



ASIC
Australian Securities &
Investments Commission

REGULATORY GUIDE 133

Funds management and custodial services: Holding assets

June 2022

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.

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 guide was issued in June 2022 and is based on legislation and regulations as at the date of issue.

Previous versions:

- Superseded Regulatory Guide 133 *Funds management and custodial services: Holding assets*, issued July 2018
- Superseded Regulatory Guide 133 *Managed investments and custodial or depository services: Holding assets*, issued November 2013
- Superseded Policy Statement 133 *Managed investments: Scheme property arrangements*, issued August 1998, reissued October 1998 and June 1999, rebadged as a regulatory guide 5 July 2007

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

This guide explains:

- the obligations that apply to responsible entities of registered managed investment schemes (registered schemes), licensed providers of custodial services (licensed custody providers), managed discretionary account (MDA) providers and investor directed portfolio service (IDPS) operators in relation to holding assets;
- the minimum standards and related requirements for asset holders;
- what responsible entities, licensed custody providers, MDA providers and IDPS operators must do if they engage another asset holder;
- the requirements for documented compliance controls;
- the additional requirements that apply to primary production schemes that include rights for the use of land; and
- the limited relief we have given responsible entities of registered schemes from the obligation to separate assets to allow the use of omnibus accounts, and the requirements that apply when other Australian financial services (AFS) licensees use omnibus accounts.

Purpose of this guide

- RG 133.1 This guide sets out minimum standards for asset holders to ensure that they meet their obligations under their AFS licence or delegation.
- RG 133.2 We consider that clients' confidence will be better maintained if asset holders, including non-licensees who hold assets under the licence of their client, are required to meet minimum standards to ensure that:
- (a) client assets are not exposed to unnecessary risks because of the way assets are held; and
 - (b) efficient operational arrangements exist for holding and dealing with client assets.
- RG 133.3 The minimum standards will help maintain client confidence in the provision of the relevant services and to promote a fair and efficient market for the provision of asset-holding services.

Who this guide applies to

- RG 133.4 This guide is for:
- (a) responsible entities of registered schemes;

- (b) licensed custody providers and, where relevant, entities that provide custodial services incidentally;
- (c) MDA providers that are responsible to clients for assets held under an MDA;
- (d) IDPS operators that are responsible to clients for assets held under an IDPS; and
- (e) other asset holders who hold assets under the licence of their client.

Note: For the purposes of this guide, we are excluding from the definition of ‘asset holders’ persons who must be, or are customarily, used to clear, settle or hold assets to participate in particular kinds of transactions on financial markets, such as certain securities depositories and clearing systems.

RG 133.5 This guide applies to registered schemes that are also registered as Australian passport funds for the purposes of the Asia Region Funds Passport.

RG 133.6 This guide does not apply to the corporate director of a corporate collective investment vehicle (CCIV), a CCIV or a custodian engaged by the corporate director or CCIV. However:

- (a) where the assets of the CCIV are held by the CCIV, the corporate director may wish to consider the principles set out in this guide; and
- (b) where the assets of the CCIV are held by a person other than the CCIV, the corporate director may wish to consider the principles set out in this guide when assessing whether that person has met the minimum standards in reg 8B.5.10(2) of the *Corporations Regulations 2001* (Corporations Regulations).

Services that form part of a custodial service

RG 133.7 The minimum standards and related requirements apply to all asset holders. This is regardless of whether the services are provided as a main business of the provider or as an incidental provider. In some cases, the nature and scale of the services provided may affect what is required to meet the minimum standards.

Note: For an explanation of ‘incidental providers’, see [Regulatory Guide 166 AFS licensing: Financial requirements](#) (RG 166).

RG 133.8 We consider that services performed as a result of holding financial products, or a beneficial interest in financial products, when providing a custodial service are a part of holding the assets and so form part of the custodial services. On this basis, the following services form part of the custodial services when provided in that way:

- (a) *Exercising rights as a holder*—this involves exercising the rights and obligations associated with assets held that are interests or securities, other than dealing in the assets. For example, this applies to:

- (i) exercising voting rights arising from a reorganisation or restructure;
 - (ii) electing to participate in dividend or distribution reinvestment plans; and
 - (iii) electing to accept offers made on the basis of holding the assets, such as certain placements and rights issues.
- (b) *Tax reclamations*—this involves reclaiming recoverable portions of tax withheld by foreign taxation authorities from interest or dividend payments on investments held.
- (c) *Reconciliations*—this involves reconciling the asset holder’s own records of its holdings against the records of various third parties, such as fund managers, banks and other custodians.
- (d) *Record keeping and reporting*—this involves maintaining statements of holdings and completed transaction reports, and keeping records of valuations provided to the asset holder.

