



Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019

Patsy Reddy, Governor-General

Order in Council

At Wellington this 13th day of May 2019

Present:

Her Excellency the Governor-General in Council

These regulations are made under subpart 1 of Part 9 and sections 576 and 581 of the Financial Markets Conduct Act 2013—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with sections 549, 576(2), and 581(2) of that Act.

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Regulations

1 Title

These regulations are the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019.

2 Commencement

These regulations come into force on 14 June 2019.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Financial Markets Conduct Act 2013

Annex 2 means Annex 2 of the memorandum

constituent document has the same meaning as in Part 2 of the passport rules

financial service provider number, in relation to a person, is the number given to the person on the person's registration under the Financial Service Providers (Registration and Dispute Resolution) Act 2008

foreign passport fund means a passport fund the home economy for which is not New Zealand

home economy, for a passport fund, means,—

- (a) if the passport fund is a regulated CIS, or a sub-fund of a regulated CIS, in only 1 participating economy, that participating economy; and
- (b) if the passport fund is a regulated CIS, or a sub-fund of a regulated CIS, in more than 1 participating economy, the participating economy in which the fund is first registered or approved as a regulated CIS (however that registration or approval is described)

home regulator has the same meaning as in section 55 of the passport rules

host regulator has the same meaning as in section 55 of the passport rules

law of the home economy, in relation to a foreign passport fund,—

- (a) means the laws and regulations (as defined in paragraph 4.1(f) of the memorandum) of the home economy of the fund; and
- (b) includes the rules in Annex 3 of the memorandum to the extent that those rules apply in the home economy of the fund

managed investment product means,—

- (a) in Part 1 (recognition regime), an interest in a foreign passport fund;
- (b) in Part 2 (application regime), an interest in a New Zealand passport fund

memorandum means the Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport signed on behalf of

New Zealand on 28 April 2016 and as in force on the commencement of these regulations, the text of which is set out in Schedule 2

New Zealand investor means an investor that—

- (a) is incorporated under the laws of New Zealand; or
- (b) in the case of a natural person, is resident in New Zealand; or
- (c) in the case of a legal person that is not a natural person, is established under the laws of New Zealand

New Zealand offeror means an offeror that—

- (a) is incorporated under the laws of New Zealand; or
- (b) in the case of a natural person, is resident in New Zealand; or
- (c) in the case of a legal person that is not a natural person, is established under the laws of New Zealand; or
- (d) is registered as an overseas company under the laws of New Zealand

New Zealand passport fund means a scheme that is registered on the register of managed investment schemes and that is identified as a passport fund on that register

operator, in relation to a passport fund, means the entity that is the operator of the fund under the passport rules

participating economy—

- (a) means any of the countries listed in regulation 6; and
- (b) in this regulation, includes New Zealand

passport fund means a regulated CIS, or a sub-fund of a regulated CIS, that is registered as a passport fund in a participating economy

passport fund recognition scheme means the recognition scheme provided for under the laws of a participating economy that have been made for implementing the memorandum

passport rules means the rules in Annex 3 of the memorandum

recognised offer means an offer referred to in regulation 9

recognition regime means the recognition regime established by Part 1

regulated CIS has the same meaning as in section 56 of the passport rules

sub-fund has the same meaning as in section 55 of the passport rules.

4 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

5 Overview

- (1) These regulations provide for a recognition regime and an application regime to be implemented that—
 - (a) provides for exemptions from the Act so that offerors may offer investments in certain overseas managed investment schemes in New Zealand in accordance with certain parts of the securities laws of Australia, Japan, the Republic of Korea, and Thailand (*see* Part 1):
 - (b) extends the territorial scope of the Act and the Financial Markets Conduct Regulations 2014 so that offerors may offer investments in certain New Zealand managed investment schemes in those overseas countries in accordance with certain New Zealand laws, and investors in those countries may rely on and enforce those laws (*see* Part 2).
- (2) This regulation is only a guide to the general scheme and effect of these regulations.

Part 1

Recognition regime when New Zealand is host country

Application

6 Countries to which recognition regime applies

The following are designated as the countries to which the recognition regime established by this Part applies:

- (a) Australia:
- (b) Japan:
- (c) Republic of Korea:
- (d) Thailand.

Compare: LI 2014/326 r 257

7 Class of financial products to which recognition regime applies

- (1) The recognition regime applies to managed investment products offered in New Zealand by the operator of a foreign passport fund.
- (2) However, this Part does not apply to an offer of those products in New Zealand by an operator if—
 - (a) the FMA has made an order under section 471 of the Act that prohibits the operator from making an offer under the recognition regime; and
 - (b) the order has not been revoked or otherwise expired.

Compare: LI 2014/326 r 258

8 When New Zealand is host country

New Zealand is the host country when an offer of managed investment products is made in New Zealand by an operator.

Compare: LI 2014/326 r 259

*Recognised offer***9 When offer is recognised offer**

- (1) An offer of managed investment products becomes a recognised offer, in relation to New Zealand, on the day on which the offer is first made in New Zealand, if the preconditions in regulations 12 to 16 are met in relation to the offer on that day.
- (2) The offer continues to be a recognised offer after that day even if a precondition in regulations 12 to 16 ceases to be met after that day.
- (3) *See* section 578 of the Act (which allows the FMA to declare that a failure to comply with a precondition is non-material).

Compare: LI 2014/326 r 260

*Exemptions***10 Effect of recognised offer**

- (1) Managed investment products offered under a recognised offer are exempt from the following provisions of the Act:
 - (a) Part 4, other than sections 215, 216(2), and 221 to 225:
 - (b) section 215, to the extent that it requires an issuer to ensure that the register of those products is kept in the manner specified in section 216(1):
 - (c) section 222, to the extent that it requires the register of those products to be available for inspection at the place at which the register is kept:
 - (d) subpart 9 of Part 5.
- (2) Every operator is exempted from Part 7 of the Act with respect to a particular accounting period if the operator, during the period, would be an FMC reporting entity only because managed investment products issued by the operator are regulated products.
- (3) This regulation ceases to apply to the interests in a scheme if the scheme ceases to be a foreign passport fund.
- (4) *See also* Part 6 of Schedule 4 of the Financial Markets Conduct Regulations 2014 (which modifies PDS, register entry, and annual report requirements for managed investment products offered under a recognised offer).

