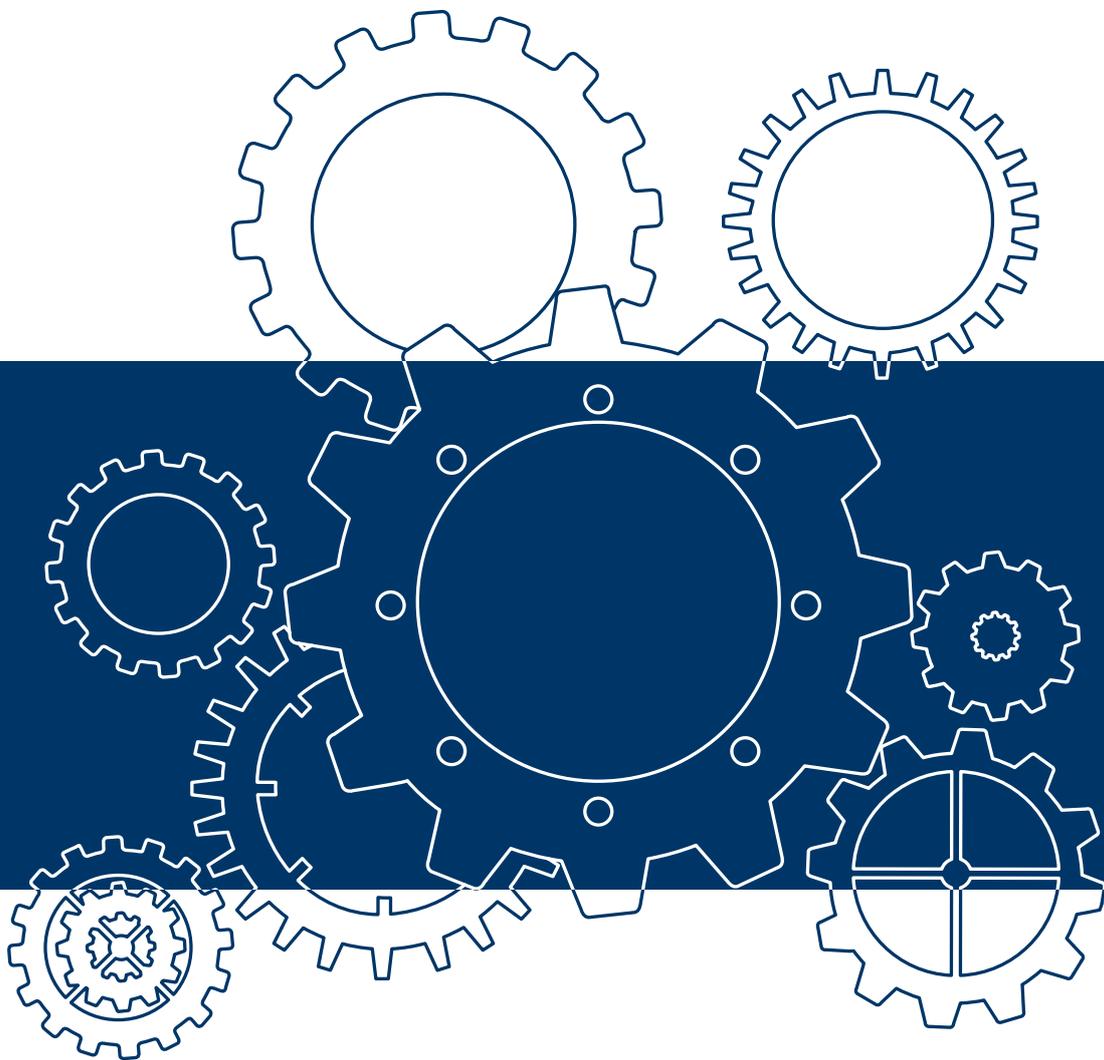


# GOVERNANCE TOOLKIT

## Outsourcing

Version 1: 1 February 2015



THIS TOOLKIT PROUDLY SUPPORTED BY

**MO** MILLS OAKLEY  
LAWYERS

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## Purpose of the Governance Toolkits

AIST has developed the Governance Toolkits to assist **RSE licensees** with maintaining strong prudential frameworks. They are created specifically to assist AIST members and are a benefit of membership.

The Toolkits contain functional tools such as diagrams, decision trees, flowcharts and checklists, to assist **RSE licensees** with understanding and applying their legal obligations, regulatory guidance and AIST governance guidelines.

## How to use this Toolkit

The Outsourcing Toolkit is designed to assist **RSE licensees** with understanding and implementing *Superannuation Prudential Standard SPS 231 Outsourcing (Outsourcing Standard)* in a manner that is consistent with *Prudential Practice Guide SPG 231 – Outsourcing (Outsourcing Guide)*.

