

# Macau Investment Funds Law Series: Custodians under Law No. 11/2025

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## Key takeaways

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Macau's new **Investment Funds Law (Law No. 11/2025)**, effective **1 January 2026**, comprehensively overhauls the territory's investment fund regime by repealing the previous framework under Decree-Law No. 83/99/M. One of the law's most significant developments concerns the role of **custodians**, whose eligibility, duties, and accountability are substantially expanded.

In this Macau Investment Funds Law Series, our companion articles include:

1. Fund Managers: [link](#);
2. Foreign Funds Inbound & Macau Funds Outbound: [link](#);
3. Sales Entities: [link](#).

## Key takeaways

- **Broadened eligibility:** Custodians are no longer limited to credit institutions; other authorised financial institutions — including those domiciled outside Macau — may now serve as fund custodians, subject to qualifying conditions.
- **Good faith and independence:** Custodians must act with prudence, honesty, good faith, diligence, and independence, and in the best interests of participants. [2]
- **Three-pillar duty framework:** Custodian responsibilities are codified across three functions — *property custody*, *asset rights verification*, and *operational monitoring*.

- **Strict conflict-of-interest prohibitions:** The management entity and custodian must not be the same entity, nor may one be a subsidiary of the other, with limited exceptions for affiliates within the same group.
- **Outsourcing permitted with safeguards:** Custodians may outsource asset-custody functions to third parties, subject to cumulative conditions; cascading sub-delegation is allowed with prior consent. [7]
- **Heightened liability:** Custodians are liable for loss of custodied assets (including losses caused by delegates), with liability that cannot be contractually excluded or limited for public funds.
- **Private fund flexibility:** A custodian is not mandatory for private funds; where none is appointed, the management entity must adopt appropriate measures to safeguard fund assets. [11]
- **Transition deadline:** Existing funds and entities must comply by **1 January 2027**.

## I. Introduction

Macau's prior fund regime (Decree-Law No. 83/99/M) did not accommodate modern practices such as private funds or diversified custodian arrangements. Law No. 11/2025 repeals the decree-law and defines a **custodian** as an entity responsible for *safekeeping or holding fund property in trust* and performing related duties. The custodian role is now open to a broader range of licensed financial institutions — including overseas entities — marking a significant shift from the old bank-centric model. **For details on fund distribution, see our article on Sales Entities Under Macau Investment Funds Law (Law No. 11/2025) in this series.**

## II. Key Provisions and Analysis

### 1. Eligibility to Act as Custodian

Two categories of custodian are recognised: (1) **credit institutions** and (2) **other financial institutions** authorised to conduct custody business. [1] All custodians must satisfy baseline qualifying conditions — including adequate compliance policies, sound internal controls and risk assessment systems, sufficient record-keeping, proportionate resources, and fit-and-proper requirements for governing body members and senior management.

**Overseas custodians** must additionally demonstrate that their home jurisdiction has legal and supervisory standards **equivalent to or stricter** than Macau's, that they are subject to **prudential and effective supervision** at home, and that they hold a **good market reputation** in custody operations locally.

### 2. Overarching Duty of Good Faith

As a threshold matter, the custodian (alongside management entities and sales entities) is required to act with **prudence, honesty, good faith, and diligence**, and to act

**independently** and in the **best interests** of participants. This overarching standard underpins all of the specific obligations set out below. [2]

### 3. Three-Pillar Duties of Custodians

For **public funds**, the law organises custodian duties into three pillars: [3]

**Property custody:** The custodian must hold fund property through procedures suitable to the asset type, maintain **separate accounts** per fund so that ownership is identifiable at all times, preserve and update records, and regularly **reconcile** its accounts with those of any delegate custodians. [4]

**Asset rights verification:** The custodian must systematically verify all existing rights over fund assets and their holders, maintain and update the fund's **asset register**, and register assets under the fund's or management entity's name with appropriate notations. [5]

**Operational monitoring:** The custodian must execute the management entity's investment instructions — unless the instruction violates the law or the fund's constitutive documents — ensure timely settlement, maintain a chronological operations log, produce periodic asset inventories, and prepare the custodian's annual report. [6]

In addition, the custodian has an ongoing **supervisory function**: it must monitor the management entity's NAV calculations, subscription/redemption pricing, and compliance with applicable laws and fund documents — and must **immediately notify** the management entity and the AMCM upon discovering any irregularity that may harm participants' rights.

