement with an asset holder in RG 133.83–RG 133.101. That agreement must contain an obligation for the master custodian to ensure its agreement with the sub-custodian is in writing and on substantively the same terms as required for an agreement with an asset holder (other than the requirement in RG 133.102–RG 133.108 on suspicious matter reporting).
- RG 133.122 In some cases, it may not be reasonably practicable to engage another person to hold client assets outside Australia who is willing to include such matters in the agreement. In this case, to the extent that it is not reasonably practicable to ensure compliance, the agreement between the master custodian and the sub-custodian does not need to contain the matters in RG 133.83–RG 133.101 or RG 133.110–RG 133.119. However, the master custodian must provide the responsible entity, licensed custody provider, MDA provider or IDPS operator with documents that demonstrate it is not reasonably practicable to engage another person to hold the assets who is willing to include such matters in the agreement.
- RG 133.123 The requirement for a master custodian to enter into an agreement does not apply if the sub-custodian is controlled by the master custodian and the master custodian is liable to its client for the acts and omissions of the sub-custodian as if they were the acts or omissions of the master custodian.

## Disclosure to retail clients of relationship with asset holder

- RG 133.124 For retail clients, we expect responsible entities, MDA providers and IDPS operators to explain in the Product Disclosure Statement (PDS), Financial Services Guide (FSG) or IDPS Guide the limited role of the asset holder in holding the assets or scheme property, and acting only as a custodian. We also expect responsible entities, MDA providers and IDPS operators to explain the limited role of the asset holder more generally in communications with clients that refer to the asset holder as a custodian. To promote understanding, in communications to retail clients the role of the

asset holder should be explained in a clear, concise and effective manner. This includes the limited nature of the services undertaken.

- RG 133.125 Where some of the assets or scheme property may not be held on trust by the asset holder, these circumstances may also need to be explained in communications.

## **Transfer of assets when asset holder is changed**

- RG 133.126 If a responsible entity changes the asset holder, it must consider whether it is appropriate to obtain a report from an unrelated person with relevant knowledge confirming that all assets to be transferred have been identified and transferred. Verification of the appropriate identification and transfer of assets may involve checking reconciliations between the outgoing and incoming asset holder or obtaining an audit. If the responsible entity does not consider it is in the best interests of members to obtain the report, it must keep a record in writing of the grounds for its belief. It must keep this record for seven years.



## D Compliance controls for licensed custody providers

### Key points

This section applies to licensed custody providers. It does not apply to registered schemes, MDAs and IDPSs. For information on compliance controls addressing risks to client assets applicable to registered schemes, MDAs and IDPSs, see Regulatory Guide 132 *Funds management: Compliance and oversight* ([RG 132](#)).

As an AFS licensee, a licensed custody provider must have documented compliance controls to ensure that it complies with its obligations in relation to client assets.

Compliance controls may vary depending on the nature and amount of assets and who holds them.

### Compliance controls must cover risks to client assets

RG 133.127 A licensed custody provider must establish and maintain adequate documented controls to demonstrate that it is complying with its AFS licence obligations.

Note: We use the term compliance ‘controls’ instead of ‘compliance measures’, as this reflects Australian Standard [AS ISO 37301:2023](#) *Compliance management systems—Requirements with guidance for use*.

### Compliance controls may vary

RG 133.128 We have not prescribed in detail what compliance controls should be put in place for dealing with client assets.

RG 133.129 There will be different risks to clients arising out of the different ways that client assets are held. This includes whether the licensed custody provider is the asset holder or if it engages another asset holder to hold some or all the assets. We also recognise that what is required in documented compliance controls will depend on the nature and amount of assets held.

RG 133.130 For example, more sophisticated compliance controls may be required by a standalone custody business that provides services for a full range of financial products, compared to a licensed custody provider that holds only a limited range and value of assets.

**If the licensed custody provider is the asset holder**

- RG 133.131 If the licensed custody provider is the asset holder, we consider its documented compliance controls should include:
- (a) regular checks to ensure that all record keeping for client assets is carried out in a timely and accurate manner; and
  - (b) measures for ensuring that the minimum standards in Section B of this guide are met.