## Tools

<b>Obligations Map</b>	showing the source of the <b>Outsourcing</b> requirements and how they interconnect with the broader regulatory framework
<b>Implementation Flowchart</b>	to implement <b>Outsourcing</b> obligations
<b>Decision Tree</b>	to assess whether the activity to be outsourced is a material business activity
<b>Checklists</b>	<ul style="list-style-type: none"> <li>- to develop an Outsourcing Policy</li> <li>- to assess Outsourcing options</li> <li>- to develop an Outsourcing Agreement</li> </ul>
<b>Dictionary</b>	words in <b>bold font</b> are defined in a Dictionary at the back of the Toolkit. AIST recommends that members of the Board and other relevant staff familiarise themselves with the key concepts in the Dictionary.
<b>Alerts</b>	<p>Symbol  is used to identify an issue that needs particular care. It may denote:</p> <ul style="list-style-type: none"> <li>- an issue or uncertainty arising from different, overlapping regulatory requirements; or</li> <li>- a matter that requires care in interpretation and application to a trustee's particular circumstances.</li> </ul>
<b>Workshops</b>	<p>AIST recommends that trustees consider training workshops to assist them with understanding their duties and the duties of trustee directors in relation to <b>Outsourcing</b>.</p> <p>For more information about available workshops, contact <a href="mailto:info@aist.asn.au">info@aist.asn.au</a>.</p>

## Warning & Disclaimer

This Toolkit is intended to assist RSE licensees but does not replace or exhaustively replicate primary sources of an RSE licensee’s legal obligations, such as general law, legislation, regulations, prudential standards and regulatory guidance.

While the  symbol identifies issues requiring particular care, content without a  symbol should not be regarded as any less significant. A trustee should make its own judgment on how to apply the information in this Toolkit and should seek professional advice.

This Toolkit does not constitute legal advice and should not be relied upon to demonstrate compliance with any legal obligation or standard of conduct expected of a trustee or its directors. While this Toolkit is a valuable tool for an RSE licensee considering its obligations, it will not guarantee compliance or sound prudential outcomes.

Content in this Toolkit is adapted from the Australian Prudential Regulation Authority (**APRA**) **Outsourcing Standard, Outsourcing Guide** and APRA FAQs.

The information is current as at **1 February 2015**. The Prudential Standards and Prudential Practice Guides can change and any changes made on or after **1 February 2015** will need to be taken into account.

APRA’s requirements and expectations and the content of this toolkit apply to outsourcing agreements entered into from 1 July 2013. If an RSE licensee is a party to an outsourcing agreement in relation to a material business activity that was entered into prior to this date, it should consult paragraphs 35-37 of the **Outsourcing Standard** to ensure that it has complied with the transitional arrangements.

## Further assistance

If you would like further assistance, contact your professional advisers or alternatively contact AIST at [info@aist.asn.au](mailto:info@aist.asn.au) or Mills Oakley Lawyers at [super@millsoakley.com.au](mailto:super@millsoakley.com.au).

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## 1. RSE licensee's obligations

The **Outsourcing Standard** imposes obligations on the board of directors of an RSE licensee to ensure all **Outsourcing** arrangements involving material business activities are subject to appropriate due diligence, approval and ongoing monitoring. The management of risks associated with the **Outsourcing** of material business activities is a key concern for APRA. The ultimate responsibility for the management of **Outsourcing** risks lies with the RSE licensee's board of directors.