Compare: LI 2014/326 r 261

*Preconditions***11 Preconditions**

Regulations 12 to 16 set out preconditions for the purposes of section 577(1)(d) of the Act.

Compare: LI 2014/326 r 262

12 Preconditions concerning application for entry

- (1) The operator must, before making the offer,—
 - (a) apply to the FMA for entry of the foreign passport fund in accordance with section 4(2) of Annex 2; and
 - (b) ensure that the notification process described in section 6 of Annex 2 is completed (but with that process being applied as if the reference in that section to 21 days were a reference to 15 working days); and
 - (c) comply with each request referred to in subclause (4) as soon as is reasonably practicable after receiving the request; and
 - (d) pay the prescribed fee (*see* Schedule 1 of the Financial Markets Conduct (Fees) Regulations 2014).
- (2) For the purpose of subclause (1)(a), the information required under section 4(2)(c) of Annex 2 is the following information and all other information that is reasonably necessary to assess the foreign passport fund's and operator's compliance with New Zealand law:
 - (a) a copy of every exemption or modification granted or given by the home regulator that is relevant to the offer:
 - (b) the operator's name, its financial service provider number, and the address of its principal place of business:
 - (c) the home economy of the foreign passport fund:
 - (d) a link to the home regulator's Internet site to information that confirms that the foreign passport fund has been registered under section 3(3) of Annex 2:
 - (e) the name of the dispute resolution scheme of which the operator is a member under the Financial Service Providers (Registration and Dispute Resolution) Act 2008:
 - (f) the proposed name of the foreign passport fund to be used in New Zealand:
 - (g) the total asset value under section 3(4)(a) of Annex 2 (calculated in accordance with section 3(5) of that Annex) as at the time of the application made under that section for the fund:
 - (h) a link to the operator's Internet site and a link for any Internet site of the foreign passport fund:

- (i) confirmation that, in all material respects,—
 - (i) the foreign passport fund is in compliance with the laws of its home economy; and
 - (ii) the operator is in compliance with the laws of its home economy;
 - (j) details of any offer of the managed investment products in the home economy that show how section 17 of the passport rules is and will be complied with;
 - (k) details of the procedure and processes that the operator has in place to ensure that the offer will be made in compliance with the Act and other financial markets legislation;
 - (l) the full name and address in New Zealand of 1 or more persons resident or incorporated in New Zealand who are authorised to accept service in New Zealand at that address of documents on behalf of the operator;
 - (m) the name, contact details, and financial service provider number of each distributor in New Zealand (if any).
- (3) The application for entry of the foreign passport fund must not have been refused by the FMA on the basis that it is of the opinion that—
- (a) the fund, or the operator, does not comply with, or is not likely to comply with,—
 - (i) the laws of New Zealand; or
 - (ii) the law of the home economy; or
 - (iii) the passport rules; or
 - (b) it is not in the public interest of New Zealand to authorise interests in the fund for offer in New Zealand or authorising the fund would breach sanctions applied against another economy by New Zealand; or
 - (c) an exemption from or modification to a passport rule has been given to the fund in accordance with Part 5 of Annex 2 and the FMA has not consented and does not consent to the exemption or modification; or
 - (d) the name of the fund to be used in New Zealand is not available for use in New Zealand because it is already in use or the use of the name is subject to a restriction in New Zealand that also applies to a regulated CIS in New Zealand, unless the fund or its manager notifies the FMA and the home regulator in writing that the fund will adopt an available alternative name in New Zealand because its name in New Zealand is not available in the home economy; or
 - (e) action is being taken under paragraph 8.6 or 8.8 of the memorandum.
- (4) For the purposes of subclause (1)(c), a **request** is a written request from the FMA that—
- (a) is made before the notification process described in section 6 of Annex 2 is complete; and

- (b) seeks further information because the FMA is of the opinion that the application for entry does not include all of the information required by section 4(2) of Annex 2.
- (5) In this regulation, **distributor** means a qualified distributor that is acting in relation to the offer as referred to in section 2(2) and (3) of Annex 1 of the memorandum.

13 Preconditions about notification under memorandum

- (1) Notification under paragraph 8.6 of the memorandum must not have been given on behalf of New Zealand that it intends to decline to accept applications for entry by a class of foreign passport funds that includes the relevant foreign passport fund.
- (2) Notification under paragraph 8.8 of the memorandum must not have been given on behalf of New Zealand that it intends to take an action under that provision in relation to a class of foreign passport funds that includes the relevant foreign passport fund.
- (3) A notification must be disregarded for the purposes of this regulation if it is given less than 7 days before the date on which the offer is first made in New Zealand.

14 Preconditions for operator to lodge notice with Registrar

- (1) The operator must, before making the offer, lodge a notice with the Registrar that complies with regulation 15.
- (2) The notice, when received by the Registrar, also serves as the opt-in notice referred to in section 575(2) of the Act.

Compare: LI 2014/326 r 266

15 Requirements for notice lodged with Registrar

The notice referred to in regulation 14 must—

- (a) be signed and dated by the operator or a person with authority to act on the operator's behalf, and contain the following information:
 - (i) the name of the operator:
 - (ii) the registration number of the foreign passport fund that is given in the home economy (if any):
 - (iii) if the foreign passport fund is a sub-fund of a regulated CIS, the name of that regulated CIS:
 - (iv) the operator's financial service provider number:
 - (v) the name of the person signing the notice on the operator's behalf:
 - (vi) the name of the person completing the notice and an address for communications from the Registrar to that person; and

- (b) state that the operator intends to make an offer under the recognition regime in accordance with this Part; and
- (c) confirm that the operator has ensured that the notification process described in section 6 of Annex 2 is completed; and
- (d) specify the managed investment products to be offered; and
- (e) specify the proposed offer period for the offer of the managed investment products in New Zealand; and
- (f) state the full name and address in New Zealand of 1 or more persons resident or incorporated in New Zealand who are authorised to accept service in New Zealand at that address of documents on behalf of the operator; and
- (g) state that the operator submits to the jurisdiction of the courts of New Zealand; and
- (h) state the operator's New Zealand overseas offeror registration number allocated by the Registrar (if any); and
- (i) be accompanied by the statement required by regulation 24(1A)(b) of the Financial Markets Conduct Regulations 2014; and
- (j) be accompanied by the information specified in regulation 16.