**If another person is the asset holder**

- RG 133.132 If the licensed custody provider 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 133.133 We consider the licensed custody provider's documented compliance controls should set out the controls it will take to minimise these risks. This would include, for example, controls for ensuring that:
- (a) it will allow a person to be the asset holder only if the person meets the minimum standards in Section B;
  - (b) the activities of the asset holder will be actively monitored and appropriate action taken in case of deficiencies; and
  - (c) any agreement entered into with the asset holder will remain compliant and current.

## E Protection of rights for land used in registered schemes

### Key points

This section applies to registered schemes.

In order to comply with its responsible entity duties and general AFS licensee duties under the Corporations Act, the responsible entity of a primary production registered scheme must adequately protect the rights to use the land for the purposes of the scheme.

In order to adequately protect the rights to the land, the responsible entity should ensure that members of the scheme have an interest in the land registered under state or territory land title laws.

The land should be held in a way that protects members from risks that are outside the scope of the scheme, such as the insolvency of a landowner.

### Protecting members' rights

- RG 133.134 In many primary production registered schemes, members contract with the responsible entity to set up and maintain the scheme, and harvest or exploit its products in the context that there will be arrangements allowing the use of certain land. For example, this could apply to schemes involved in agriculture, use of animals, harnessing energy from solar or wind energy, or obtaining benefits from sequestering carbon dioxide. The land often remains the property of the responsible entity, or an associate or unrelated landowner, and reverts to it when the scheme ends.
- RG 133.135 We consider that it is inconsistent with the obligation of a responsible entity to do all things necessary to ensure that it operates a registered scheme efficiently, honestly and fairly to operate the scheme if the scheme is subject to risks of failure because of inadequate protection of the rights to use land for the scheme for the expected duration of the scheme. We consider the rights of members in relation to the land requiring protection include the rights sufficient to enable access, cultivation, transmission, exploitation, maintenance, protection, repair, refurbishment, and harvesting or obtaining output from the scheme, where relevant to the scheme.
- RG 133.136 To provide adequate protection of the rights to land, it is appropriate that members have an interest in the land registered under the state or territory land title laws—for example, by lodging the instruments before or immediately after the interests in the registered scheme are issued. We consider that land should be held in a way that protects members from risks outside the scope of the scheme, such as the insolvency of a landowner.

RG 133.137 Certain risks arise if members are not protected by an interest in land (needed for operation of the scheme) that:

- (a) is registered under state or territory laws;
- (b) is paramount; and
- (c) cannot lawfully be adversely affected by any existing or subsequent secured creditor or a transferee, except one whose title has been conferred by the responsible entity in accordance with its duties.

RG 133.138 Risks to members include the following:

- (a) the holder of the interest in the land may have used, or may use, the land as security without acknowledging the interests of members. If there is a default, the secured creditor may act without regard to the interests of the members;
- (b) a person holding an interest in the land on which the registered scheme relies (landowner)—or a liquidator of a landowner or other person authorised to act on a landowner’s behalf—may restrict access to land that is reasonably necessary for the operation of the scheme but is not covered by the interest;
- (c) a landowner—or a liquidator of a landowner or other person authorised to act on the landowner’s behalf—may transfer the land (or an interest in the land) and the transferee may not be under an obligation to recognise the rights of the members regarding the land; and
- (d) it may be practically difficult to continue to operate or to wind up the registered scheme if a landowner has become insolvent.

RG 133.139 If the interest in the land continues only while the obligations of the interest holder to others with an interest in the land (e.g. a secured creditor or lessor) are being met, failure to meet these obligations may result in the loss of the interest. Retail investors may not expect the registered scheme to be put at risk by such failures. If the security or lease has been entered into by the responsible entity in accordance with its duties, risk remains and may require disclosure to retail clients.