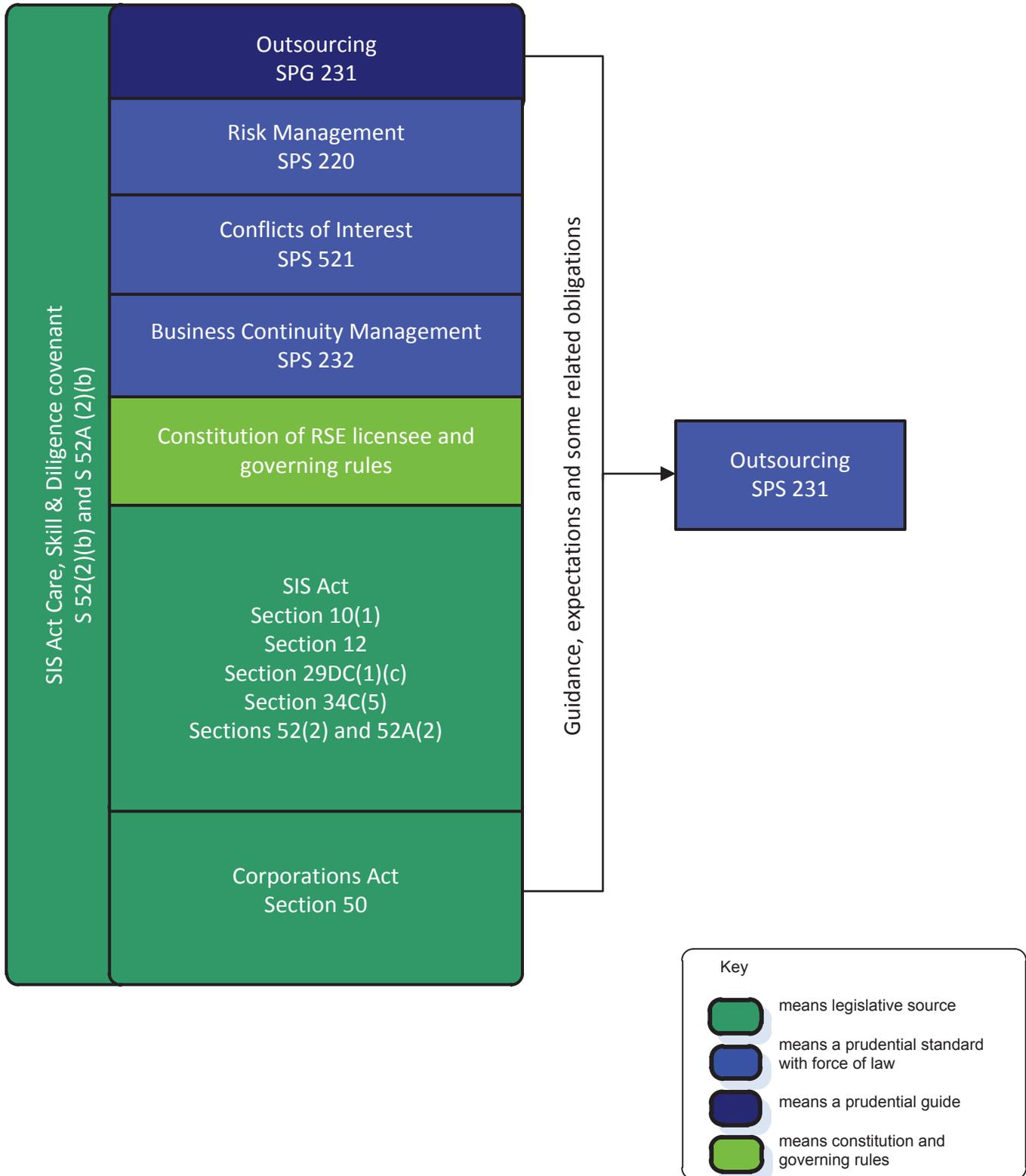
### 1.1 Source of obligations

The **Outsourcing Standard** contains prescriptive requirements in relation to the outsourcing of material business activities. The **Outsourcing Guide** and APRA FAQs contain APRA's expectations of an RSE licensee implementing the **Outsourcing Standard**.

A more fundamental source of **Outsourcing** obligations is the SIS covenants, in particular the covenant to exercise the care, skill and diligence of a prudent superannuation trustee (s 52(2)(b) **SIS Act**). An RSE licensee will also need to consider its corporate constitution and fund's governing rules. The covenants and governing rules are relevant to all **Outsourcing** by an RSE licensee, of both material and non-material business activities.

## 1.2 Obligations Map

The following Obligations Map sets out the breadth of sources from which obligations in relation to the management of **Outsourcing** arrangements arise.



## 1.3 Outsourcing Policy

An RSE licensee is required to have a board-approved policy for **Outsourcing** of material business activities (Outsourcing Policy).

The policy should:

- address all aspects of **Outsourcing** contemplated by the RSE licensee and clearly identify the business activities, functions or services covered;
- identify whether it deals with material and non-material business activities;
- address any other concerns that need to be considered and addressed, and whether there are any types of **Outsourcing** arrangements that are not acceptable to the RSE licensee; and
- address whether **Outsourcing** to associated entities is permitted, and whether there are any further expectations or restrictions in such a case.

### Conflicts & Risk

If the RSE licensee's conflicts management framework does not address conflicts arising from **Outsourcing**, the Outsourcing Policy should do so. AIST recommends this be addressed in both the conflicts management and outsourcing frameworks.

An RSE licensee should have a clear understanding of the risks that may arise from any arrangement, regardless of whether the arrangement is material, and consider these within its risk management framework.

## 1.4 Materiality

A material business activity is described in the **Outsourcing Standard** as one with the potential to have a significant impact, if disrupted, on:

- an RSE licensee's business operations;
- an RSE licensee's ability to manage risks effectively;
- the interests or reasonable expectations of beneficiaries of the fund; or
- the financial position of the RSE.

The meaning of 'beneficiaries' should be determined by reference to a fund's governing rules and the general law. However there is some general uncertainty as to the meaning of this term in the context of a superannuation fund. **See AIST's factsheet 'Beneficiaries'**.

In considering whether an activity has the potential to have such an impact, an RSE licensee must have regard to:

- the financial and operational impact, and impact on reputation, if a service provider failed to perform over a given period;
- the cost of **Outsourcing** as a share of total costs;
- the degree of difficulty in finding an alternative service provider, or bringing the business activity in-house, including the time it would take;
- the RSE licensee's ability to meet regulatory requirements if there were problems with the service provider;
- any potential loss to beneficiaries and other parties in the event of a service provider failure; and
- any affiliation or relationship between the RSE licensee and the service provider.

An RSE licensee may also consider whether it relies on the performance of the business activity.

The **Outsourcing Standard** states that the internal audit function is a material business activity.

APRA provides a non-exhaustive list of activities that would typically be considered material, including:

- administration (including processing contributions, rollovers and transfers in compliance with the superannuation data and payment regulations and standards);
- custody arrangements;
- investment management functions under a formal agreement or mandate;
- business continuity planning arrangements;
- product design; and
- marketing, and arrangements with fund promoters.

Arrangements with financial planners, particularly where the advice relates only to a member's interest in the RSE, may also be material.

APRA considers that where the RSE licensee is responsible for the selection and implementation of an investment, while the manager of the selected investment vehicle is responsible for the day-to-day operation of it, that activity will not be material. For example, APRA does not consider that the following activities would ordinarily be material:

- (a) investment of RSE assets into a unit trust, pooled superannuation trust, managed investment scheme, policy of life insurance or similar arrangement;
- (b) contractor relationships where:
  - i. there are numerous service providers in the marketplace;
  - ii. the agreement is short-term (less than 12 months); and
  - iii. the cost of switching between providers is low and switching is easy.

Examples of such relationships include:

- utility services;
  - legal services;
  - advertising;
  - recruitment and personnel services;
  - printing services;
  - travel and transportation services;
  - repair and maintenance of fixed assets;
  - purchase of goods;
  - background investigation and information services;
  - specialised training; and
  - software licensing arrangements.
- (c) secondments, where an RSE licensee maintains effective management control of a third-party resource that is normally physically located within the RSE licensee's business operations; and
  - (d) use of an advisory or professional service.