RG 133.9 This list is not exhaustive. Other services may be provided from time to time that may be considered to form part of the provision of a custodial service.

RG 133.10 Other services that may be provided by licensed custody providers include:

- (a) fund accounting;
- (b) unit pricing and determining asset values and net asset values;
- (c) compliance monitoring and reporting;
- (d) maintaining and operating a basic deposit product; and
- (e) performance measurement and monitoring.

Note: [Information Sheet 141](#) *Dealing and providing a custodial or depository service as a secondary service* (INFO 141) may also be relevant in determining whether a person is providing a custodial service and subject to this guide.

Summary of our guidance

RG 133.11 Table 1 summarises the sections of this guide and who each section applies to. The minimum standards and related requirements in relation to asset holding set out in this guide apply to entities in their capacity as asset holders or when engaging an asset holder.

Table 1: Summary of our guidance

Section of this guide	Applies to
Section B: Minimum standards and related requirements for asset holders	<p>The following entities who hold assets:</p> <ul style="list-style-type: none"> • responsible entities of registered schemes; • licensed custody providers; • MDA providers; • IDPS operators; and • other asset holders holding assets under the licence of their client
Section C: Requirements when engaging another asset holder	<p>The following entities who engage asset holders:</p> <ul style="list-style-type: none"> • responsible entities of registered schemes; <p>Note: Under the Australian Passport Rules, the operator of a registered scheme that is registered as an Australian passport fund for the purposes of the Asia Region Funds Passport is required to appoint an independent asset holder.</p> <ul style="list-style-type: none"> • licensed custody providers; • MDA providers; • IDPS operators; and • other asset holders holding assets under the licence of their client
Section D: Compliance controls for licensed custody providers	<p>Licensed custody providers</p> <p>Note: For information on compliance controls for registered schemes, see Regulatory Guide 132 <i>Funds management: Compliance and oversight</i> (RG 132).</p>
Section E: Protection of rights for land used in registered schemes	<p>Responsible entities of registered schemes whose members require the use of particular land on which the scheme will occur</p>
Section F: Relief from the obligation to separate assets	<p>Responsible entities, licensed custody providers, MDA providers and IDPS operators, in relation to holding assets</p>

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

provide a custodial service for this purpose. This is because holding those assets is not a custodial service under s766E(3)(b). Holding assets is a part of the operation of the registered scheme by the responsible entity.

Note: We do not consider that a controlled sub-trust is a separate scheme. This is because the members (e.g. the responsible entity as trustee) have day-to-day control over the sub-trust. We consider that any property held through a controlled sub-trust is scheme property of the registered scheme that controls the sub-trust. As such, we will regard the sub-trustee of a controlled sub-trust as a custodian who must comply with the standards and requirements in Section C.

Obligations for all asset holders who are licensed to hold assets

RG 133.16 An asset holder who is licensed to hold assets must:

- (a) do all things necessary to ensure that it carries on the financial services for which it is licensed efficiently, honestly and fairly;

Note: An MDA provider must be a licensed custody provider unless another licensed custody provider directly contracts with all retail clients to be the asset holder (see [Regulatory Guide 179](#) *Managed discretionary accounts* (RG 179)).

- (b) demonstrate that it meets the minimum standards and related requirements set out in Section B of this guide, including when it applies for an AFS licence to hold assets; and

Note: The minimum standards apply while the assets are held.

- (c) meet any other obligations that apply to its AFS licence.

Note: For information on obligations that apply to an AFS licensee, see [Regulatory Guide 104](#) *AFS licensing: Meeting the general obligations* (RG 104) and [Regulatory Guide 105](#) *AFS licensing: Organisational competence* (RG 105).

Obligations for all AFS licensees who engage asset holders

RG 133.17 If an AFS licensee engages another asset holder, it must do all things necessary to ensure that the asset holder meets the minimum standards and related requirements. This includes an asset holder who holds assets under the AFS licensee's licence.

Note: See Section C for more information on the obligations that apply to AFS licensees who engage another asset holder.

Engaging non-licensees

RG 133.18 An asset holder engaged by an AFS licensee may or may not be an AFS licensee itself. If the asset holder is providing a financial service to clients on the AFS licensee's behalf, it will generally need to be an authorised

representative of the AFS licensee, exempted from holding an AFS licence, or acting on behalf of another AFS licensee: see s911B(1).