Note: For more information on disclosure to retail clients, see Regulatory Guide 232 *Agribusiness managed investment schemes: Improving disclosure for retail investors* ([RG 232](#)). RG 232 includes a disclosure principle dealing with a responsible entity’s disclosure obligations in relation to the arrangements entered into to secure rights of access or tenure to the resources and infrastructure required to operate the agribusiness scheme, including any land, licences or leases, and water.

RG 133.140 Registration of an interest does not ensure the land right that the interest might normally confer can be used. There may be other rights to use land, such as native title rights. A responsible entity must only offer interests in the registered scheme if following reasonable inquiry it does not believe that there are such rights or that government action or refusal to grant permission will mean the land cannot be used for the scheme as intended.

## F Holding crypto-assets

### Key points

This section applies to:

- responsible entities where scheme assets comprise or include crypto-assets; and
- custodians where the crypto-assets are financial products.

It contains ASIC's expectations of such asset holders, including the requirement to have specialist expertise and infrastructure relating to crypto-asset custody.

- RG 133.141 We consider the following measures are good practice for the asset holder, and any custodian engaged by it, holding the crypto assets:
- (a) It should have:
    - (i) specialist expertise and infrastructure relating to crypto-asset custody, including robust systems and practices to receive, validate, review, report and execute instructions from the relevant client; and
    - (ii) robust cyber and physical security practices for its operations, including appropriate internal governance and controls, risk management and business continuity practices.
  - (b) The crypto-assets should be segregated on the blockchain. This means that unique public and private keys are maintained by the asset holder so that the other assets are not intermingled with other crypto-asset holdings.
  - (c) The private keys used to access the crypto-assets should be generated and stored in a way that minimises the risk of loss and unauthorised access as detailed in the following examples:
    - (i) Solutions that protect private key material using hardware devices should be physically isolated and have appropriately limited connectivity to other computing systems (cold storage). Private key material should not be held on internet-connected systems or networked hardware (hot storage) beyond what is strictly necessary for the operation of the product.
    - (ii) Hardware devices used to hold private key material should be subject to robust physical security practices.
    - (iii) Effective systems and processes for key backup and recovery should be maintained, with geographically distributed backup sites preferred.

- (d) Signing approaches that minimise ‘single point of failure risk’ should be adopted.
- (e) Cyber security practices and the controls environment should be independently verified to an appropriate standard—for example:
  - (i) System and organisation controls [report 1](#) and [report 2](#);
  - (ii) [GS 007](#);
  - (iii) International Organization for Standardization, ISO/IEC 27001:2022 *Information security, cybersecurity and privacy protection—Information security management systems—Requirements* ([ISO 27001](#)) and ISO/IEC 27002:2022 *Information security, cybersecurity and privacy protection—Information security controls* ([ISO 27002](#)); and
  - (iv) National Institute of Standards and Technology, *Cybersecurity framework* ([NIST CSF](#)).

RG 133.142 The security of private keys is of critical importance. Private keys are necessary to sign transactions that assign crypto-assets to new addresses. If private keys are compromised, unauthorised parties can use them to transfer the crypto-assets to addresses (and parties) that are outside the control of the asset holder. Accordingly, asset holders should ensure that the private keys used are protected from unauthorised access—both online and offline.

RG 133.143 Asset holders should adopt a transaction-signing approach that minimises single point of failure risk. For example, a multi-signature or sharding-based signing approach is preferred to a single private key to sign transactions. As technology develops, other suitable approaches may also emerge. It is a matter for the asset holder to determine the most effective approach, considering the benefits and drawbacks of different approaches.

RG 133.144 The process of receiving, validating, reviewing and executing instructions should include appropriate permissioning so that no one party has control of the entire process. If the structure of the product is such that it only needs to interact with a predefined set of addresses—for example, particular dealers, markets or authorised participants—the asset holder should consider a whitelist approach, so that transfers can only be made to those predefined addresses.

RG 133.145 In relation to compensation systems, we consider it good practice that asset holders have access to an arrangement so that clients can be compensated if crypto-assets are lost. The precise nature of the arrangement—including what is covered, how much is covered, and its form (e.g. insurance, an asset protection plan or compensation fund)—is for the asset holder to determine, taking into account the nature of the product and obligations at law.