 When considering materiality, an RSE licensee should remember how 'outsourcing' is described in the **Outsourcing Standard**: 'an arrangement with any other party to perform, *on a continuing basis*, a business activity that currently *is, or could be, undertaken by the RSE licensee itself*' (emphasis added). If a service provider performs activities that could not be done by the RSE licensee itself, it will not constitute 'outsourcing'.

 APRA considers that where the RSE licensee is in doubt, the business activity should be treated as material.

## 1.5 Role of the board and senior management

An RSE licensee must identify, assess, manage, mitigate and report on risks associated with **Outsourcing**, and must have procedures, processes and controls in place for monitoring compliance with the Outsourcing Policy.

Although **Outsourcing** may result in a service provider having day-to-day management or responsibility for a business activity, the RSE licensee is responsible for complying with all its legal obligations.

As part of the Board’s assessment of the **Outsourcing** arrangement, it must ensure the **Outsourcing** risks and controls are taken into account in accordance with its risk management framework and when completing any risk management declaration required to be provided to APRA.

The **Outsourcing Standard** states that the ‘Board is ultimately responsible’ for any **Outsourcing**.

⚠ Responsibility of the ‘Board’ does not equate to liability for directors, however liability could arise from a breach of any SIS covenant.

## 1.6 Notifying APRA

Where an RSE licensee enters into an **Outsourcing** arrangement, it must notify APRA. The notification must be made as soon as possible, and no later than 20 business days after it is entered into. The RSE licensee must also provide APRA with a summary of key risks involved in the arrangement and risk mitigation strategies in place to address them. APRA may seek additional material.

Where the **Outsourcing** arrangement involves **Offshoring**, the RSE licensee must consult with APRA prior to entering any such arrangement. APRA will need to be satisfied that the impact of the arrangement has been adequately addressed as part of the RSE licensee’s risk management framework.

Where an **Outsourcing** arrangement is terminated, the RSE licensee must notify APRA as soon as practicable and provide a statement regarding the transition arrangements and future strategies for carrying out the material business activity.

The following table provides RSE licensees with a summary of the APRA notification timeframes.

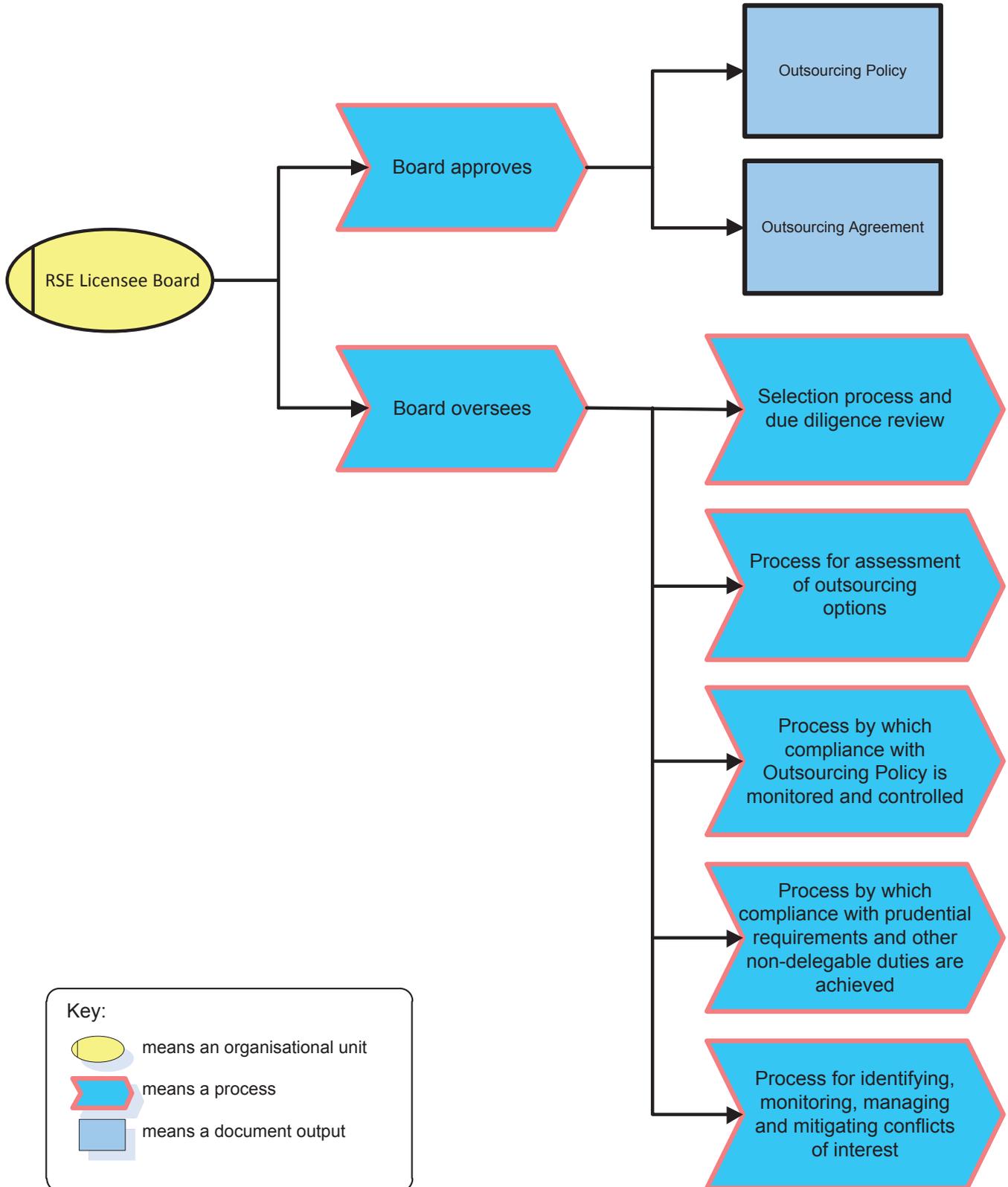
APRA notification event	Timeframe
The <b>Outsourcing</b> arrangement involves <b>Offshoring</b> of a material business activity	Prior to entering into the arrangement
The RSE licensee has entered into an <b>Outsourcing</b> agreement	No later than 20 business days after execution of the outsourcing agreement
There is a significant problem with the potential to impact the RSE licensee’s business operations, the interests of beneficiaries, and/or any of the RSEs or connected entities of the RSE licensee	The <b>Outsourcing Standard</b> does not stipulate a timeframe however the 10 day reporting timeframe under SPS 220 Risk Management may be triggered.
The <b>Outsourcing</b> arrangement is terminated	As soon as practicable
In the case of a sudden financial or operational failure of an existing service provider, or under the RSE licensee’s Business Continuity Plan	As soon as practicable