- RG 133.19 An asset holder engaged by an AFS licensee may also be providing a financial service to the AFS licensee. The client who is provided with a custodial service is the person on whose behalf the financial products are held, or for whom the financial products are held on trust. Depending on the terms of the arrangement, a person who contracts with a provider of a custodial service may be the client of that service or merely a person who is arranging for the service to be provided to another person. If the AFS licensee is the client, the asset holder may not need an AFS licence to hold the client assets that are financial products or beneficial interests in financial products, provided that the requirements in reg 7.6.01(1)(k) of the Corporations Regulations are satisfied.
- RG 133.20 The exemption under reg 7.6.01(1)(k) may be relevant to sub-custodians and applies if:
- (a) the asset holder holds the financial products on trust for, or on behalf of, a licensed custody provider; and
 - (b) the licensed custody provider in turn holds the beneficial interest on trust for, or on behalf of, the client of the licensed custody provider.
- RG 133.21 This exemption takes into account the responsibility of an AFS licensee who holds the beneficial interest in the financial products, which may be a financial service provided to the person for whom the beneficial interest is held. This is to ensure that the holder of the financial products meets appropriate standards. The minimum standards for asset holders also reflect this responsibility by applying to AFS licensees that directly or indirectly engage other entities as asset holders of client assets. Ensuring that asset holders meet the minimum standards helps AFS licensees meet their broader AFS licensee obligations and safeguards clients' interests.

What are the minimum standards and related requirements?

- RG 133.22 All asset holders must:
- (a) have an adequate organisational structure (see RG 133.34–RG 133.43);
 - (b) unless they engage another asset holder to hold all relevant assets—have adequate staffing capabilities (see RG 133.44–RG 133.47);
 - (c) unless they engage another asset holder to hold all relevant assets—have adequate capacity and resources to perform core administrative activities (see RG 133.48–RG 133.50); and
 - (d) hold assets on trust for the client, which includes the obligation to separate assets (see RG 133.51–RG 133.54).

- RG 133.23 These minimum standards and related requirements apply when:
- (a) the asset holder is the responsible entity, licensed custody provider, MDA provider or IDPS operator, or another asset holder holding assets under the AFS licence of its client;
 - (b) the asset holder is engaged by the responsible entity, licensed custody provider, MDA provider or IDPS operator; or
- Note: See Section C for more information on when another asset holder is engaged. If an asset holder engages another asset holder, it must ensure that the engaged asset holder meets the minimum standards.
- (c) the custodial services are provided as a main business of the provider or merely incidentally (see RG 133.7–RG 133.10).

- RG 133.24 The minimum standards are set out in the following legislative instruments, which modify the Corporations Act:
- (a) [Class Order \[CO 13/1409\]](#) *Holding assets: Standards for responsible entities*;
 - (b) [Class Order \[CO 13/1410\]](#) *Holding assets: Standards for providers of custodial or depository services*;
 - (c) [ASIC Corporations \(Managed Discretionary Account Services\) Instrument 2016/968](#); and
 - (d) [Class Order \[CO 13/763\]](#) *Investor directed portfolio services*.

Note: The application of the minimum standards by legislative instrument replaces the AFS licence conditions in [Pro Forma 209 Australian financial services licence conditions](#) (PF 209). PF 209 has been amended accordingly.

- RG 133.25 A responsible entity, licensed custody provider, MDA provider or IDPS operator that engages an asset holder to hold assets must keep records demonstrating compliance with the minimum standards for organisational structure, staffing capabilities, and capacity and resources: see RG 133.55. These records must be kept for seven years.

- RG 133.26 We expect asset holders that are AFS licensees to conduct checks on their clients before providing the service and then, as appropriate, to ensure that the asset holder will meet its AFS licensee obligations: see RG 133.56–RG 133.59.

Meeting the minimum standards and related requirements

- RG 133.27 All asset holders must meet these minimum standards and related requirements, as set out in Section B.
- RG 133.28 In some cases, the nature and scale of the services provided may affect what is required to meet the minimum standards. An asset holder's arrangements for meeting the minimum standards may vary depending on the particular

assets being held. We have not prescribed specific arrangements for different asset holders.