- RG 133.146 We consider it good practice that cyber security practices and controls environments are independently verified to an appropriate standard, as determined by industry practice. It is a matter for the responsible entity to decide whether they are satisfied with the standards, certifications or attestations that the custodian has achieved.
- RG 133.147 Asset holders should, where appropriate, take the necessary steps to obtain a copy of and consider an independent audit of the effectiveness of the controls of a third-party service organisation responsible for custody of assets. Where crypto-assets are held, it is expected this would include controls determined by industry practice for mandated standards, certifications or attestations that are expected for custodians of crypto-assets. This could be an audit based on GS 007 or a comparable audit from other jurisdictions.

## **Risk management by asset holders regarding crypto-asset exchanges used to obtain crypto-assets**

- RG 133.148 An AFS licensee must do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly: see s912A(1)(a). Under s912A(1)(h), most AFS licensees are required to have adequate risk management systems.
- RG 133.149 We consider it good practice for asset holders to carefully consider where they source their crypto-assets from, including their service providers used to buy or sell crypto-assets. In particular:
- (a) the asset holder should be satisfied, based on reasonable due diligence, that any service provider it relies on to buy or sell crypto-assets:
    - (i) is a digital currency exchange provider registered with the Australian Transaction Reports and Analysis Centre (AUSTRAC), or is regulated by one or more laws of a foreign country giving effect to the Financial Action Task Force recommendations relating to customer due diligence and record-keeping; and
    - (ii) implements risk-based systems and controls under the AML/CTF Act that are supervised or monitored by a body empowered by law to supervise and enforce the customer due diligence and record-keeping obligations; and
  - (b) the asset holder should ensure that authorised participants, market makers and other service providers that trade crypto-assets in connection with the product do so through a service provider that meets the same standard as above.



- RG 133.150 The obligations under the AML/CTF Act require entities to, among other things, have customer identification procedures and aim to reduce the risk of crypto-assets being used to support criminal activity.
- RG 133.151 Research also suggests that market integrity issues are more prevalent on crypto-asset markets with lower levels of regulation, compliance and transparency.
- RG 133.152 The asset holder is responsible for ensuring its risk management systems appropriately manage all other risks posed by crypto-assets. This could include implementing or applying relevant standards published by Australian and international organisations as they are developed.

## G Relief from the obligation to separate assets

### Key points

A responsible entity must ensure that scheme property is clearly identified as scheme property and held separately from its property and the property of any other scheme.

We have given limited relief to responsible entities from this requirement, and make similar exceptions for other asset holders, to allow the use of omnibus accounts.

### Specific obligations for registered schemes

- RG 133.153 A responsible entity that holds scheme property on trust under s601FC(2) must generally ensure that property of the registered scheme is:
- (a) clearly identified as scheme property (see s601FC(1)(i)(i)); and
  - (b) held separately from the responsible entity's property and the property of any other scheme (see s601FC(1)(i)(ii)).

### Obligations for other AFS licensees who are asset holders

- RG 133.154 Similar requirements apply if an AFS licensee holds assets as a licensed custody provider under [ASIC Instrument 2024/17](#), an MDA provider under [ASIC Instrument 2016/968](#) or an IDPS operator under [ASIC Instrument 2023/669](#).

### Relief for omnibus accounts

- RG 133.155 In some circumstances, it may not be appropriate to separate assets from those of other persons or schemes. Holding certain classes of assets separately may be inconsistent with market practice where it is likely to substantially add to the cost of holding assets or scheme property. We have given limited relief from s601FC(1)(i) to responsible entities in certain circumstances. This is subject to requirements to ensure that the interests of members are not put at any material risk of being lost by any pooling arrangements: see [ASIC Instrument 2024/16](#).
- RG 133.156 Our relief under ASIC Instrument 2024/16 permits responsible entities to use omnibus accounts for:
- (a) Australian or foreign currency;

- (b) a deposit-taking facility with a body carrying on a business of accepting money on deposit, including rights under that facility;
- (c) securities; or
- (d) derivatives.