## 1.7 RSE licence requirement

Section 29DC of the **SIS Act** requires an RSE licensee to include its ABN in any documents it gives to APRA and any document in which it identifies itself as an RSE licensee of an RSE.

## 2. Implementation

### 2.1 Implementation Flowchart



## 2.2 Managing the arrangements

### Communication with the service provider

An RSE licensee must ensure it has sufficient and appropriate resources so that it can monitor and manage each **Outsourcing** arrangement at all times. The type and extent of these resources will vary according to the materiality of the arrangement, and should reflect its size and nature. The RSE licensee could consider assigning accountability for the management of a specific arrangement to an individual, team or committee.

APRA expects that an RSE licensee, at a minimum, maintain appropriate levels of contact with service providers and have processes in place to monitor performance under the relevant agreement. This includes regular assessment of the data managed by the service provider so that the RSE licensee can satisfy itself it is of high quality, accurate and complete, and consistent with the provisions of the agreement. Trustees may wish to engage experts to assist in such reviews, such as data quality consultants, or an internal or external auditor.

### Document retention

APRA also expects RSE licensees to maintain copies of important documents relating to the arrangement, in English, at the RSE licensee's Australian office. Examples of important documents include:

- contractual agreements;
- due diligence assessments;
- the service provider's Business Continuity Management (BCM) documentation and details of the latest testing of BCM processes undertaken;
- financial statements and reports; and
- any other information the RSE licensee considers critical to the ongoing monitoring and control of the arrangement with the service provider.

Trustees should also ensure service providers maintain records that may be necessary for audit trail purposes.

### Conflicts management

APRA expects that an RSE licensee consider and take into account potential and actual conflicts of interest between the RSE licensee and the service provider that may impact the monitoring of the service provider.

### Offshoring

An RSE licensee should consider monitoring economic, social and political conditions within the host country where offshoring is part of the arrangement, to assess the service provider's ability to continually and adequately perform the contracted service.

### Custodial arrangements

The RSE licensee should ensure a process is in place to provide the RSE licensee with assurance that services are in line with the RSE licensee's agreed performance standards and risk appetite, and comply with the relevant RSE licensee policies. The RSE licensee should ensure the custodian's internal control framework is adequate and continues to operate effectively. APRA also expects that an RSE licensee will ensure it regularly receives and reviews external audit and other reporting from the custodian.

### APRA notification

An RSE licensee must advise APRA of any significant problems that materially affect, or have the potential to materially affect the **Outsourcing** arrangement and, subsequently, materially affect the RSE licensee's business operations, the interests of beneficiaries or any connected entities.

The RSE licensee must notify APRA, as soon as practicable, when an **Outsourcing** arrangement is terminated and provide a statement regarding the transition arrangements and future strategies for carrying out the outsourced material business activity.