Compare: LI 2014/326 r 267

16 Information that must accompany notice lodged with Registrar

The following information must accompany the notice lodged with the Registrar under regulation 14:

- (a) the PDS for the offer and the other information that must be supplied under section 48 of the Act; and
- (b) a copy of every exemption or modification granted or given by the home regulator that is relevant to the offer; and
- (c) the constituent document of the foreign passport fund; and
- (d) a copy of the most recent financial reporting statements for the foreign passport fund (if any) that are prepared in accordance with the laws of the home economy together with a copy of the auditor's report on those statements (if any).

Compare: LI 2014/326 r 268

Terms and conditions

17 Terms and conditions to be complied with

Regulations 18 to 22 set out terms and conditions for the purposes of section 577(1)(e) of the Act (*see* section 579 of the Act for an offence relating to a contravention).

Compare: LI 2014/326 r 269

18 Financial reporting information for foreign passport fund must be lodged

An operator must ensure that, within 3 months after the balance date of the foreign passport fund,—

- (a) copies of the financial reporting statements for the passport fund that are required to be prepared under section 16 of the passport rules, together with a copy of the auditor's report on those statements, are delivered to the Registrar for lodgement; and
- (b) the statements that are delivered to the Registrar for lodgement—
 - (i) are accompanied by written notification to the Registrar that the operator is relying on these regulations in respect of the accounting period to which the statements relate; and
 - (ii) are in English or accompanied by an accurate English translation.

19 Compliance with passport rules

- (1) The foreign passport fund must comply with the passport rules.
- (2) The operator must, in relation to the foreign passport fund, comply with the passport rules.

20 Registration under Financial Service Providers (Registration and Dispute Resolution) Act 2008

- (1) The operator must be registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 for the service referred to in section 5(1)(i) of that Act.
- (2) This regulation ceases to apply when all interests in the foreign passport fund that are held by New Zealand investors are cancelled, redeemed, or forfeited, or all of the obligations owing under those products have been discharged.

21 Agent of operator and address for service

- (1) An operator must—
 - (a) be represented for the purposes of the Act and these regulations by 1 or more persons resident or incorporated in New Zealand who are authorised to accept service in New Zealand of documents on behalf of the operator; and
 - (b) have an address in New Zealand for service for the purposes of the Act.
- (2) The operator must notify the Registrar of the matters referred to in subclause (1) and of any changes to those matters.
- (3) This regulation ceases to apply when all interests in the foreign passport fund that are held by New Zealand investors are cancelled, redeemed, or forfeited, or all of the obligations owing under those products have been discharged.

22 Duty to notify changes

- (1) This regulation applies if an event listed in the table in section 12 of the passport rules occurs.
- (2) For the purposes of section 96 of the Act, the operator must send to the FMA notice of the event as soon as practicable but in any case not later than 7 days after the operator becomes aware of the event having occurred.

*Other duties to notify certain matters***23 Duty to notify contraventions of New Zealand law**

- (1) This regulation applies if—
 - (a) the operator becomes aware of a contravention of New Zealand law in relation to the foreign passport fund; and
 - (b) the contravention—
 - (i) may reasonably be regarded as significant (including having regard to any other contraventions); or
 - (ii) when considered on its own or together with any related contravention, adversely affects the relevant amount by more than 1%.
- (2) For the purposes of section 96 of the Act, the operator must give the FMA notice of the contravention as soon as practicable but in any case not later than 7 days after the operator becomes aware of the contravention having occurred.
- (3) In this regulation, the **relevant amount** means the value of the assets of the foreign passport fund that is attributable to New Zealand investors.

24 Duty to provide copy of annual implementation review

For the purposes of section 96 of the Act, the operator must give the FMA a copy of each implementation review report that is addressed to the FMA and prepared under section 15 of the passport rules within 3 months after the end of the review period (within the meaning of that section).

Part 2**Application of New Zealand law to managed investment products offered under passport recognition regime****25 Extension of Act and regulations to managed investment products offered in participating economy by New Zealand offeror**

- (1) This regulation applies if a New Zealand offeror proposes to make, or is making, an offer of managed investment products in any of the following participating economies under the passport fund recognition scheme:
 - (a) Australia:
 - (b) Japan:

- (c) Republic of Korea:
 - (d) Thailand.
- (2) The following apply in the participating economy in relation to the offer as if it were a regulated offer being made in New Zealand:
- (a) the Act, other than Part 3:
 - (b) those parts of the Financial Markets Conduct Regulations 2014 that relate to the parts of the Act that apply in the participating economy.
- (3) However, the Act and those regulations do not apply to managed investment products offered in a participating economy by a New Zealand offeror to the extent that the offer is exempted under subpart 2 of Part 9 of the Act.

Compare: LI 2014/326 r 276

26 Notice to Registrar of intention to make offer under passport fund recognition scheme

- (1) A New Zealand offeror that intends to make an offer of managed investment products in a participating economy under the passport fund recognition scheme must lodge a notice with the Registrar of the intention to make the offer.
- (2) The offeror must lodge the notice not later than the time when it notifies the host regulator of the intention to make the offer.

Compare: LI 2014/326 r 277

27 Form of notice required by regulation 26

- (1) A notice required by regulation 26 must—
- (a) state that the New Zealand offeror intends to make an offer of managed investment products in 1 or more participating economies under the passport fund recognition scheme; and
 - (b) be signed and dated by the New Zealand offeror or a person with authority to act on the New Zealand offeror's behalf; and
 - (c) contain the information set out in subclause (2).
- (2) The information is as follows:
- (a) the name of the New Zealand offeror:
 - (b) the New Zealand offeror's registration number:
 - (c) particulars of the managed investment products to be offered:
 - (d) confirmation that the scheme is registered on the register of managed investment schemes and is identified as a passport fund on that register:
 - (e) the name of the participating economy or economies in which the products are proposed to be offered:
 - (f) the proposed offer period for the offer of the products in each of those economies:

- (g) the name of the person signing the notice on the New Zealand offeror's behalf.

Compare: LI 2014/326 r 278

Schedule 1
Transitional, savings, and related provisions

r 4

Part 1
Provisions relating to these regulations as made

There are no transitional, savings, or related provisions relating to these regulations as made.