RG 133.157 This relief applies subject to ASIC's power to exclude reliance by a responsible entity in certain circumstances.

Note: For information on how to apply for relief, see Regulatory Guide 51 *Applications for relief* ([RG 51](#)) and Regulatory Guide 136 *Funds management: Discretionary powers* ([RG 136](#)).

RG 133.158 Provisions regarding the use of pools (e.g. omnibus accounts) also apply to licensed custody providers under [ASIC Instrument 2024/17](#), MDA providers under [ASIC Instrument 2016/968](#) and IDPS operators under [ASIC Instrument 2023/669](#).

RG 133.159 Omnibus accounts are permitted where:

- (a) the assets are held separately from the assets of the AFS licensee engaging the asset holder and the asset holder;
- (b) the AFS licensee responsible for ensuring that the assets are held (e.g. the responsible entity) ensures that the asset holder:
  - (i) maintains adequate records at all times showing the entitlement of clients in the assets not held separately;
  - (ii) performs reconciliation procedures on each business day for the assets not held separately. An exception to this is if, because of the nature of assets of a particular type, it is ordinary and reasonable commercial practice to reconcile such assets less frequently. We expect that this standard will generally be required daily for financial products traded on a financial market and deposit products;
  - (iii) does not restrict its capacity to exercise or cause the exercise of powers in relation to the assets, including any power to direct voting; and
  - (iv) has safeguards in place to ensure that the omnibus account will never fail to have sufficient funds to meet the entitlements of the client, and any other person in relation to the assets not held separately for more than two business days. If necessary, this may be through the asset holder supplementing the assets not held separately with its own assets. The amount paid in by the asset holder would become held for the persons having a beneficial interest in the omnibus account, other than the asset holder. If, because of later repayments, the account goes into surplus, the asset holder can be reimbursed with equivalent assets; and
- (c) the AFS licensee responsible for ensuring that the assets are held:

- (i) documents its policy on not holding assets separately and its reasons why that policy is appropriate. In setting out the reasons why the policy is appropriate, the AFS licensee should consider any extent to which it might expose the relevant clients to unreasonable risk or have any reason to believe that applying the policy would not meet its duties to the relevant clients;
- (ii) ensures the policy has been reviewed during the previous 13 months and a written record of the outcome of the review recorded; and
- (iii) keeps a record of the policy and the record of its review for seven years after it has ceased to be the current policy that enables the assets not to be held separately.

RG 133.160 For retail clients of licensed custody providers, the potential use of omnibus accounts must be notified in the asset holder's FSG and expressly agreed to in writing by the retail client.

### **Key reasons for permitting use of omnibus accounts**

- RG 133.161 Omnibus accounts are typically used to hold financial assets. If asset separation requirements applied, omnibus accounts would cause the responsible entity to be in breach of the obligation to clearly identify scheme property or assets and hold it separately from other relevant property or assets.
- RG 133.162 A responsible entity might reasonably consider that holding assets or scheme property separately would be inappropriate if it increases the costs to members without materially decreasing any risk. A risk could arise from holding assets together to the extent that the assets of one client could be used to settle the obligations of another client.
- RG 133.163 Ensuring efficient and compliant operation by the asset holder may include operating separate omnibus accounts for different types of clients (e.g. buy–hold clients versus broker–dealer clients). Specifically, if there is a non-trivial risk of a shortfall in a client's account due to the nature of the client or the types of transaction entered into that would not be addressed by the asset holder paying in assets to cover a shortfall, we expect that the asset holder would, as part of its risk management system, segregate the client's assets to minimise potential losses to other clients or to the asset holder itself.
- RG 133.164 If an asset holder has used assets in the omnibus account for the benefit of another person not in accordance with the client's instructions and a shortfall arises, the asset holder must cover the shortfall after the end of the second business day after the shortfall arises.