- RG 133.29 We expect that an asset holder will seek independent verification of:
- (a) the robustness of its compliance controls that apply to the asset holding, taking into account the nature of the assets; and
 - (b) in the case of a registered scheme, whether the asset holder is the responsible entity or a related party of the responsible entity.
- RG 133.30 A responsible entity, licensed custody provider, MDA provider or IDPS operator must establish adequate procedures for giving instructions to:
- (a) if it is the asset holder, its custody staff; or
 - (b) if it has engaged an asset holder, the asset holder.
- RG 133.31 It must ensure that the associated risks are managed appropriately and reasonable compliance controls are in place to ensure the instructions are followed. It should consider relevant industry best practice for providing instructions, including data, when establishing its procedures for interacting with the asset holder.
- RG 133.32 A responsible entity must set out in writing and implement a reasonable process for determining:
- (a) whether it should hold assets or scheme property that it is permitted to hold; or
 - (b) if it will engage another person as asset holder, which asset holder and on what terms.
- RG 133.33 The process must apply a reasonable written policy approved by the directors of the responsible entity. The written policy must address the potential conflicts of interest and other considerations relevant to the best interests of members.

Organisational structure

- RG 133.34 An asset holder must have an organisational structure that supports the separation of the assets held from its own assets and those of any other client or managed investment scheme. The exception to this is omnibus accounts: see Section F. We consider that the use of nominee companies is a means of separating client assets.
- RG 133.35 The requirements for organisational structure do not apply when all the financial products or beneficial interests in financial products in which the asset holder has an interest are held by another person that it appoints. However, in that case the asset holder must still ensure that it has appropriate

controls to appoint and monitor delegates and that its arrangements for managing conflicts arising from this function are adequate. We encourage asset holders to separate staff responsible for appointing and monitoring sub-custodians from staff involved in investment management decisions. The asset holder also has an obligation to ensure sub-custodians comply with the organisational structure requirements. An exception applies for assets outside Australia, if this is not reasonably practicable.

- RG 133.36 Asset holders must ensure that custodial staff and their managers are segregated from staff performing other functions in a way that minimises the potential for a conflict of interest arising between:
- (a) the duties of custodial staff; and
 - (b) the duties and interests of persons who make investment decisions, trading decisions or other discretionary decisions resulting in the transfer or disposal of client assets.
- RG 133.37 The exception to this is discretionary decisions on certain at-call deposit accounts with regulated deposit takers and foreign exchange transactions.
- RG 133.38 This is particularly important where the asset holder is the responsible entity, MDA provider or IDPS operator performing transactional functions, or a related body corporate.
- RG 133.39 Custodial staff and other staff involved in these discretionary decisions must be located sufficiently separately to reduce, as far as is reasonably practicable, the risk of inappropriate influence on decisions relating to holding client assets.
- RG 133.40 In addition, asset holders must have a documented policy designed to ensure that custodial staff are not influenced to act other than in accordance with their duties because of a conflict of interest. The policy must be approved by:
- (a) the asset holder's directors or governing body;
 - (b) a senior manager authorised to give approval (by the directors or governing body); or
 - (c) for an AFS licensee that is a foreign company, its senior officer in Australia.
- RG 133.41 The asset holder must undertake reasonable checks to ascertain and document whether there has been any attempt to inappropriately influence custodial staff, and must take reasonable action if this occurs.

Note: Where the asset holder is an AFS licensee, it also has a general obligation to have adequate arrangements to manage its conflicts of interest. For information on managing conflicts of interest, see [Regulatory Guide 181 Licensing: Managing conflicts of interest](#) (RG 181).

- RG 133.42 Reporting lines must be independent of potentially conflicting activities up to the level of the managing director or senior officer in Australia. An asset holder must have arrangements that ensure custodial staff who are not involved in potentially conflicting activities can report directly, or through other custodial staff:
- (a) to the board of directors or governing body of the client;
 - (b) for a registered scheme with a compliance committee—to the committee; or
 - (c) for non-Australian clients—to the most senior officer of the client in Australia, or the relevant foreign jurisdiction in which the assets are held.
- RG 133.43 An asset holder's organisational structure must ensure that custodial staff can report directly to the directors of the asset holder or, in the case of a responsible entity, the compliance committee. This can be directly or through other custodial staff. The custodial staff and their managers must not also be responsible for investment decisions, trading decisions or other discretionary decisions resulting in the transfer or disposal of client assets. The exception to this is discretionary decisions on holding certain at-call deposit accounts with regulated deposit takers and foreign exchange transactions.