Schedule 2

Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport

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The Participants to this Memorandum of Cooperation (MOC) share the goals or intend to take those actions consistent with their [government's] goals of:

- i. providing investors in the economy of each of the Participants with a more diverse range of investment opportunities, enabling them to better manage their portfolio and meet their investment objectives;
- ii. deepening the region's capital markets to attract finance for economic growth in the region;
- iii. facilitating the recycling of the region's savings locally, growing the pool of funds available for investment in the region;
- iv. strengthening the capacity, expertise and international competitiveness of financial markets in the region and the fund management industry, with a view to supporting sound economic development; and
- v. maintaining the legal and regulatory frameworks which promote investor protection, fair, efficient and transparent markets for financial services, supporting financial stability and providing high standards in the management and distribution of collective investment schemes; and

have the mutual intention of implementing and participating in the Asia Region Funds Passport, the subject of this MOC.

The Participants to this MOC have reached the following understanding:

Paragraph 1: Purpose

- 1.1 The purpose of this MOC is to establish the Asia Region Funds Passport and to establish robust and practical arrangements for its implementation, operation and governance.
- 1.2 Each Participant intends to give effect to the commitments in this MOC, considers that it is likely to be able to do so, and will do all it can to do so.
- 1.3 In the event that a Participant does not give effect to the commitments in this MOC or it appears to the Participant that it is not likely to give effect to those commitments, it will promptly notify in writing this failure to implement the commitments to the other Participants.
- 1.4 Each Participant acknowledges that if another Participant is unable to give effect to a commitment in this MOC, for a reason beyond its control, the result that the commitment in the MOC is not met is to be treated as a circumstance that may be raised as a difference for the purposes of Paragraph 8 and as a matter requiring notification under subparagraph 1.3 but is not to be otherwise treated as a failure by the Participant to meet the commitment.

- 1.5 If there is more than one Participant from an economy and under an arrangement between the Participants from that economy where one or more of them are responsible for a particular commitment under this MOC, then that commitment does not apply to the other Participant(s) of that economy.
- 1.6 If any requirements in the Host Economy, other than Host Economy Laws and Regulations apply in relation to a Passport Fund or the Operator of a Passport Fund in a Host Economy, and the application of those requirements materially disadvantages or is likely to materially disadvantage, in comparison to Regulated CIS and their operators in the Host Economy:
- a. the operation of or offering of interests in the Passport Fund in that Host Economy, or
 - b. the Operator of the Passport Fund,
- then the application is to be treated as a circumstance which may be raised as a difference under Paragraph 8.
- 1.7 If the application of any Host Economy Laws and Regulations permitted only because of subsection 3(2) of Annex 1 materially disadvantage or is likely to materially disadvantage:
- a. the operation of or offering of interests in, or
 - b. the Operator in relation to,
- Regulated CISs that are or have been offered as, or that might, if not for the Host Economy Law and Regulation, be offered in the Host Economy as a Passport Fund, then the application is to be treated as a circumstance which may be raised as a difference under Paragraph 8.

Paragraph 2: Cooperation and Commitments

- 2.1 Each Participant will:
- a. Give effect to the Passport Arrangements in accordance with Paragraph 5;
 - b. Administer the Passport and supervise Passport Funds in a manner that is consistent with the Passport's goals;
 - c. Resolve differences amicably as set out in Paragraph 8;
 - d. Cooperate with the other Participants, including information sharing, as set out in Annex 4;
 - e. Support the Joint Committee as the body responsible for overseeing the implementation and operation of the Passport, and provide assistance to the Joint Committee in carrying out its functions as set out in Paragraph 6;
 - f. Maintain its eligibility under subparagraph 10.1(a) to 10.1(d).

- 2.2 Except as otherwise provided or confirmed in writing by all Participants, each Participant will meet its own costs of performing the cooperation and understanding under this MOC.
- 2.3 This MOC does not apply in relation to a collective investment scheme (CIS) in a Host Economy, where the CIS is of a kind where the offer of interests in the CIS is not regulated in that economy, regardless of the location of persons holding interests in the CIS or the location of its operator.

Paragraph 3: Interpretation

- 3.1 The Participants will implement the cooperation and understanding set out in this MOC consistently with their domestic Laws and Regulations and with their obligations at international law.
- 3.2 The Participants will consult each other if a Participant indicates that it finds any part of this MOC unclear or uncertain in its effect.
- 3.3 A Participant may translate the MOC and any other document relevant to the Passport Arrangements, including any application forms that may be agreed, into another language. However, the Participants acknowledge that the English language version of the text of this MOC and of any application on the public register kept under Annex 2 is the sole authentic version and will thus prevail to the extent of any inconsistency.

Paragraph 4: Definitions

- 4.1 For the purposes of this MOC:
 - a. Asia Region Funds Passport or Passport means the arrangements established by this MOC to allow collective investment schemes that are established and regulated in one Participant's economy to be offered to investors in another Participant's economy;
 - b. Asia Region Funds Passport Joint Committee or Joint Committee means the committee established under Paragraph 6 of this MOC;
 - c. Common Regulatory Arrangements means the arrangements set out in Annex 2;
 - d. Deregistered Passport Fund means a Regulated CIS or a sub fund of a Regulated CIS that has been deregistered as a Passport Fund;
 - e. Initiating Participant has the meaning set out in Paragraph 8 of this MOC;
 - f. Laws and Regulations mean the provisions of the laws, regulations, codes, enforceable instruments, and other regulatory requirements, that apply in the economy of a Participant or that a Participant may administer;
 - g. Memorandum of Cooperation or MOC means this document and its Annexes;

- h. Original Participant means a Participant that has signed this MOC before 30 June 2016;
 - i. Participant means a signatory to this MOC;
 - j. Passport Arrangements has the meaning set out in Paragraph 5 of this MOC;
 - k. Passport Fund means a Regulated CIS, or a sub fund of a Regulated CIS, that is registered as a Passport Fund by its Home Regulator;
 - l. Passport Rules means the rules in Annex 3 that are to apply as requirements in each Participant's economy;
 - m. Prospective Subsequent Participant means an agency that has applied to the Joint Committee to become a Subsequent Participant; and
 - n. Subsequent Participant means an agency that becomes a Participant under Paragraph 11 of this MOC.
- 4.2 All other terms that are defined in the Annexes have the same meaning when used elsewhere in this MOC, unless the contrary intention appears.