## Relief does not extend to non-financial assets

- RG 133.165 Our policy on omnibus accounts does not extend to assets other than securities, derivatives, foreign currency and certain deposit-taking facilities. For example, responsible entities or other persons holding scheme property are not permitted to hold a single piece of other property as trustee for a registered scheme and also another scheme.
- RG 133.166 However, we consider that the obligation to hold assets separately arises only to the extent that this can be done. This may not be possible for real property (e.g. where disclosure of trusts in the land titles register may not be permitted) and certain other assets. In this case, we accept that real property can be registered in the name of the asset holder without breaching the requirements to hold the assets separately in:
- (a) s601FC(1)(i) for responsible entities of registered schemes;
  - (b) [ASIC Instrument 2024/17](#) for licensed custody providers;
  - (c) [ASIC Instrument 2016/968](#) for MDA providers; or
  - (d) [ASIC Instrument 2023/669](#) for IDPS operators.
- RG 133.167 In the case of a responsible entity, we consider the obligation to separate assets or scheme property extends to doing all that is practicable to achieve separation, given the nature of the property and its ownership. As such, we do not consider it necessary to give any relief from s601FC(1)(i) for assets that are real property. However, we expect compliance arrangements to particularly address the risks of this asset-holding arrangement.

## Key terms

Term	Meaning in this document
ADI	An authorised deposit-taking institution—a corporation that is authorised under the <i>Banking Act 1959</i> . ADIs include: <ul style="list-style-type: none"> <li>• banks;</li> <li>• building societies; and</li> <li>• credit unions</li> </ul>
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 in s9.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
AFS licensee obligations	The obligations of an AFS licensee under Ch 7 of the Corporations Act
AML/CTF Act	<i>Anti-Money Laundering and Counter-Terrorism Financing Act 2006</i>
Annex 3 (for example)	An annex to the <a href="#">Memorandum of Cooperation</a>
APRA	Australian Prudential Regulation Authority
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>
asset holder	Means: <ul style="list-style-type: none"> <li>• a person who holds: <ul style="list-style-type: none"> <li>– scheme property or assets of a registered scheme;</li> <li>– client assets of an IDPS;</li> <li>– client portfolio assets of an MDA service; or</li> <li>– financial products, or a beneficial interest in financial products, held under a custodial service; or</li> </ul> </li> <li>• a licensed custody provider or, where relevant, an entity that provides custodial services incidentally</li> </ul>
AUASB	Auditing and Assurance Standards Board

Term	Meaning in this document
Australian passport fund	A registered scheme or sub-fund of a retail CCIV that is also registered as a passport fund under Pt 8A.3 of the Corporations Act
Australian Passport Rules	The <a href="#">Corporations (Passport) Rules 2018</a> made under s1211 and 1211A 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 in s9.
client	A member of a registered scheme, a client of an IDPS operator, a client of an MDA provider or a client of a custodial service being a person for whom financial products or a beneficial interest in financial products are held in providing the custodial service (as the case may be)
client assets	Scheme property or other assets of a registered scheme, the assets held under an IDPS (other than by the client), the client portfolio assets of an MDA service, or financial products or a beneficial interest in financial products held under a custodial service
client portfolio assets	Financial products and other property that are the client's contribution to an MDA service or that are derived directly or indirectly from the client's contributions
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 in s1224(3) of the Corporations Act.
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	<i>Corporations Regulations 2001</i>
custodial service	The service provided under an arrangement between the provider and the client, or between the provider and another person with whom the client has an arrangement (whether or not there are also other parties to any such arrangement), under which a financial product, or a beneficial interest in a financial product, is held by the provider in trust for, or on behalf of, the client or another person nominated by the client unless the service is not a custodial or depository service under s766E(3) of the Corporations Act  Note: This is a definition in s766E for the term 'provide a custodial or depository service'.

