



# **Holding Scheme Property Policy**

**22 February 2022**



# Table of Contents

<b>Purpose of Policy</b>	<b>1</b>
<b>Statutory Provisions</b>	<b>1</b>
<b>ASIC Regulatory Guides 133 and 166</b>	<b>1</b>
<b>Organisational Structure - Requirement</b>	<b>1</b>
<b>Organizational Structure - Investment Property</b>	<b>1</b>
<b>Organizational Structure - Cash Balances</b>	<b>2</b>
<b>Staff Capabilities</b>	<b>2</b>
<b>Adequacy of Resources</b>	<b>2</b>
<b>Statutory Provisions</b>	<b>3</b>
<b>Records</b>	<b>4</b>
<b>Overall Conclusion</b>	<b>4</b>
<b>Policy Review</b>	<b>4</b>
<b>Contact</b>	<b>4</b>

# Holding Scheme Property Policy

## *Policy on holding property of registered schemes*

### Purpose of Policy

Fawkner Property Ltd (**Fawkner**) acts as the responsible entity of registered managed investment schemes. These schemes are classed as “stable property trusts or syndicates” by ASIC and fall within the kind of scheme “direct real property”. As responsible entity of such schemes, Fawkner may hold scheme property provided the company meets the specifications set out in ASIC CO 13/1409 and ASIC RG 133 Funds management and custodial services: Holding assets (**RG133**). It is a requirement that Fawkner has a written policy approved by the directors including:

- a process for determining whether Fawkner should hold scheme property or engage a custodian; and
- addressing the potential conflicts of interest and other considerations relevant to the best interests of members of registered managed investment schemes.

### Statutory Provisions

The responsible entity of a registered scheme must hold scheme property on trust for members: see s601FC(2) of the Corporations Act 2001 (Cth) (**Act**). Holding assets is part of the operation of a managed investment scheme.

Under s601FB(2) of the Act, the responsible entity has the power to appoint an agent, or otherwise engage a person (usually called a “Custodian”), to do anything that the responsible entity is authorised to do in relation to the scheme, including holding scheme property.

Under paragraph 912A(1)(d), the responsible entity of a registered scheme must have available adequate resources (including financial technological and human resources) to provide the financial service of operating a registered managed investment scheme and carry out supervisory arrangements.

ASIC Class Order 13/1409 inserts into the Act two new sections 601FCAA and 601FCAB.

Section 601FCAA sets minimum standards (other than financial adequacy) for asset holders and section 601FCAB sets out requirements for engaging a custodian to hold assets.

### ASIC Regulatory Guides 133 and 166

RG133 requires AFS Licensees authorised to operate registered managed investment schemes to meet minimum standards and related requirements as well as prescribing requirements when engaging a custodian.

ASIC Regulatory Guide 166 Licensing: Financial requirements sets out the financial requirements for holders of Australian Financial Services Licences and Appendix 2 applies to responsible entities.

### Organisational Structure - Requirement

To meet the requirements, Fawkner must have an organisational structure that supports the separation of the assets held on trust for the members of a registered managed investment scheme from the assets held on trust for anyone else and from the assets of Fawkner in its personal capacity. An important feature of the structure should be that it minimises the potential for a conflict of interest between the duties of custodial staff and the duties and interest of staff making decisions resulting in the transfer or disposal of assets held on trust, such as investment decisions.

In respect of a Fawkner property trust which is a registered managed investment scheme, there are two types of scheme property – investment properties and cash in bank accounts.

### Organizational Structure - Investment Property

Fawkner property trusts which are registered managed investment schemes:

- invest only in investment property – no property securities and no property development; and
- hold the investment property for the duration of the trust, unless circumstances arise in which the interests of the unitholders are best served by selling one or more investment properties.

As a result, the key investment decisions in respect of Fawkner property trusts which are registered managed investment schemes are:

- purchases and sales of investment property; and
- capital expenditure on investment property.

Real estate registries do not recognise trusts, so, if Fawkner is to hold investment property on trust for the members of a scheme, this will not be evident from the records at the titles registry. The evidence that an investment property is held on trust is the contract of sale, which forms the basis of the recognition of the property as an asset of the scheme in the financial records of the scheme.

It is Fawkner policy that all contracts for the sale or purchase of investment property are entered into in the capacity of responsible entity of a trust nominated in the contract and executed by two directors or a director and company secretary pursuant to a resolution of the board, recorded in the minutes. The Fawkner part of the contract is handed to the staff controlling the original documents register for registration and filing. Conveyancing is outsourced and the Financial Controller records purchases and sales in the financial records of the trust, based on the contract details.

The acquisitions team advises the directors in relation to purchases and sales but does not take part in the process of execution of contracts and recognition of assets in the financial records.

Asset management staff involved in the oversight of capital expenditure, including landlord works, tenant incentives and capital maintenance are not to be involved in authorisation of payments from bank accounts. All capital expenditure commitment for items of \$10,000 or more or related items amounting to \$10,000 or more in any period of 12 months must be explicitly approved in advance by a resolution of the directors. All other capital expenditure items must be in accordance with budgets approved by the directors.