Paragraph 5: The Passport Arrangements

- 5.1 Each Participant will give effect to the following (the Passport Arrangements) to facilitate cross-border offerings of Passport Funds in the Participants' economies:
- a. Apply and conduct reasonable checks on compliance with and where appropriate enforce the Home Economy Laws and Regulations for Regulated CIS, in relation to Passport Funds registered in its economy, where they are made consistent in accordance with subparagraph 5.2, whether by administrative action, regulatory or supervisory function or other means and whether directly or through another entity that is subject to supervision by the Participant;
 - b. Apply any Host Economy Laws and Regulations consistently with Annex 1 in relation to Passport Funds registered in the economies of other Participants that may be offered in the Participant's economy in accordance with the Common Regulatory Arrangements;
 - c. Conduct reasonable checks on compliance with and where appropriate enforce the Passport Rules, whether by administrative action, regulatory or supervisory function or other means and whether directly or through another entity that is subject to supervision by the Participant in relation to:
 - i. Passport Funds registered in its economy;
 - ii. Passport Funds registered in the economies of other Participants that may be offered in the Participant's economy in accordance with the Common Regulatory Arrangements; and

- iii. Deregistered Passport Funds in the circumstances outlined in the Passport Rules in Annex 3; and
 - d. The Common Regulatory Arrangements as outlined in Annex 2.
- 5.2 The Participants recognise the importance of ensuring consistency in the application of the Passport Rules in their economies. Accordingly, each Participant will endeavour, within the timeframes specified in subparagraph 5.6, to make the necessary legislative or other arrangements in its economy to give effect to the Passport Rules such that they are enforceable and then once the arrangements are made, endeavour to maintain them on an ongoing basis so that:
 - a. the necessary legislative or other arrangements will be consistent with the Passport Rules; and
 - b. the Passport Rules will be binding on Passport Funds and Deregistered Passport Funds for which the Participant is the Home Economy or Host Economy.
- 5.3 In the event that the outcomes in subparagraphs 5.2(a) or 5.2(b) are not met or the Home Economy Laws and Regulations or the Host Economy Laws and Regulations as they apply to Passport Funds in an economy are not consistent with the Passport Rules, the Participant from that economy will notify all other Participants in writing and any Participant from another economy may raise a difference under Paragraph 8.
- 5.4 If there is an inconsistency between Home Economy Laws and Regulations, or Host Economy Laws and Regulations as they apply in relation to Passport Funds and the Passport Rules such that a person cannot comply with both, the affected Participants will consult with each other with a view to resolve the inconsistency.
- 5.5 Exemptions from or modifications to the Home Economy Laws and Regulations, the Host Economy Laws and Regulations and the Passport Rules may be provided in relation to Passport Funds by Passport Regulators in accordance with the Common Regulatory Arrangements as outlined in Annex 2.
- 5.6 Each Original Participant will endeavour to implement the Passport Arrangements within 18 months from the MOC coming into effect meaning that the Participant is ready to assess applications for entry from Passport Funds registered in the economy of the other Participant. Each Subsequent Participant will endeavour to implement the Passport Arrangements within 18 months of becoming a Subsequent Participant. Participants will notify the Joint Committee when implementation has been effected. As soon as practicable after having received the notification, the Joint Committee will publish notification on the Passport website that the relevant Participant has effected implementation.
- 5.7 Each Participant will start assessing applications for entry from Passport Funds registered in the economy of another Participant from such time as the notice has been published on the Passport website under subparagraph 5.6 for both relevant Participants that have implemented the Passport Arrangements, mean-

ing each of those Participants are ready to assess applications for entry from Passport Funds registered in the economy of the other Participant.

Paragraph 6: Joint Committee

- 6.1 The Asia Region Funds Passport Joint Committee (Joint Committee) is hereby established for the purpose of overseeing the effective implementation and operation of the Passport Arrangements under this MOC.
- 6.2 The main functions of the Joint Committee will be to:
- a. monitor the Passport Arrangements and its operation, which includes ensuring that the application of the Passport Arrangements remains consistent with the objectives of the Passport;
 - b. maintain an official Passport website, where it will publish the text of this MOC and any amendments to it and a list of Participants that have implemented the Passport Arrangements;
 - c. publish annual progress reports on the operation of the Passport Arrangements, which will be prepared in accordance with Paragraph 7;
 - d. commence a review of the Passport Arrangements two years after the date on which the first two Participants implement the Passport Arrangements, or at a time determined by the Joint Committee, and publish the report of the review on the official Passport website;
 - e. facilitate the resolution of differences as set out in Paragraph 8;
 - f. recommend amendments to this MOC where appropriate, and when the amendment should take effect in accordance with Paragraph 9;
 - g. assess nominations from Prospective Subsequent Participants and make recommendations to the Participants based on the procedures set out in Paragraph 11;
 - h. where considered appropriate, develop and publish information that serves as general guidelines to Operators, investors and Passport Regulators on the operation of the Passport including processes for registration of Passport Funds, the admission of Passport Funds in each Host Economy and the interpretation of the Passport Rules for CIS operators and investors; and
 - i. consider and, if agreed, make recommendations to the Participants about aspects for the form or content of the application for registration of a Passport Fund or entry to a Host Economy that are to apply.
- 6.3 For the purpose of performing its role under this paragraph, the Joint Committee may assume any other functions it considers necessary or desirable for the effective implementation and operation of the Passport.
- 6.4 The Joint Committee will consist of one representative from each economy that has at least one Participant. There will only be one representative from each economy at any one time. The representative will be nominated initially within

one month of entering into this MOC by notice in writing from a Participant from the economy to all other Participants. A Participant from each economy will also nominate an alternate representative who may act if the representative is not present. Thereafter, a Participant may change the representative(s) from its economy at any time by notice, in writing, to all other Participants. Each Participant will ensure that the representative it nominates has the appropriate authority and experience to exercise the relevant functions.