Staffing capabilities

- RG 133.44 Custodial staff must have the knowledge and skills necessary to properly perform their functions relating to the custodial property. The asset holder must provide adequate ongoing training and educational programs so that staff knowledge remains at a level necessary for performing their assigned responsibilities. The training must cover the asset holder's legal obligations, to the extent relevant to enable the staff members to perform their particular responsibilities relating to custodial property.
- RG 133.45 Responsible entities, licensed custody providers, MDA providers and IDPS operators have obligations to conduct 'know your staff' risk-based due diligence inquiries under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (AML/CTF Act).
- RG 133.46 In addition to these inquiries, we expect that résumé, police and reference checks would be carried out, where appropriate. We also expect appropriate oversight to be applied, to address the risk of fraud and any other risks in relation to the asset holding (including exercising rights as holder) that might arise from the engagement of an employee.
- RG 133.47 We expect an asset holder to assess the risks associated with the various employee functions within its organisation, and design measures that it considers are appropriate to the nature of the risks faced by it in relation to potential fraud (e.g. mandatory absence periods, dual approval processes, staff rotation and 'maker/checker' processes).

Capacity and resources

- RG 133.48 An asset holder's staff must have the necessary time and authority to perform their duties associated with holding client assets. This will vary, depending on the nature of the assets.
- RG 133.49 The asset holder must make resources available to custodial staff, including in specialist areas, to the extent necessary for them to adequately perform their duties. This is likely to include:
- (a) computer systems that are reasonably up to date and secure from any actual or potential threats, including from fraud;
 - (b) systems capable of handling record keeping and transaction processing appropriate to the volume of transactions and capable of reliably identifying assets for each client, particularly when omnibus accounts are used;
 - (c) systems capable of handling client instructions for assets held (e.g. exercising voting rights or other rights conferred on the asset holder on client instructions);
 - (d) procedures for accurately recording all client assets held, all movements of those assets and evidence of authorisation for such movements. This includes who gave authorisation, how and when, and all income and other related administrative activities;
 - (e) access to information sources that may be relevant to being aware of action that may be taken in exercising rights as an asset holder and pricing information;
 - (f) memberships at central securities depositories, where relevant to client assets;
 - (g) access to and, if necessary, membership of any relevant settlement and clearance systems;
 - (h) where appropriate, access to relevant and appropriate domestic or global sub-custodial networks;
 - (i) where physical assets are held, secure physical storage;
 - (j) appropriate business continuity and disaster recovery procedures; and
- Note: AFS licensees that are bodies regulated by the Australian Prudential Regulation Authority (APRA) are excluded from the requirement in s912A(1)(h) to have risk management systems. However, responsible entities that are trustees of regulated superannuation funds must meet the requirement in s912A(1)(h), except for risks arising solely from the operation of the regulated superannuation fund by the trustee.
- (k) appropriate systems and procedures for change management.
- RG 133.50 In all circumstances, such systems, processes and procedures should ensure that opportunities for fraud and operational error are reduced as far as reasonably

practicable. As part of having adequate risk management arrangements for AFS licensees to whom that requirement applies, we expect that:

- (a) AFS licensees that are responsible for giving instructions on the use of assets where high-volume transactions are likely to occur will ensure that automated systems are used to authenticate instructions. However, we recognise that there may be exceptional circumstances where it is only practical to use manual systems; and
- (b) asset holders will have reasonable capacity to accept and act on instructions through such processes.

Holding assets on trust

RG 133.51 Responsible entities, licensed custody providers, MDA providers and IDPS operators must do all things necessary to ensure that they, and any other asset holder they engage, hold the relevant assets on trust. This is except for assets held:

- (a) outside of Australia where a trust structure is not recognised under the foreign law and it is reasonable to hold the assets in accordance with the foreign law;
- (b) outside of Australia where it is not reasonable to hold the assets on trust under the foreign law and the client has documented that they are satisfied that the assets are held in a manner that, given the relevant laws, provides reasonably effective protection in case of insolvency of the asset holder. This includes the basis on which the asset holder is satisfied;
- (c) under the requirements for omnibus accounts; or

Note: See Section F for information on omnibus accounts.

- (d) if the asset holder is providing a custodial service through its authorised representative, where:
 - (i) the asset holder is liable to the client for the acts and omissions of the authorised representative as if they were the acts or omissions of the asset holder; and
 - (ii) revenue received from the client in relation to the provision of the custodial service is revenue of the asset holder.

Note: The conditions in RG 133.51(d) avoid the application of regulatory requirements that could create an incentive for an asset holder to engage an authorised representative to hold the assets on its behalf.

RG 133.52 The trust may be a bare trust or directed trust. A directed trust is held on the basis that the asset holder holding the assets will have no active powers and limited duties in relation to the trust assets, except as provided for in the custody agreements.

- 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 133.66–RG 133.81).