### 4. Conflict of Interest and Structural Independence

The Law imposes strict structural separation: the management entity and custodian **must not be the same entity**, nor may one be a **subsidiary** of the other; cross-directorships that could create conflicts require AMCM permission; and the management entity **may not outsource** fund investment management to the custodian or its controlled entities. The one exception: both may be **different subsidiaries within the same group**, provided effective internal controls and full disclosure in the fund's constitutive documents are in place. [8]

### 5. The Custody Contract

The management entity–custodian relationship must be governed by a **written contract** covering, at minimum, each party's rights and obligations, information-flow mechanisms, custody arrangements for fund assets, conflict-of-interest principles, and other participant-protection clauses. Where the custodian is domiciled **outside Macau**, the contract must preserve Macau court jurisdiction (without prejudice to valid arbitration or concurrent-jurisdiction clauses), may not exclude Macau's protective measures for funds and investors, and must require the custodian to respond to AMCM information requests and comply with AMCM instructions. The custodian may hold fund assets in its own name by way of trust or perform a pure custody and safekeeping function; the chosen arrangement must be clearly stated in the fund's constitutive documents. [9] [10]

## 6. Outsourcing of Custody Functions

The custodian may outsource asset-custody functions to a third party by written contract, subject to three cumulative conditions: (1) the possibility of outsourcing must be stipulated in the custody contract; (2) outsourcing must not circumvent the Law or any other applicable legal or regulatory requirements; and (3) the custodian must expressly undertake in the outsourcing contract to observe the general outsourcing principles set out in the Law. The sub-delegate may, in turn, further outsource the functions it has received, provided the management entity or custodian has given prior consent and the same rules are applied on a cascading basis. [7]

## 7. Liability, Prohibited Activities, and Replacement

**Liability:** The custodian is liable for **loss of custodied assets** (including losses caused by delegates) and for **participant losses** arising from breach of its obligations. The only defence is proof that the loss resulted from an external event beyond reasonable control. This liability **cannot be contractually excluded or limited** for public funds, nor can it be disclaimed by virtue of outsourcing. [12]

**Prohibited activities:** The custodian **may not** acquire fund units for its own investment purposes. Re-use of custodied assets is permitted only when three conditions are satisfied concurrently: (1) the re-use is conducted for the benefit of the fund and its participants; (2) the re-use is performed in accordance with the contract between the management entity and the custodian; and (3) the re-use is supported by high-quality, highly liquid collateral. [13] [14]

**Replacement:** Replacing a custodian requires **prior AMCM approval** and a participants' meeting resolution. Grounds include economic difficulties, misconduct, resignation, or any serious threat to participants' interests. The outgoing custodian remains responsible until assets are fully transferred to its replacement. [15]

## 8. Private Funds: Custodian Flexibility

The Law does not mandate the appointment of a custodian for every private fund. Where a private fund has a custodian, the management entity must take reasonable and prudent measures to ensure the custodian possesses the requisite qualifications and capability. If no custodian is appointed, the management entity must adopt appropriate measures to safeguard the security of fund assets. This flexibility recognises the sophisticated-investor profile of private-fund participants. [11]

## III. Implications and Next Steps

The new custodian regime creates a more open and competitive landscape, but with significantly higher compliance expectations. The practical impact will differ by stakeholder. **Macau banks** with existing custody licences are well-positioned to capture new fee income as the fund industry expands under the modernised framework. However, the enhanced segregation, record-keeping, and supervisory obligations will require material investment in systems and internal controls. **Fund managers** now have access to a wider custodian pool —

including non-bank financial institutions and overseas entities — which should improve flexibility and competitive pricing. In return, managers face heightened obligations: rigorous custodian due diligence, compliant written contracts, and careful management of conflicts of interest. **Overseas financial institutions** interested in the Macau custody market should begin preparing jurisdiction-equivalency documentation and ensure they can satisfy the AMCM's information-request and direction-compliance requirements embedded in the custody contract framework.

All existing funds and entities must bring their custodian arrangements into full compliance by **1 January 2027**.

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## Footnotes

[1]: Article 23

[2]: Article 21

[3]: Articles 77–80

[4]: Article 78

[5]: Article 79

[6]: Article 80

[7]: Article 26(4)–(5)

[8]: Article 24

[9]: Article 25(1) and (3)

[10]: Article 25(2)

[11]: Article 104(1)(ix)

[12]: Article 29

[13]: Article 81(1)

[14]: Article 81(2)

[15]: Article 82

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