- 6.5 The Joint Committee will select one of its representatives to act as Chair and one to act as Deputy Chair. The Chair and Deputy Chair of the Joint Committee will rotate annually among the representatives on the Joint Committee.
- 6.6 The Joint Committee will make decisions, assessments and recommendations by consensus except in the circumstances set out in subparagraph 6.7. Each economy, through its nominated representative, will have one vote on each matter before the Joint Committee. Consensus is achieved if:
- a. no Joint Committee representative present at the meeting votes against a proposed assessment or recommendation; and
 - b. any Joint Committee representative absent from the meeting has given notice that they do not object to that assessment or recommendation or has not advised the Chair of the Joint Committee in writing that they object within 21 days of the conclusion of the meeting.
- 6.7 The Joint Committee may make decisions, assessments and recommendations by majority of those voting in relation to procedural matters for the operation of the Joint Committee.
- 6.8 The Chair of the Joint Committee will write to all representatives:
- a. within seven days of the conclusion of the meeting to record the vote and notify them of the Joint Committee's decisions, assessments or recommendations on the matters set out in subparagraph 6.2; and
 - b. within 28 days of the conclusion of the meeting, to notify them of any notification or written communication received from a representative under subparagraph 6.6(b) and whether consensus has been achieved for the decision, assessment or recommendation to which the notification or communication relates.
- 6.9 The Joint Committee may meet in person, or by video conference, teleconference call or any other means or joint means as appropriate.
- 6.10 The Joint Committee will otherwise determine its own rules and procedures, consistent with this MOC including the frequency with which the meetings will be held that will enable the efficient exercise of its functions.

Paragraph 7: Periodic Progress Reports

- 7.1 Each Participant will provide the Joint Committee with an annual progress report on the operation of the Passport or as otherwise determined by the Joint

Committee, with a view to improving the Passport's operation and resolving any issues which may arise.

- 7.2 Such progress reports will include the following information:
- a. Use of the Passport including any data available on number and size of Passport Funds in operation; and
 - b. Performance of regulatory functions including data on the number of applications received for the registration of prospective Passport Funds or the admission of a Passport Fund to a Host Economy, the number of registrations or admissions and deregistrations and refusals respectively for each, and the timeliness in performing the regulatory functions for admission of a Passport Fund to a Host Economy detailed at Annex 2.
- 7.3 The Joint Committee may recommend that additional information be included in the progress reports.
- 7.4 The Joint Committee will publish a progress report annually on the official Passport website detailing the performance of the Passport, which may contain information from individual Participants' progress reports as deemed appropriate by the Joint Committee.

Paragraph 8: Resolution of Differences

- 8.1 This paragraph applies where differences arise among Participants concerning the interpretation, application or implementation of this MOC.
- 8.2 The relevant Participants will endeavour to amicably resolve any differences concerning the application or implementation of this MOC.
- 8.3 Subject to subparagraph 8.4, in the first instance, the relevant Participants will take reasonable steps and act in good faith to resolve any such difference by consultations among themselves.
- 8.4 If the difference relates to the interpretation of this MOC, the Joint Committee will be consulted on the difference, notwithstanding subparagraph 3.2.
- 8.5 The procedure set out at subparagraph 8.6 may be invoked if:
- a. relevant Participants, using reasonable efforts and in good faith, have exhausted the procedures described in subparagraphs 8.3 and 8.4;
 - b. the difference remains unresolved;
 - c. one of the relevant Participants (the Initiating Participant) is of the reasonable opinion that its or its economy's interests or its functions are being prejudiced by another relevant Participant's (the Responding Participant) failure to implement the commitments in the MOC, including any to which subparagraph 1.4 applies, the existence of a requirement or Host Economy Law and Regulation to which subparagraph 1.6 or 1.7 applies or the manner in which the Responding Participant is interpreting, applying or implementing this MOC; and

- d. the Initiating Participant has notified the Joint Committee of the situation.
- 8.6 Where the circumstance described in subparagraph 8.5 exists, the Initiating Participant may take any or all of the following actions, provided that it has given both the Responding Participant and the Joint Committee written notification of its intention to take the action at least seven days prior to taking the action:
- a. decline to accept applications for entry from some or all Passport Funds registered in the economy of the Responding Participant; and
 - b. issue stop orders, or take other actions that achieve the same result, against some or all Passport Funds registered in the economy of the Responding Participant which are offered in its economy, under subsection 10(3) of the Common Regulatory Arrangements (Annex 2).
- 8.7 The written notification of intention referred to in subparagraph 8.6 need only be given for the first time the Initiating Participant intends to take any action in relation to the difference that gave rise to the circumstance described in subparagraph 8.5.
- 8.8 Where an Initiating Participant has taken any action under subparagraph 8.6, the Responding Participant may take any or all of the following actions, provided it has given both the Initiating Participant and the Joint Committee written notification of its intention to take the action at least seven days prior to taking the action:
- a. decline to accept applications for entry from some or all Passport Funds registered in the economy of the Initiating Participant; and
 - b. issue stop orders or take other actions that achieve the same result against some or all Passport Funds registered in the economy of the Initiating Participant which are offered in its economy, under subsection 10(3) of the Common Regulatory Arrangements (Annex 2).
- 8.9 The written notification of intention referred to in subparagraph 8.8 need only be given the first time the Responding Participant intends to take any action in relation to the difference that gave rise to the circumstance described in subparagraph 8.6.
- 8.10 The notifications referred to in subparagraph 8.6 and subparagraph 8.8 will be published on the official Passport website.
- 8.11 Where subparagraph 8.6 or subparagraph 8.8 or both are invoked, the Initiating and Responding Participants will continue to perform the commitments under this MOC with respect to all other Participants.
- 8.12 Unless notifications are published under subparagraph 8.10 or actions are required by law to be disclosed, the existence of a difference and any related documentation will be kept confidential and will not be shared with third parties, other than Participants, without the prior written consent of the relevant

Participants referred to in subparagraph 8.2 if the difference does not relate to interpretation, or all other Participants if it relates to interpretation.

Paragraph 9: Amendments to the MOC

- 9.1 In recommending amendments under subparagraph 6.2(f), the Joint Committee will consider any known views of other economies in the region that have expressed a wish to become, at a later date, Subsequent Participants.
- 9.2 For the avoidance of doubt, any recommendations for amendment made by the Joint Committee under this MOC are non-binding. Participants may decline to accept a recommendation, in which case they will give notice in writing to all other Participants within any time frame set out in the Joint Committee's recommendation.
- 9.3 Where the Joint Committee makes a recommendation for amendment under this paragraph, each Participant will endeavour to implement the agreed recommendation by the time specified in the recommendation by the Joint Committee and will notify the Joint Committee when its implementation of the recommendation is completed.
- 9.4 If notice is given under subparagraph 9.2 that the Participant declines to accept a recommendation or implementation of a recommendation referred to in subparagraph 9.3 is not completed within a timeframe determined by the Joint Committee or the date agreed in writing by all Participants under subparagraph 9.5, the amendment which is the subject of the recommendation of the Joint Committee will not apply. The recommendation will be further considered by the Joint Committee at its next meeting.
- 9.5 Any amendments to this MOC will commence on the date specified in the agreed recommendation. The date may be varied by agreement in writing by all Participants. Before commencement, an updated MOC will be issued and published on the Passport website with the date of commencement of the updated MOC.