They must ensure that there is a legally enforceable agreement, which addresses certain issues, with any asset holder they engage (see RG 133.82–RG 133.109) or any master custodian they engage (see RG 133.121–RG 133.124).

If an asset holder is engaged on or after 1 November 2015 by a retail client, the agreement must address certain issues: see RG 133.110–RG 133.120. 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 133.125–RG 133.126.

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 133.127.

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.

RG 133.63 If a responsible entity engages another asset holder because it does not meet the financial requirements under [Class Order \[CO 13/760\] Financial requirements for responsible entities and operators of investor directed portfolio services](#), it must ensure that all the relevant assets are held by another person. This is apart from any exceptions permitted under [\[CO 13/760\]](#). For responsible entities, these exceptions are ‘Tier \$500,000 class assets’ and ‘special custody assets’.

Note: For definitions of these terms, see [\[CO 13/760\]](#) and [RG 166](#).

RG 133.64 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 F).

RG 133.65 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 133.66 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 133.67 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 133.67(a)–RG 133.67(b) where the assets are outside Australia, except where exceptions are recognised.
- RG 133.68 Where appropriate, the responsible entity, licensed custody provider, MDA provider or IDPS operator may be able to meet the obligations in RG 133.67 in relation to an asset holder that is appointed by a master custodian by seeking appropriate information or assurance from the master custodian.
- RG 133.69 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 133.70 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 133.71 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 133.72 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 133.73 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 133.74 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 133.75 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 133.76 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 133.77 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 133.78 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 133.79 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 F.

RG 133.80 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 133.81 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 133.82 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 133.123–RG 133.124 are met.
- RG 133.83 The agreement with an asset holder must address the issues in RG 133.84–RG 133.109.

Rights to review and monitor the asset holder

- RG 133.84 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 133.85 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 133.86 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 133.87 The agreement must set out how instructions will be given to the asset holder.

Liability

- RG 133.88 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 133.89 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 133.90 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 133.91 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 133.92 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 were authorised. These records must be kept and maintained by the asset holder and made available to the responsible entity, licensed custody provider, MDA provider or IDPS operator. 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.

Auditing

- RG 133.93 The agreement must require that the asset holder provides all reasonable access and assistance to any auditor engaged to perform an audit.

Note 1: Under reg 5C.4.02 of the Corporations Regulations, an agent of a responsible entity, such as an asset holder, must give the auditor of the registered scheme's compliance plan access to the books of the scheme, and assist in the conduct of the audit. Under reg 5C.5.01, responsible entities and their agents must give the compliance committee access to the books of the scheme and assist the committee in the performance of its functions.

Note 2: We may require an AFS licensee and an agent of a responsible entity to assist us in checking compliance: see s601FF and 912E of the Corporations Act and reg 5C.2.01 of the Corporations Regulations. We also have powers to require production of books under the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

Identity of any agents

- RG 133.94 The agreement must provide that before arranging for assets to be held by another person as agent, the arranging asset holder will provide the responsible entity, licensed custody provider, MDA provider or IDPS operator with written notice of the identity of, and contact information for, each agent. This written notice should be provided where reasonably practicable and, in any event, before the assets are held, except in exceptional circumstances identified in the agreement.

Termination

- RG 133.95 The agreement must set out that the responsible entity, licensed custody provider, MDA provider or IDPS operator has the right to terminate the agreement if it has reasonable grounds for believing that the asset holder is not complying with, or is unlikely to comply with, the agreement to a material extent and that, as a result, the asset holder will not comply with the relevant requirements. This should take into account any remedy provided, or that may be expected to be provided, by the asset holder. The relevant requirements are the requirements that the responsible entity, licensed custody provider, MDA provider or IDPS operator must ensure the asset holder meets in providing the services under the agreement (reflecting ASIC's minimum standards) and the requirement that records must be kept to enable convenient audit.
- RG 133.96 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 133.96(a) if the asset holder is in breach.
- RG 133.97 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 133.98 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 133.99 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 133.100 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 133.123.

Business continuity

RG 133.101 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 133.102 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 133.103 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 breaches under s912D(1B) or 601FC(1)(l).

RG 133.104 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 133.105 The required arrangements are not the source of any obligation to make inquiries.

RG 133.106 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 133.107 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 133.108 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 133.109 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 133.110 If the asset holder is engaged on or after 1 November 2015 by a retail client, the agreement must set out the issues in RG 133.111–RG 133.120, as relevant.

Manner in which assets are held

- RG 133.111 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 133.112 The agreement with the retail client must set out how instructions will be given to the asset holder.