## 2.3 Assessing service providers

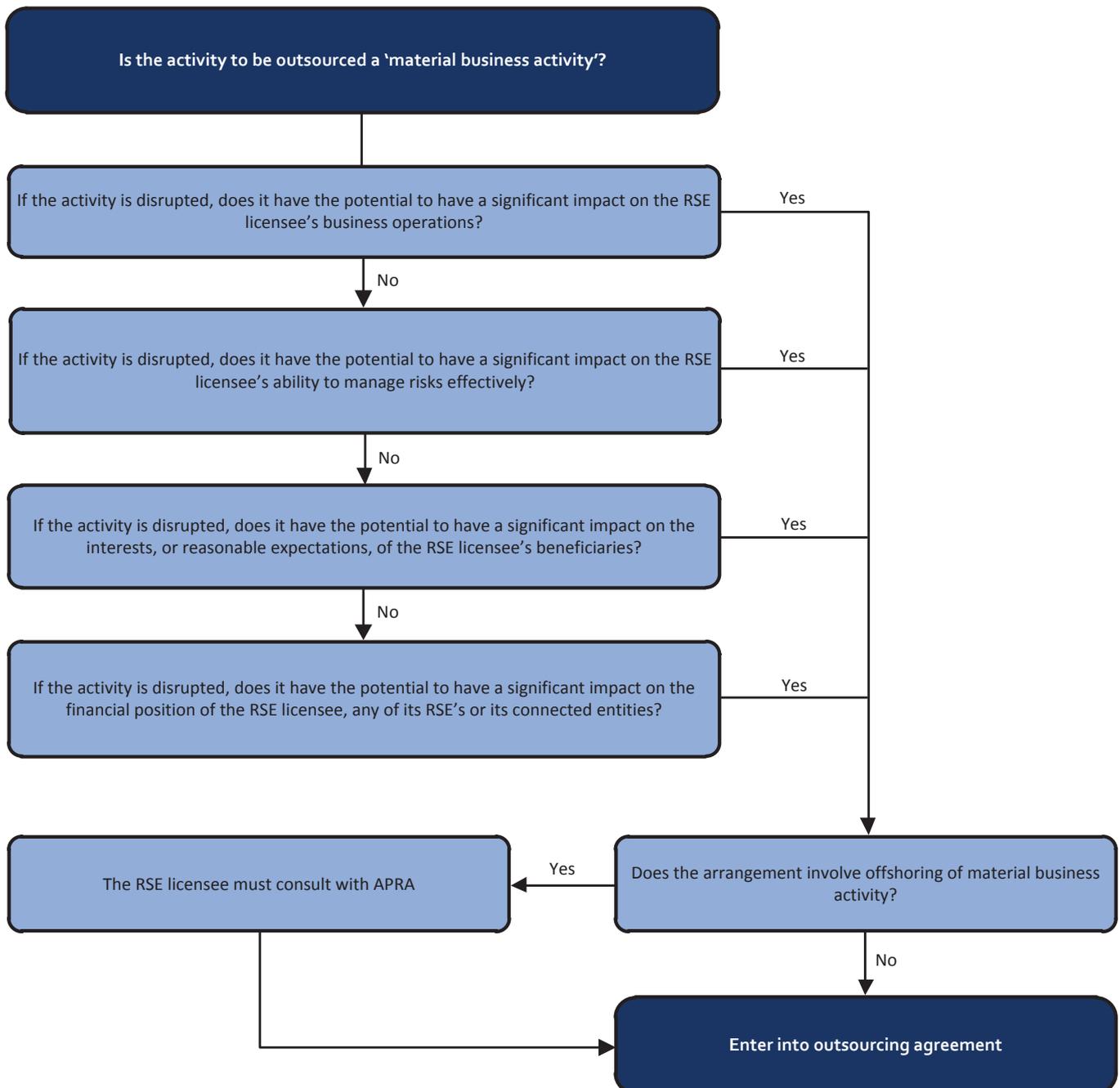
A prudent RSE licensee will establish an **Outsourcing** team, consisting of individuals from the relevant business areas and others with relevant or necessary skills to assess the risks involved in **Outsourcing**. Such people may include specialists in the relevant risk areas, or external experts.

The outsourcing team would ensure the Outsourcing Policy is complied with at all times, including assessment of initial tender and due diligence processes, evaluation of outsourcing options, and making recommendations to senior management and the Board regarding the **Outsourcing** proposal.

### 3. Outsourcing Policy

In developing its Outsourcing Policy, the RSE licensee must assess the materiality of the business activity to be outsourced.

#### 3.1 Assessment of materiality of business activity



## 3.2 Develop an Outsourcing Policy

The following checklist will assist the RSE licensee in assessing whether its outsourcing arrangements comply with the minimum requirements in the **Outsourcing Standard** and with the **Outsourcing Guide**.

Outsourcing Policy	YES/NO
(a) Does the RSE licensee have an Outsourcing Policy which sets out its approach to <b>Outsourcing</b> material business activities, including a detailed framework for managing all such <b>Outsourcing</b> arrangements?	
(b) Does the RSE licensee's Outsourcing Policy set out specific requirements in relation to <b>Outsourcing</b> to <b>associated entities</b> ?	
i. Does the Outsourcing Policy identify risks arising from the arrangement?	
ii. Can the RSE licensee demonstrate that the arrangement is conducted at arm's length and in the best interest of beneficiaries?	
(c) Does the Outsourcing Policy set out the RSE licensee's approach to conflicts of interest that may arise through <b>Outsourcing</b> , including how risks arising from such an arrangement will be identified, monitored, managed and mitigated?	
(d) Does the Outsourcing Policy set out specific requirements in relation to <b>Outsourcing</b> to service providers conducting the material business activity outside Australia?	
(e) Does the Outsourcing Policy require the RSE licensee to identify, assess, manage, mitigate and report on risks associated with <b>Outsourcing</b> to meet its obligations to beneficiaries and protect the financial position of the RSE licensee, any of its RSEs or its connected entities?	
(f) Does the Outsourcing Policy include a process for regular monitoring of performance under <b>Outsourcing</b> agreements, including meeting criteria concerning service levels?	
(g) Does the Outsourcing Policy include procedures to ensure all of its relevant business units are made aware of, and have processes and controls for monitoring compliance with, the Outsourcing Policy?	
(h) Does the Outsourcing Policy provide that the Board is ultimately responsible for the <b>Outsourcing</b> of any material business activity, including compliance with all prudential requirements and other non-delegable legal obligations related to the outsourced business activity?	
(i) Is the Outsourcing Policy approved by the Board, including acknowledgement that any group policy that is adopted or applied meets the requirements of the <b>Outsourcing Standard</b> ?	
(j) Are the <b>Outsourcing</b> risks and controls taken into account as part of the RSE licensee's overall risk management framework and when completing a risk management declaration required to be provided to APRA?	
(k) Does the RSE licensee have sufficient and appropriate resources to manage and monitor each <b>Outsourcing</b> relationship at all times, including maintaining appropriate levels of regular contact with the service provider and regularly monitoring performance against service levels under the agreement?	
(l) Does the RSE licensee's internal audit function review any proposed <b>Outsourcing</b> of a material business activity and regularly review and report to the Board or Board Audit Committee on compliance with the RSE licensee's Outsourcing Policy?	