Paragraph 10: Eligibility to be a Participant

- 10.1 An agency of an economy will be eligible to be a Participant only if:
 - a. the regulator of collective investment schemes in the economy is a signatory to Appendix A of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information;
 - b. the jurisdiction is not listed on the Financial Action Task Force's list of high-risk and non-cooperative jurisdictions in relation to a matter that is relevant to the Passport;
 - c. the jurisdiction has been assessed by the International Monetary Fund or by the World Bank, in its last assessment as part of a Financial Sector Assessment Program, or by the IOSCO Assessment Committee under its

- country review program, as having fully or broadly implemented the relevant IOSCO Principles relating to enforcement, cooperation and collective investment schemes or if it was not accorded such a rating:
- i. this was for reasons irrelevant to the Passport; or
 - ii. it has, to the satisfaction of all Participants, implemented any recommendations of the relevant assessment by the International Monetary Fund, World Bank or the IOSCO Assessment Committee; or
 - iii. it has put, or will put, other arrangements in place (such as Passport Rules or other actions) which satisfy all other Participants;
- d. the regulatory framework of the economy will, on implementation of the Passport Arrangements, require an entity or specified persons to be:
- i. responsible for performing the independent oversight functions in the Passport Rules; and
 - ii. sufficiently independent considering any continuing or prior involvement in the management of the Passport Fund (including investment decisions) and any continuing or prior business or professional relationship with the Operator of the Passport Fund; and
- e. the regulatory framework of the economy is, in the opinion of each Participant, sufficiently equivalent to the regulatory framework of the economy of the Participant in terms of its regulatory outcomes for Regulated CIS.
- 10.2 The Original Participants have reasonably assessed one another against the eligibility criteria in subparagraph 10.1 and are satisfied that each meets the criteria.
- 10.3 If there is a change, or a Participant becomes aware that there is likely to be a change, that may reasonably be regarded as affecting a Participant's compliance with the eligibility criteria, the Participant will notify all Participants within 21 days from the later of the date on which:
- a. the Participant became aware of the change or likely change; or
 - b. if the change is confidential, the confidential change ceases to be confidential.

Paragraph 11: Procedure for Becoming a Subsequent Participant

- 11.1 One or more agencies of an economy that wish to make the commitments in this MOC (a Prospective Subsequent Participant) may apply to become a Subsequent Participant by writing to the Joint Committee in English setting out all information necessary for the Joint Committee to assess whether it meets the eligibility criteria set out in subparagraph 10.1 and the amendments to the tables or economy specific elements in this MOC including in Annexes 1, 3 and 4 that would be necessary for its participation in the Passport. Among other

- things, the application should explain how the Prospective Subsequent Participant will meet the eligibility criteria.
- 11.2 A Prospective Subsequent Participant who does not currently meet all eligibility criteria, should in its application to become a Subsequent Participant set out its intention to seek the legal authority or otherwise take action necessary to enable them to do so, and details of such actions including the extent of likelihood of implementation and the timeframe expected.
- 11.3 In considering the eligibility of a Prospective Subsequent Participant, the Joint Committee will be reasonable in assessing whether the Prospective Subsequent Participant meets the eligibility criteria set out in subparagraph 10.1.
- 11.4 The Joint Committee will assess, within six months from receipt of an application, or within such longer period as mutually determined by the Joint Committee and the Prospective Subsequent Participant, whether the Prospective Subsequent Participant meets the eligibility criteria in subparagraph 10.1.
- 11.5 If the Joint Committee assesses that a Prospective Subsequent Participant meets the eligibility criteria, the Joint Committee will make a recommendation that the Prospective Subsequent Participant is eligible to become a Subsequent Participant.
- 11.6 If the Joint Committee assesses that a Prospective Subsequent Participant does not meet the eligibility criteria, the Joint Committee will make a recommendation that the Prospective Subsequent Participant not become a Subsequent Participant. In such circumstances, where possible, the Joint Committee will provide the Prospective Subsequent Participant with suggestions on what might be needed to be addressed in any subsequent application.
- 11.7 Within 28 days of the Joint Committee making a recommendation under either subparagraph 11.5 or subparagraph 11.6, or within such longer period as mutually determined by the Joint Committee and the Prospective Subsequent Participant:
- a. Each Participant will inform the Chair of the Joint Committee in writing of whether it accepts the Joint Committee's recommendation, and will copy this communication to other Participants; and
 - b. If a Participant does not concur with any Joint Committee finding that the Prospective Subsequent Participant meets the eligibility criteria, that Participant will inform the Joint Committee in writing of this lack of concurrence and of the reasons for it. Any reasons submitted and the identity of the non-concurring Participant will be included in the notification to the Prospective Subsequent Participant in subparagraph 11.12.
- 11.8 If a Participant does not notify the Joint Committee within the required time set out in subparagraph 11.7, a statement to this effect will be included in the notification to the Prospective Subsequent Participant under subparagraph 11.12.
- 11.9 The Chair of the Joint Committee will write on behalf of all Participants to the Prospective Subsequent Participant within 28 days from the receipt of the last

notification by a Participant under subparagraph 11.7 to advise whether or not the Prospective Subsequent Participant has been accepted as a Subsequent Participant.