Term	Meaning in this document
custodial staff	<p>Natural persons who have duties relating to:</p> <ul style="list-style-type: none"> <li>• holding assets;</li> <li>• record keeping for assets;</li> <li>• checking authorisations for instructions to transact; or</li> <li>• functions incidental to these powers (but does not include functions that involve the exercise of a material discretion whether under an arrangement with the asset holder or a person engaged by the asset holder other than in relation to an at-call deposit account of a regulated deposit taker or transactions in foreign exchange contracts)</li> </ul>
custodian	A provider of a custodial service or a person that holds scheme property of a registered scheme, assets held under an IDPS, or client portfolio assets of an MDA service
Div 2 (for example)	A division of the Corporations Act (in this example numbered 2), unless otherwise specified
financial product	<p>Generally, a facility through which, or through the acquisition of which, a person does one or more of the following:</p> <ul style="list-style-type: none"> <li>• makes a financial investment (see s763B);</li> <li>• manages financial risk (see s763C);</li> <li>• makes non-cash payments (see s763D)</li> </ul> <p>Note: See Div 3 of Pt 7.1 of the Corporations Act for the exact definition. In addition to the general categories above, this specifies certain things as being included or excluded from the definition.</p>
FSG	<p>A Financial Services Guide—a document required by s941A or 941B to be given in accordance with Div 2 of Pt 7.7 of the Corporations Act</p> <p>Note: This is a definition in s9.</p>
GS 007	<a href="#">Guidance Standard GS 007</a> <i>Audit implications of the use of service organisations for investment management services</i> , issued by the AUASB in October 2011
IDPS	An investor directed portfolio service as defined in <a href="#">ASIC Instrument 2023/669</a> or any instrument that amends or replaces that instrument
IDPS Guide	A document provided by an IDPS operator instead of a PDS to help retail clients decide whether they should use the IDPS
IDPS operator	A public company that is a holder of an AFS licence that is authorised to operate an IDPS and who provides an IDPS or a function that forms part of the IDPS
licensed custody provider	A person who holds an AFS licence authorising the licensee to provide a custodial service



Term	Meaning in this document
managed investment scheme	Has the meaning given in s9 of the Corporations Act Note: A notified foreign passport fund is a managed investment scheme for the purpose of the Corporations Act: see s1213E.
master custodian	A person with primary contractual responsibility to an AFS licensee, who is authorised by the licensee to engage an asset holder
MDA	Managed discretionary account
MDA provider	A person who holds an AFS licence with authorisations to provide MDA services Note: A detailed definition is contained in <a href="#">ASIC Instrument 2016/968</a> .
MDA service	Has the meaning given in <a href="#">ASIC Instrument 2016/968</a>
member	A member of a registered scheme
Memorandum of Cooperation	The <a href="#">Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport</a>
omnibus account	An account in which money, securities or derivatives for more than one beneficial owner are co-mingled by a custodian or a sub-custodian
participating economy	An economy that is a participant under the <a href="#">Memorandum of Cooperation</a> (while it is in effect) and has: <ul style="list-style-type: none"> <li>• advised the Asia Region Funds Passport Joint Committee that it has implemented the Asia Region Funds Passport; and</li> <li>• not withdrawn from the Memorandum of Cooperation</li> </ul>
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 Note: Some regulated collective investment schemes, or sub-funds of regulated collective investment schemes, that have been deregistered as passport funds remain subject to obligations as if they were still a passport fund.
Passport Rules	The requirements in Annex 3 to the <a href="#">Memorandum of Cooperation</a> , as incorporated into the domestic law of a participating economy
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 Note: See s9 for the exact definition.
PF 209 (for example)	An ASIC pro forma (in this example numbered 209)
Pt 7.9 (for example)	A part of the Corporations Act (in this example numbered 7.9), unless otherwise specified