## 4. Assessing options

### 4.1 Assessing Outsourcing options

The RSE licensee must be able to demonstrate to APRA that it is satisfied of the following, prior to entering into an **Outsourcing** agreement:

Process: assessment of outsourcing option	YES/NO
(a) Can the RSE licensee demonstrate that, in assessing the options for <b>Outsourcing</b> a material business activity and entering into an <b>Outsourcing</b> agreement, it has:	
i. Prepared a business case for <b>Outsourcing</b> the material business activity?	
ii. Undertaken a tender or other selection process for the service provider?	
iii. Undertaken a due diligence review of the chosen service provider, including the ability of the service provider to conduct the business activity on an ongoing basis?	
iv. Taken into account the changes to the risk profile of the business activity that arise from <b>Outsourcing</b> the activity and how this changed risk profile is addressed within the RSE licensee's risk management framework?	
v. Considered how and to what extent <b>Outsourcing</b> of the material business activity will assist the RSE licensee in meeting the adequacy of resources requirements, and how these requirements will be monitored on an ongoing basis?	
vi. Involved the Board, Board committee or senior manager with delegated authority from the Board, in approving the agreement?	
vii. Considered all the matters outlined in the minimum requirements for <b>Outsourcing</b> agreements?	
viii. Established procedures for monitoring performance under the <b>Outsourcing</b> agreement on a continuing basis?	
ix. Addressed the renewal process for <b>Outsourcing</b> agreements and how the renewal will be conducted?	
x. Developed contingency plans that would enable the outsourced business activity to be provided by an alternative service provider or brought in-house if required?	
xi. Determined that its conduct in relation to the <b>Outsourcing</b> agreement is in the best interests of beneficiaries?	
(b) Is the <b>Outsourcing</b> arrangement an <b>Offshoring</b> arrangement?	
i. If so, has the RSE licensee consulted APRA?	

 An RSE licensee can address all of the above issues and still not comply with its obligations under the care, skill and diligence covenant if they are not addressed adequately. Examples of this are if a tender process lacks probity, or due diligence is not thorough.

## 4.2 Offshoring arrangements

APRA requires an RSE licensee to consult with them prior to entering into any **Offshoring** arrangements involving a material business activity. Prior consultation is intended to provide an opportunity for APRA to review the RSE licensee’s assessment of **Offshoring** risks and the processes and controls proposed to mitigate such risks.

Risks that may need to be considered include:

- country risk: overseas economic, political and/or social events may impact on the ability of an overseas service provider to continue to provide the outsourced service;
- compliance/legal risk: any risk that the **Offshoring** arrangement may impact the RSE licensee’s ability to comply with relevant Australian and/or foreign laws;
- contractual risk: such as the enforceability of an **Offshoring** agreement, and whether this may be limited or negated entirely;
- access risk: the ability of the RSE licensee to obtain information and retain records, and whether the arrangement hinders this. APRA may also have difficulty gaining access for prudential review purposes; and
- counterparty risk: arising from the obligor’s failure to meet the terms of any agreement with the RSE licensee or to otherwise perform as agreed.

These risks should be assessed and addressed during the preparation of the business case, during the conduct of due diligence processes and during contract negotiations. The RSE licensee may need to engage specific risk management expertise to assess, monitor and control the material business activity outsourced to a service provider who conducts the activity outside Australia.

## 4.3 Custody agreements

Custody agreements pose a risk to RSE licensees where a custodian fails to properly safeguard an RSE’s assets. In order to ensure such risks are mitigated and monitored, APRA expects an RSE licensee would consider the adequacy and security of a custodian’s internal control framework, and ensure the custodian’s procedures for acceptance, execution and settlement of authorised transactions are appropriate.

APRA expects the RSE licensee’s **Outsourcing** framework would include policies that address functions such as valuation and unit pricing. An RSE licensee may choose to use the custodian’s policies in this regard, although this should only occur once a detailed due diligence review of the service provider has been performed. The RSE licensee is ultimately responsible for ensuring the policies adopted are appropriate and consistent with the RSE licensee’s policy framework.

## 5. Outsourcing arrangements

The **Outsourcing** arrangement must be contained in a legally binding agreement, and the RSE licensee should take care in ensuring the proper execution of such agreements. The RSE licensee must ensure the items in the checklist at 5.3 are covered in any **Outsourcing** agreement, prior to the commencement of any such agreement.

### 5.1 Liability and indemnity requirements of the agreement

Any **Outsourcing** agreement must address issues of liability, indemnity, sub-contracting and insurance. The **Outsourcing Standard** requires that the service provider indemnifies the RSE licensee for actions of any sub-contractor under the arrangement, which is independent of any rights or actions the service provider may have against the sub-contractor.