Liability

- RG 133.113 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 133.114 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 133.115 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 133.116 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 133.117 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 133.118 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 133.119 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 133.120 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 133.121 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 133.103–RG 133.109 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 133.122 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 133.84–RG 133.102. 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 133.103–RG 133.109 on suspicious matter reporting).
- RG 133.123 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 133.84–RG 133.102 or RG 133.111–RG 133.120. 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 133.124 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 133.125 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 133.126 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 133.127 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 133.128 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 19600:2015 Compliance management systems—Guidelines](#).

Compliance controls may vary

RG 133.129 We have not prescribed in detail what compliance controls should be put in place for dealing with client assets.

RG 133.130 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 133.131 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 133.132 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 133.133 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 133.134 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.

We have modified the Corporations Act where an offer of interests in a registered scheme requires the use of particular land on which the scheme will occur.

The purpose of the modification is to protect members by requiring:

- the land to be held by members or a company controlled by members, or on trust for members; and
- the registered scheme to provide measures, including registration of a protective interest in the land, to ensure as far as possible continuing access to the land required for the purposes of the scheme.

The instrument to register the protective interest must be lodged under state or territory land title laws before or immediately after interests in the registered scheme are issued.

Protecting members' rights

RG 133.135 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 133.136 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 133.137 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 133.138 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 133.139 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 133.140 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 133.141 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.

Registration of protective interest

- RG 133.142 Where an offer of interests in a registered scheme involves the use of particular land that is reasonably required for the benefits to be produced by the scheme through primary production, certain additional requirements apply.
- RG 133.143 We have modified the Corporations Act so that these additional requirements apply to any offer of interests in a registered scheme that is made:
- (a) to retail clients on or after 2 January 2014; and
 - (b) with, or includes, an offer of rights attaching to or arising from the land on which the scheme will occur (see [Class Order \[CO 13/1406\]](#) *Land holding for primary production schemes*).
- RG 133.144 Under [CO 13/1406], the responsible entity must:
- (a) take reasonable steps to ensure that any regulatory approvals necessary to carry out the primary production activities that the scheme is involved in are obtained and maintained;
 - (b) protect the rights of members to have use of the land on which the primary production occurs, as relevant to the scheme and for the expected duration of the scheme, through a registered interest in the land under state or territory land title laws. These rights include the rights sufficient to enable access, cultivation, transmission, exploitation, maintenance, and harvesting or obtaining output from the scheme;
 - (c) register the interest in such a form and in such a way that it cannot be adversely affected either by the interests of others in the land or, as far as possible, by any future interests. The exception to this is if the interests of others were properly created by the responsible entity in accordance with its duties or were interests of which the responsible entity was not aware after reasonable inquiry. For example, the responsible entity will need to obtain written consents from the entities external to the scheme (e.g. the landowner or secured creditors) to postpone the priority of their interests in the land over the scheme members' interests in the same land, and may need to register the consents in accordance with state or territory land title laws; and
 - (d) ensure that, if the registered interest is a lease or an instrument that confers the right to use land that requires regular payments to be made:
 - (i) the constitution of the scheme gives the responsible entity the power to require members to make payments to meet the obligations under the terms of any lease or instrument;

- (ii) any amounts paid by members for the lease or instrument are retained on trust until the money is used to meet lease or rental payments for the land necessary for the continuity of a required registered interest;
- (iii) the terms of the lease or instrument are not less favourable to the scheme than if they were agreed on an arm's length basis and exclude any action by the lessor or a head lessor in connection with the lease or instrument that would adversely affect the interests of members without the responsible entity having at least three months written notice; and
- (iv) on receipt of a notice under RG 133.144(d)(iii), affected members are promptly notified in writing and advised of members' rights to requisition a meeting.

RG 133.145 The interest must be:

- (a) registered in the name of the members collectively or in the name of a company controlled by scheme members;
- (b) held by each member in relation to that portion of the land on which the primary production business in which the member has an interest is being conducted;
- (c) held by the asset holder or other person entitled to hold scheme property as trustee for members, or in trust for the responsible entity if it holds the beneficial interest in trust for members; or
- (d) held by the responsible entity as trustee for members.

RG 133.146 If the notice of the trust cannot be registered on the register, we expect the responsible entity to lodge a caveat and the trust deed with the land titles registrar where possible and when it would help to reduce risk.

RG 133.147 [\[CO 13/1406\]](#) does not allow for arrangements that require the use of land outside Australia. However, we will consider individual applications for relief for the use of foreign land by a particular registered scheme on a case-by-case basis. The applicant will need to demonstrate that arrangements will be put in place that are as effective as those that would be required for Australian land.