## Organizational Structure - Cash Balances

Fawkner property trusts which are registered managed investment schemes hold cash in:

- non-interest bearing operating (cheque) accounts;
- interest bearing savings accounts; and
- bank term deposit accounts.

All receipts of trust money (such as rent or interest) are paid directly into the trust operating account. All payments on behalf of the trust (such as fees, expenses or distributions) are made out of the operating account (most often by

direct transfer or Bpay for small business suppliers).

The opening of bank accounts is conducted by the Financial Controller. Opening of a bank account is authorised by two directors. A bank account holding money forming part of scheme property are in the name of the responsible entity as responsible entity for a nominated scheme.

Bank account transactions require two signatories or authorisations and the signatories are to be approved by the directors authorising the opening of the account.

Invoices for payment are authorised by staff other than the Financial Controller, who is responsible for posting the invoices to the accounting system for payment. Invoices for capital expenditure must be approved by the director in charge of asset management, as being in accordance with a budget or commitment approved by the directors. Invoices for fees to or expense recovery by the responsible entity are raised by the Financial Controller and are approved by a director.

Electronic copies of invoices are retained in the accounting system and are available to the auditors of property outgoings (where applicable) and to the financial auditor of the trust.

Bank accounts are to be reconciled with the financial records of the trust monthly by the Financial Controller and any apparent anomalies reported to the Managing Director.

Any other potential conflicts of interest are to be dealt with according to the *Fawkner Conflicts and Related Parties Policy*.

## Staff Capabilities

The Financial Controller is to be notified to ASIC as a Responsible Manager under the Fawkner AFSL and subjected to prudential checks at appointment.

As a Responsible Manager, the Financial Controller is subject to the training obligations set out in the Fawkner Compliance Manual.

The Managing Director is to ensure that the Financial Controller is qualified, capable and diligent person.

## Adequacy of Resources

Adequacy of financial resources in respect of holding scheme property is dealt with specifically under ASIC CO 13/760 and the requirements are set out in Chapter 14 of

the Compliance Manual along with other financial obligations relates to holding an Australian Financial Services Licence. This policy assumes that Fawkner can and does comply with these obligations.

In respect of Human resources, this policy deals especially with human resources for custody of scheme property. Apart from the directors, the key staff member in this function is the Financial Controller.

ASIC RG 133.47 suggest that the resources required for custodial staff are likely to include:

Resource	Comment
Computer systems that are reasonably up to date and secure from any actual or potential threats, including from fraud.	The ICT systems on which Fawkner depends for operation of managed investment schemes require these characteristics and, accordingly, this requirement is dealt with in Proof B5 lodged as a part of the AFSL application.
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.	Fawkner employs Yardi Voguer commercial property management and accounting software. Yardi Systems is a leading software provider to the property sector with over 20,000 users worldwide (omnibus accounts are not used).
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).	No client assets are held.
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.	No client assets are held.

Resource	Comment
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.	Investment properties are freehold and are valued in accordance with the Fawkner Valuation Policy.
Memberships at central securities depositories, where relevant to client assets.	Not applicable.
Access to and, if necessary, membership of any relevant settlement and clearance systems.	Conveyancing is outsourced to a legal firm that is a member of Pexa.
Where appropriate, access to relevant and appropriate domestic or global sub-custodial networks.	Not applicable.
Where physical assets are held, secure physical storage.	Not applicable.
Appropriate business continuity and disaster recovery procedures.	The ICT systems on which Fawkner depends for operation of managed investment schemes require these characteristics and, accordingly, this requirement is dealt with in Proof B5 lodged as a part of the AFSL application.
Appropriate systems and procedures for change management.	The continuing professional development and ongoing training of staff involved in custody keep minds open to changes in investor needs and preferences, the legal and tax environment and technology.

## Statutory Provisions

The risk of fraud affecting scheme property is dealt with in the *Fawkner Risk Management Policy*.

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## Records

All financial records and records related to investment property are to be kept for 7 years.

## Overall Conclusion

This policy is approved in the context of the Fawkner Compliance Manual, the Fawkner Policies set out in Chapter 2 of the Compliance Manual, the Proofs forming part of the application for variation of the AFSL and the Compliance Plan lodged with ASIC.

In adopting this policy and directing that officers and staff comply with and implement the policy, the directors consider that implementation of the policy will cause Fawkner to meet its obligations under ASIC CO 13/1408.

## Policy Review

This policy will be reviewed on an annual basis. As appropriate, that review may be carried out with the assistance of external compliance advisers and/or the auditor of Fawkner. A copy of the current policy is available to investors in Fawkner managed investment schemes.

Date of most recent management review: 16 February 2022  
Date of approval by the Fawkner Board: 22 February 2022

## Contact

Unit holders or advisers who have any questions or would like to request more information available to existing or potential investors, are invited to contact Fawkner investor relations:

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