Term	Meaning in this document
reg 7.6.04 (for example)	A regulation of the Corporations Regulations (in this example numbered 7.6.04), unless otherwise specified
registered scheme	A managed investment scheme that is registered under s601EB of the Corporations Act
regulated collective investment scheme	A regulated collective investment scheme as defined by the Passport Rules for a participating economy
responsible entity	A responsible entity of a registered scheme as defined in s9 of the Corporations Act
retail client	A client as defined in s761G and 761GA of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations
RG 104 (for example)	An ASIC regulatory guide (in this example numbered 104)
s912A (for example)	A section of the Corporations Act (in this example numbered 912A), unless otherwise specified
scheme property	<p>Means:</p> <ul style="list-style-type: none"> <li>(a) contributions of money or money's worth to the scheme;</li> <li>(b) money that forms part of the scheme property under provisions of the Corporations Act or the ASIC Act;</li> <li>(c) money borrowed or raised by the responsible entity for the purposes of the scheme;</li> <li>(d) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraphs (a), (b) or (c); and</li> <li>(e) income and property derived, directly or indirectly, from contributions, money or property referred to in paragraphs (a), (b), (c) or (d)</li> </ul> <p>Note: This is a definition contained in s9 of the Corporations Act.</p>
sub-fund	<p>Has the meaning given in s1222Q of the Corporations Act</p> <p>Note: A sub-fund is established on the day on which it is registered: see s1222T.</p>

## Related information

### Headnotes

AFS licence, AFS licence conditions, AFS licensee obligations, asset holder, assets, Australian financial services licence, CCIVs, client assets, compliance plans, conflicts of interest, corporate collective investment vehicle, crypto-assets, custodial service, custodian, IDPS, IDPS operator, investor directed portfolio service, master custodian, licensed custody provider, managed discretionary account, MDA, MDA provider, minimum standards, obligation to separate scheme property, omnibus accounts, organisational structure, primary production schemes, registered interest, registered managed investment scheme, responsible entity, scheme property, staffing, sub-custodian

### Legislative instruments and pro formas

[ASIC Corporations \(Managed Discretionary Account Services\) Instrument 2016/968](#)

[ASIC Corporations \(Financial Requirements for Responsible Entities, IDPS Operators and Corporate Directors of Retail CCIVs\) Instrument 2023/647](#)

[ASIC Corporations \(Investor Directed Portfolio Services\) Instrument 2023/669](#)

[ASIC Corporations \(Asset Holding Standards for Responsible Entities\) Instrument 2024/16](#)

[ASIC Corporations \(Custody Standards for Providers of Custodial and Depository Services\) Instrument 2024/17](#)

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

### Regulatory guides

[RG 51 Applications for relief](#)

[RG 104 AFS licensing: Meeting the general obligations](#)

[RG 105 AFS licensing: Organisational competence](#)

[RG 132 Funds management: Compliance and oversight](#)

[RG 136 Funds management: Discretionary powers](#)

[RG 166 AFS licensing: Financial requirements](#)

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

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

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

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

## Legislation

AML/CTF Act

ASIC Act

Corporations Act, Chs 5C, 8A, Pts 9.4AAA, 5C.7, s9, 601FB, 601FC, 601FF, 766E, 911B, 912A, 912D, 912DAA, 912E, s1211, 1211A

Corporations Regulations, regs 5C.2.01, 5C.4.02, 5C.5.01, 7.6.01(1)(k), 8B.5.10(2)

## Information sheets

[INFO 141](#) *Dealing and providing custodial or depository service as secondary service*

[INFO 225](#) *Crypto-assets*

[INFO 238](#) *Whistleblower rights and protections*

[INFO 239](#) *How ASIC handles whistleblower reports*

## Consultation papers and reports

[CP 296](#) *Funds management*

[REP 582](#) *Response to submissions on CP 296 Funds management*

## Other documents

[AS ISO 37301:2023](#) *Compliance management systems—Requirements with guidance for use*

[GS 007](#) *Audit implications of the use of service organisations for investment management services*

[ISO 27001](#) *Information security, cybersecurity and privacy protection—Information security management systems—Requirements*

[ISO 27002](#) *Information security, cybersecurity and privacy protection—  
Information security controls*

[NIST CSF](#) *Cybersecurity framework*

[SSAE No. 18](#) *Attestation standards: Clarification and recodification* (PDF  
956 KB)

[Memorandum of Cooperation on the Establishment and Implementation of  
the Asia Region Funds Passport](#)