

Regulatory Guide 132 – Compliance and oversight

Our observations on ASIC's updates to the guide

Background

In July 2018, the Australian Securities and Investments Commission (ASIC) issued a suite of seven new and updated regulatory guides, providing comprehensive guidance to the funds management industry. The guidance has been updated for changes arising from the Asia Region Funds Passport (Passport) and also updates and consolidates all of ASIC's funds management policies to help promote industry-wide consistency.

The new and updated regulatory guides are:

- RG 131 Funds management: Establishing and registering a fund
- RG 132 Funds management: Compliance and oversight
- RG 133 Funds management and custodial services: Holding assets
- RG 134 Funds management: Constitutions
- RG 136 Funds management: Discretionary powers
- RG 137 Constitution requirements for schemes registered before 1 October 2013
- RG 138 Foreign passport funds

This publication focuses on **RG 132 Funds management: Compliance and oversight** and is the first in a series to consider what the new and updated regulatory guides mean for industry participants.

Revised RG 132 at a glance



RG 132 is primarily for responsible entities of registered schemes and Australian passport fund operators, although parts of the guide are also relevant for operators of unregistered wholesale managed investment schemes, investor directed portfolio service (IDPS) operators, managed discretionary account (MDA) providers and parties with oversight responsibilities.

RG 132 now includes guidance on compliance management systems consistent with Australian Standard ISO 19600:2015: Compliance management systems — Guideline. While not mandatory, the changes outline the type of compliance management system ASIC believe can be adopted to enhance compliance with legal and regulatory obligations.

RG 132 also includes further guidance on the content of compliance plans for registered managed investment schemes and the functions performed by compliance committees, independent oversight entities, compliance plan auditors and annual implementation reviewers. It is important to note the legal requirements for what should be included in a compliance plan have not changed.

Five key areas Responsible Entities should consider when looking at RG 132 ...

1. Compliance Management Systems (CMS)



RG 132 recommends that a CMS should involve consideration of the following:

- the context in which the MIS, IDPS or MDA operates;
- the values, objectives and strategy of the responsible entity, wholesale scheme operator, IDPS operator or MDA provider;
- what compliance obligations, risks and objectives exist;
- roles and responsibilities of people involved in the CMS;
- organisational support required for the CMS;
- compliance controls that will respond to the identified compliance obligations, risks and objectives;
- appropriate documentation and record-keeping;
- monitoring and review of the CMS; and
- procedures where non-compliance occurs.

RG 132 also includes new guidance on what Australian passport fund operators should consider when establishing compliance controls to address specific risks of compliance with the Australian Passport Rules.

2. Compliance Plans



Under RG 132 fund operators must ensure the compliance plan:

- aligns the compliance controls in the compliance plan with the fund operator's values, objectives and strategy;
- demonstrates a nexus between compliance obligations and controls;
- sets out compliance controls with certainty;
- is written in a clear manner;
- provides for identified roles;
- provides for sufficient frequency and quantity of compliance controls;
- provides for monitoring of compliance; and
- is kept up-to-date.

3. Compliance Committees



Compliance Committees must perform their functions under s 601JC of the Corporations Act to a high standard. RG 132 provides ASIC's expectations on:

- the appropriate and relevant experience, qualifications and competence of compliance committee members;
- the competence of compliance committee members;
- specific matters that should be covered under the terms of appointment of compliance committee members; and
- meetings of compliance committees.

4. Compliance Plan Auditors



ASIC has provided specific guidance on what compliance plan auditors should address to meet their obligations under s 601HG of the Corporations Act including:

- scope of the audit;
- testing of the compliance plan in particular where there are common compliance controls across multiple registered schemes; and
- the audit report.

5. Australian Passport Funds



RG 132 includes new guidance for Australian passport fund operators and their advisers regarding the role of the independent oversight entity and the requirement to conduct an annual implementation review.

The implementation review for an Australian passport fund must be conducted by a registered company auditor, an audit firm or an authorised audit company under the Corporations Act. The implementation review must not be conducted by the Australian passport fund operator or its related party.

ASIC considered that ASAE 3100 *Compliance Engagements* as an appropriate standard for the conduct of the implementation review.

The assurance report must state whether any matter has come to the reviewer's attention that causes them to believe that, or to believe that it is likely that, the Australian passport fund was not operated in accordance with the Australian Passport Rules.

The Australian passport fund operator must, within three months after the end of the review period, provide a copy of the implementation review assurance report to:

- ASIC;
- each host regulator for a host economy where members of the fund existed during the review period;
- each host regulator where interests in the fund were offered; and
- the independent oversight entity of the Australian passport fund.

The requirement for an annual implementation review is in addition to the requirement for a compliance plan audit.

What about Corporate Collective Investment Vehicles?

The new and updated regulatory guides do not yet accommodate for the corporate collective investment vehicle (CCIV) regime as the relevant legislation has yet to pass Parliament. ASIC will review and re-release these seven regulatory guides once the CCIV regime is implemented into Australian law.

What you should do next and how PwC can help

Registering a new fund?

- You should consider contacting us to discuss these new requirements and any implications they may have.



Concerned whether your compliance management system or compliance plan meets the requirements of the revised RG 132?

- We can conduct a gap analysis and review current constitutions, compliance management systems and compliance plans to ensure compliance with the revised RG 132.



Considering accessing the Passport to offer your funds throughout the Asian region?

- We can also provide information about accessing the Passport, the Australian Passport Rules and the annual implementation review.



Contacts

Please reach out to any of the below contacts should you wish to obtain further information on RG 132 and its consequences.



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