

## Custodians of managed investment schemes

This information sheet outlines the duties and responsibilities under the Financial Markets Conduct Act 2013 (FMC Act) for custodians of registered managed investment schemes.

### Understanding your duties and responsibilities

A custodian of a registered managed investment scheme (MIS custodian) has duties and responsibilities under the FMC Act and Financial Markets Conduct Regulations 2014 (FMC Regulations).

#### Custodianship and scheme property under the FMC Act

Under the FMC Act, an MIS custodian is simply a person who holds some or all of the property of a registered managed investment scheme.

Scheme property is defined in the FMC Act as ‘the property to which the scheme relates, including—

- (a) contributions of money to the scheme; and
- (b) money borrowed or raised for the purposes of the scheme; and
- (c) financial products or other property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a), (b), or (d); and
- (d) income and property derived, directly or indirectly, from contributions, money, or property referred to in paragraphs (a) to (c) or this paragraph.’

#### Non-restricted schemes

For non-restricted schemes, the scheme property must be held by the supervisor of the managed investment scheme or, if authorised by the scheme’s governing document, by an external custodian. An external custodian must meet the external custodianship requirements set out in section 156(4) of the FMC Act (see below).

#### Restricted schemes

For a restricted scheme (where there is no supervisor) the scheme property must be held by a corporate body that is either the corporate trustee of the scheme or has as its directors only persons who are trustees of the scheme (which we interpret as requiring all trustees to be directors) or, if authorised by the scheme’s governing document, by an external custodian who meets the external custodianship requirements.

#### External custodianship requirements (section 156(4) of the FMC Act)

To be eligible to be appointed as an external custodian of a registered managed investment scheme the custodian must:

- be a body corporate that the supervisor (or, in the case of a restricted scheme, the manager) believes on reasonable grounds to be appropriate to hold and safeguard the scheme property; and
- not be the manager or associated with the manager (and, in the case of a restricted scheme, the external custodian not be associated with any of the trustees), other than by virtue of the custodianship.



### Nominees/sub-custodians (section 156(5) of the FMC Act)

An external custodian may, if authorised in writing by the supervisor (or, in the case of a restricted scheme, the manager), contract the holding of scheme property to another person who meets the external custodianship requirements.

Where a person (the supervisor, the manager in the case of a restricted scheme, or a custodian) contracts the holding of scheme property to another person (the nominee custodian), the person contracting out that function must take all reasonable steps to:

- ensure the function is performed by the nominee custodian in the same manner and subject to the same duties and restrictions as if that person were performing it directly; and
- monitor the performance of that function.

In this regard, see the standard condition and explanatory note on outsourcing in our [Standard Conditions for managed investment scheme manager licences](#), together with the custody section in our [MIS Manager Licensing Application Guide](#).

The contracting party is jointly and severally liable with the nominee custodian for the performance of the function.

### Custody of MIS property under the FMC Act and FMC Regulations

#### Scheme property held on trust (section 157 of the FMC Act)

The FMC Act provides that an MIS custodian holds scheme property on trust for the scheme and must:

- ensure that scheme property is held separately from its own property or on its own account, including any related party of the scheme
- ensure scheme property is not available for payment of debts or any creditors of the custodian
- ensure that scheme property is not liable to be attached or taken in execution under the order or process of any court at the instance of the custodian or any creditor of the custodian.

#### Record keeping (section 158 of the FMC Act)

An MIS custodian must keep, or ensure there are kept, records that:

- identify scheme property
- show when scheme property was received
- if scheme property has been disposed of, show when it was disposed of and to whom.

The records must be kept by the custodian in a way that enables the records to be conveniently inspected by the manager and the supervisor, and can be conveniently and properly audited or reviewed.

#### Procedures for reconciling records (clause 86 of the FMC Regulations)

To ensure the MIS custodian's records accurately state its holdings of scheme property, for each fund of the managed investment scheme, and for all transactions relating to scheme property, the custodian must:

- take adequate steps, or ensure these are taken, to reconcile records of scheme property kept by or on behalf of the custodian with records kept by a sub-custodian or third parties
- ensure adequate procedures are in place to promptly identify discrepancies in the records and determine the cause of any discrepancies



- promptly and fully rectify any discrepancies or ensure any discrepancies are promptly and fully rectified.

The frequency of the reconciliation must be appropriate to the type of scheme property to which the records relate, the frequency with which scheme property is traded, and the timing of any custody reports provided.

However, all records of money must be reconciled daily.

#### **MIS custodian must obtain assurance engagement** (clause 87 of the FMC Regulations)

An MIS custodian must obtain an assurance engagement. This must be obtained within four months after the close of the custodian's accounting period, from a licensed auditor or registered audit firm, and carried out in accordance with applicable accounting and assurance standards.

The custodian must within 20 working days after obtaining the assurance report provide a copy of the assurance report to the manager of the managed investment scheme and the supervisor (unless the supervisor is the custodian). This will not apply to a sub-custodian if the custodian who appointed the sub-custodian has obtained the assurance report and provided it to the manager (and supervisor if required).

#### **Requirements of assurance engagement** (clause 88 of the FMC Regulations)

The assurance engagement must, in the auditor's opinion, determine there is reasonable assurance of:

- the custodian's process, procedures and controls are designed to meet the objectives set out below, throughout the most recently completed accounting period. This applies to scheme property held by the custodian or held by a sub-custodian appointed by the custodian
- the custodian's process, procedures and controls operated effectively throughout the most recently completed accounting period.

The objectives are:

- transactions are authorised, processed and recorded in an appropriate, accurate and timely manner
- scheme property is held in accordance with the FMC Act and Regulations, and the governing document
- records and changes to records relating to the service are accurate and kept up to date in an appropriate and timely manner, and in accordance with the FMC Act and Regulations, and the governing document
- there are adequate safeguards against the loss, misappropriation and unauthorised use of scheme property
- sub-custodians are appropriately approved and managed, and are adequately monitored
- reports of holdings of scheme property are complete and adequate, and provided within the timeframes specified in the FMC Act and Regulations, and the governing document
- information technology systems and processes are appropriate to allow the custodian to accurately and reliably meet the objectives set out above.

#### **Reporting duties**

An MIS custodian also has reporting obligations under the FMC Act. See our [Information sheet: Reporting duties under Part 4 of the FMC Act](#).

In particular, MIS custodians are included in the list of people who must report to the supervisor or to the FMA if they have reasonable grounds to believe that a specified 'serious problem' has arisen in relation to a relevant financial product.



At this stage, no circumstances have been prescribed for the purposes of section 159 of the FMC Act (confirmation information relating to scheme property provided to the manager or other prescribed persons).

### Refusal to act

The supervisor of a registered managed investment scheme must refuse, and must direct a custodian to refuse, to act on a manager's direction relating to the acquisition or disposal of scheme property if the supervisor considers the acquisition or disposal would be:

- in breach of the managed investment scheme's governing document, any rule of law, or any enactment, or
- manifestly not in the interests of scheme participants.

A custodian must comply with any such direction given to it by a supervisor.

### Start planning now

We encourage you to plan and be ready for the new regime. If you are an MIS manager or supervisor, plan what you need to do to ensure your schemes' custody arrangements comply with the FMC Act. If you are an MIS custodian, plan what you need to do to ensure you can properly meet your custodian duties and responsibilities.

### Where can I find more information?

For more general information about the FMC Act, visit [our website](#). You can also subscribe to receive [FMA Updates](#) for the latest news.