However, the RSE licensee and service provider may agree to limit the service provider's liability and indemnity under the agreement. Any such limitation must be considered within the RSE licensee's risk management framework and when considering the suitable level for the operational risk financial requirement target amount and tolerance limit.

 Service providers commonly seek to limit their liability to the fees received from the RSE licensee under the agreement. The RSE licensee will need to consider the matters set out above in assessing whether such a limitation is acceptable.

### 5.2 Offshoring

Any **Outsourcing** agreement that provides for **Offshoring** should include provisions that address:

- choice of law: the agreement should specify the jurisdiction under which disputes would be resolved. Any due diligence processes could also include examination of relevant foreign legislation and regulations by a qualified expert to ensure contractual provisions are recognised and enforceable in that jurisdiction; and
- security and confidentiality of information: provisions in relation to data should be of the same standard as those required of a domestic service provider, and in accordance with legislation and regulations. The agreement should ensure all information provided by an RSE licensee to the service provider remains the property of the RSE licensee.

Although APRA will provide feedback to the RSE licensee, it does not intend to approve individual **Offshoring** arrangements.

 An RSE licensee should consider its capacity and the cost of enforcing its rights in any foreign jurisdiction before accepting a choice of law clause that stipulates a jurisdiction other than Australia.

### 5.3 Preparing a material outsourcing agreement

This checklist provides a valuable tool for the RSE licensee to ensure each **Outsourcing** agreement complies with the requirements of the **Outsourcing Standard**. It should be noted however that even if a positive response to all questions listed below is provided, the RSE licensee must be confident that it could demonstrate that it has negotiated and agreed to terms in the agreement with the level of care, skill and diligence of a prudent superannuation trustee.

Outsourcing agreement	YES/NO
(a) Is the <b>Outsourcing</b> agreement contained in a documented, legally binding agreement that is signed by all parties to it before the arrangement commences?	
(b) Does the agreement address the scope of the arrangement and the services to be supplied?	
(c) Does the agreement include commencement and end dates?	
(d) Does the agreement include review provisions?	
(e) Does the agreement include pricing and fee structure(s)?	
(f) Does the agreement include service levels and performance requirements?	
(g) Does the agreement provide for the form in which the data is to be kept and clear provisions identifying ownership and control of the data?	
(h) Does the agreement include reporting requirements, including expectations on the content and frequency of reporting?	
(i) Does the agreement include audit and monitoring procedures?	
(j) Does the agreement provide for business continuity management?	
(k) Does the agreement address confidentiality, privacy and security of information?	
(l) Does the agreement include default arrangements and termination provisions, including: <ul style="list-style-type: none"> <li data-bbox="172 1485 1353 1579">i. what constitutes a default event, how a default is to be rectified, and any indemnity provisions; and</li> <li data-bbox="172 1585 1353 1675">ii. reasons for termination, procedures to be followed (including notice periods), rights and responsibilities of the respective parties, and any transition arrangements?</li> </ul>	
(m) Does the agreement include dispute resolution mechanisms?	
(n) Does the agreement address liability and indemnity for both parties?	
(o) Does the agreement address the possibility of, and process for, sub-contracting?	
(p) Does the agreement provide that the service provider hold insurance, where appropriate?	
(q) Does the agreement address <b>Offshoring</b> arrangements (where appropriate)?	

Outsourcing agreement	YES/NO
(r) Does the agreement include a clause requiring the service provider to grant APRA access to documentation and information relating to the arrangement, including the right to conduct on-site visits where APRA deems it necessary?	
(s) Does the agreement provide that the service provider will not disclose or advertise that APRA has conducted an on-site visit, except as necessary, to coordinate with other entities regulated by APRA that are existing clients of the provider?	

 An RSE licensee can address all of the above issues and still not comply with its obligations under the care, skill and diligence covenant if they are not addressed adequately. Examples of this are if termination provisions do not adequately protect the RSE licensee, or the liability and indemnity provisions leave the interests of the beneficiaries unnecessarily exposed.

## 5.4 Custody agreements

APRA expects that an RSE licensee would have a full understanding of the assets covered under the custody agreement and – where assets are not covered by the custody agreement – ensure appropriate risk management processes are in place.

APRA expects an RSE licensee to fully understand the services provided under the custody agreement, including those that form the core services and those that are additional. These should be clearly outlined in the agreement, in line with APRA’s expectations, so that risks can be properly identified and managed within the RSE licensee’s risk management framework.

APRA expects prudent trustees will ensure the custody agreement clearly addresses the use or potential use of sub-custodians, and any agreement would require that prior to engagement of a sub-custodian, the custodian would provide the RSE licensee with written notice, including the identity of each sub-custodian. APRA expects any changes made to such arrangements would be brought to the attention of the RSE licensee within 10 business days.

## 6. Dictionary

**Associated entity** has the meaning given in section 50AAA of the *Corporations Act 2001* (Cth).

**Corporations Act** means *Corporations Act 2001* (Cth).

**Offshoring** means the physical location of the whole or part of the outsourced activity is performed outside Australia.

**Outsourcing** means an arrangement with any other party to perform, on a continuing basis, a business activity that is a function or responsibility of an RSE licensee pursuant to its duties under the governing rules and where the business activity has been delegated to that other party. In this toolkit, 'Outsourcing' refers to the outsourcing of a material business activity.

**RSE licensee** means an entity that holds an RSE licence granted under s29D of the **SIS Act**. It is used interchangeably in this Toolkit with Trustee.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993*.

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