F 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 133.148 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 133.149 Similar requirements apply if an AFS licensee holds assets as a licensed custody provider under [\[CO 13/1410\]](#), an MDA provider under [ASIC Instrument 2016/968](#) or an IDPS operator under [\[CO 13/763\]](#).

Relief for omnibus accounts

- RG 133.150 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 [\[CO 13/1409\]](#).
- RG 133.151 Our relief under [\[CO 13/1409\]](#) 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 133.152 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 133.153 Provisions regarding the use of pools (e.g. omnibus accounts) also apply to licensed custody providers under [\[CO 13/1410\]](#), MDA providers under [ASIC Instrument 2016/968](#) and IDPS operators under [\[CO 13/763\]](#).

RG 133.154 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 133.155 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 133.156 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 133.157 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 133.158 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 133.159 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 133.160 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 133.161 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) [\[CO 13/1410\]](#) for licensed custody providers;
- (c) [ASIC Instrument 2016/968](#) for MDA providers; or
- (d) [\[CO 13/763\]](#) for IDPS operators.

RG 133.162 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"> • banks; • building societies; and • credit unions
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
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 Memorandum of Cooperation
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	A person who holds: <ul style="list-style-type: none"> • scheme property or assets of a registered scheme; • assets or property of a CCIV, including a sub-fund of a CCIV; • client assets of an IDPS; • client portfolio assets of an MDA service; or • financial products, or a beneficial interest in financial products, held under a custodial service
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 Corporations (Passport) Rules 2018 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 contained in 9 of the Corporations Act.
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
[CO 13/1409] (for example)	An ASIC class order (in this example numbered 13/1409) Note: Legislative instruments made from 2015 are referred to as ASIC instruments.
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 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>

Term	Meaning in this document
custodial service	<p>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)</p> <p>Note: This is a definition contained in s766E of the Corporations Act for the term 'provide a custodial or depository service'.</p>
custodial staff	<p>Natural persons who have duties relating to:</p> <ul style="list-style-type: none"> • holding assets; • record keeping for assets; • checking authorisations for instructions to transact; or • 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)
custodian	<p>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</p>
Div 2 (for example)	<p>A division of the Corporations Act (in this example numbered 2), unless otherwise specified</p>
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"> • makes a financial investment (see s763B); • manages financial risk (see s763C); • makes non-cash payments (see s763D) <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 contained in s761A.</p>
GS 007	<p>Guidance Standard 007 <i>Audit implications of the use of service organisations for investment management services</i>, issued by the AUASB in October 2011</p>

Term	Meaning in this document
IDPS	An investor directed portfolio service as defined in [CO 13/763] or any instrument that amends or replaces that class order
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
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 ASIC Instrument 2016/968 .
MDA service	Has the meaning given in ASIC Instrument 2016/968
member	A member of a registered scheme
Memorandum of Cooperation	The Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport
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 Memorandum of Cooperation (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 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.

Term	Meaning in this document
Passport Rules	The requirements in Annex 3 to the Memorandum of Cooperation , 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 s761A 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
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 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	Means: <ul style="list-style-type: none"> (a) contributions of money or money's worth to the scheme; (b) money that forms part of the scheme property under provisions of the Corporations Act or the ASIC Act; (c) money borrowed or raised by the responsible entity for the purposes of the scheme; (d) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraphs (a), (b) or (c); and (e) income and property derived, directly or indirectly, from contributions, money or property referred to in paragraphs (a), (b), (c) or (d) Note: This is a definition contained in s9 of the Corporations Act.
sub-fund	Has the meaning given in s1222Q of the Corporations Act Note: A sub-fund is established on the day on which it is registered: see s1222T.

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, 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](#)

[\[CO 13/760\]](#) *Financial requirements for responsible entities, corporate directors and operators of investor directed portfolio services*

[\[CO 13/763\]](#) *Investor directed portfolio services*

[\[CO 13/1406\]](#) *Land holding for primary production schemes*

[\[CO 13/1409\]](#) *Holding assets: Standards for responsible entities*

[\[CO 13/1410\]](#) *Holding assets: Standards for providers of custodial services*

[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*

Legislation

AML/CTF Act

ASIC Act

Corporations Act, Chs 5C, 8A, Pts 9.4AAA, 5C.7, s9, 601FB, 601FC, 601FF, 766E, 911B, 912A, 912D, 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 a custodial or depository service as a secondary service*

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

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

[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](#)