- 11.10 If the Joint Committee's advice to the Prospective Subsequent Participant is affirmative, the Prospective Subsequent Participant will be invited to sign an acceptance to the commitments in the MOC in accordance with the format set out in Annex 5 to the MOC or in other form agreed by the Joint Committee. The Prospective Subsequent Participant will become a Subsequent Participant on the date the acceptance is provided to the Chair of the Joint Committee, or at a later date as mutually determined by the Joint Committee and the Prospective Subsequent Participant.
- 11.11 If a Prospective Subsequent Participant believes implementation will not occur within the time period in subparagraph 5.5 or a time which it has previously advised the Joint Committee in writing as the expected time for implementation:
- a. the Prospective Subsequent Participant will provide in writing to the Joint Committee the reasons for the delay and confirm whether it will continue with the implementation and by when the Prospective Subsequent Participant will be able to complete implementation; and
 - b. the Participants may reassess a Prospective Subsequent Participant against the eligibility criteria in subparagraph 10.1, to be satisfied that the Prospective Subsequent Participant continues to meet the criteria.
- 11.12 If the Participants are not unanimous in their acceptance, or if not all Participants make notifications to the Joint Committee within the timeframe stipulated in subparagraph 11.7, the Chair of the Joint Committee will inform the Prospective Subsequent Participant that the application is not accepted at this time and the reason(s) for that occurring.
- 11.13 For the purposes of this paragraph, the Participants involved in assessing and deciding on the application of a Prospective Subsequent Participant will be limited to those which were Participants as at the date of the application by the Prospective Subsequent Participant.
- 11.14 On completion of implementation, the accepted Prospective Subsequent Participant will notify the Joint Committee in writing. Within 28 days of receiving notification, the Chair of the Joint Committee will publish an amended Annex 3 on the Passport Website incorporating amendments for the inclusion of the accepted Prospective Subsequent Participant as agreed by the Joint Committee and the Prospective Subsequent Participant.

Paragraph 12: Successors

- 12.1 A Participant may have a successor in respect of some or all of the commitments in the MOC, only if:

- a. the proposed successor provides written notification to all other Participants confirming its acceptance to the commitments in the MOC, including any outstanding commitments of the Participant (its predecessor), specified in the notification at least one month prior to it assuming those commitments of the Participant; and
 - b. the successor and any other Participants of the economy of the successor, reasonably believe that the successor and any continuing Participants of that economy would meet the eligibility criteria in subparagraph 10.1 on the succession; and
 - c. the successor provides details of the Contact Point for the purposes of paragraph 16.
- 12.2 If a Participant who receives a notice under subparagraph 12.1 considers that, following the proposed succession, the proposed successor, together with any other Participant in the proposed successor's economy, would not meet the eligibility requirements, the Participant may raise a difference under paragraph 8 on that basis.
- 12.3 The commitments of a Participant specified in the written notification to the other Participants under subparagraph 12.1 (save for section 8 of Annex 2 in relation to confidentiality of information provided to the Participant under this MOC on a confidential basis), will cease to apply to the Participant when assumed by the successor under the written notification to the other Participants under subparagraph 12.1.

Paragraph 13: Annexes

13. The Annexes to this MOC form an integral part of this MOC.

Paragraph 14: Commencement, Duration and Withdrawal

- 14.1 This MOC takes effect on 30 June 2016 and remains in effect unless terminated by the written consent of all Participants.
- 14.2 Any Participant may withdraw from this MOC by giving at least 28 days written notice to the Chair of the Joint Committee and to all other Participants or such earlier period agreed to by the Joint Committee.
- 14.3 Where a Participant withdraws from this MOC under subparagraph 14.2, it will ensure that existing members of Passport Funds, Passport Funds and Operators are not unduly affected by its withdrawal. With respect to Passport Funds that are registered or offered in the Participant's economy and their Operators, the commitments of all Participants under this MOC will continue to apply as though the Participant had not withdrawn from the MOC.

Paragraph 15: Status of the Memorandum of Cooperation

- 15.1 This MOC does not create any legally binding rights, obligations or commitments.

- 15.2 The Participants acknowledge that this MOC is subject to, and will not at any time, modify or supersede, any laws or regulations in force in the Participants' economies.
- 15.3 This MOC does not affect any arrangements under other instruments.

Paragraph 16: Contact points

- 16.1 Each Participant will, within 14 days of signing this MOC or becoming a Subsequent Participant, provide written notification to each other Participant of a Contact Point through which communications regarding this MOC are to be made.
- 16.2 To change its Contact Point, a Participant will notify all other Participants.

Signed by the Original Participants:

Signed by [insert name of agency] on behalf of [name of economy]

[name]

[position]

[insert date]

Annex 1:

Host Economy Laws and Regulations

1 Purpose

This Annex sets out the Participants' commitments in relation to the obligations that may be imposed in relation to a Passport Fund or its Operator in a Host Economy by the Host Economy Laws and Regulations that are administered by the Passport Regulator of the Host Economy.

2 Main areas in which Host Economy Laws and Regulations may apply

- (1) Each Participant may, in addition to the Passport Rules, choose to apply laws and regulations, which apply in relation to Regulated CIS, to Passport Funds in its economy as Host Economy. These laws and regulations may include requirements to meet rules of entities other than the Passport Regulator that regulates CISs, and are under the supervision of the Passport Regulator. These laws or regulations may apply to a Passport Fund or its Operator in the areas listed below:
- (a) Restrictions on the labelling of a Passport Fund as an exchange-traded fund, index fund, capital-guaranteed fund, money market fund, or feeder fund;
 - (b) Disclosure and annual and periodic reporting to members, former members and prospective members in the Host Economy including:
 - (i) point-of-sale disclosure relating to the product (for example, prospectuses and product highlights sheets) as well as any requirements to update or amend that disclosure or provide continuous disclosure (such as annual and semi-annual disclosure) and material event based disclosure (such as reporting on a significant change affecting a Passport Fund);
 - (ii) any requirements to respond to requests for information from members, former members or prospective members from the Host Economy (for example, to provide a facility to enable confirmation that an investment has been accepted);
 - (iii) disclosure relating to the Passport Fund, for example, disclosure on portfolio holdings and material events affecting the Passport Fund;
 - (iv) periodic reporting relating specifically to the members' interests and former members' interests in the Passport Fund including matters affecting the taxation position of members;
 - (v) any requirements to provide consolidations or copies of documents or translated copies of documents including constituent documents, financial statements or reports and registers of mem-

- bers (but not relating to the content or manner of keeping those documents unless otherwise provided in this Annex);
- (vi) the notification by the auditor of financial reports of the Passport Fund, or an agent for the auditor, of the auditor's appointment to the Passport Regulator; and
 - (vii) the language of any disclosure including any financial report.
- (c) Distribution and the provision of financial services in the Host Economy in relation to interests in the Passport Fund or the operation of the Passport Fund in the Host Economy including:
- (i) licensing requirements relating to distribution of financial products, provision of financial advice, custodial services in relation to financial products, dealing in financial products, marketing of or offering for sale or subscription of financial products and any associated obligations;
 - (ii) distribution agreements including the payment of commissions by a Passport Fund or its Operator to distributors;
 - (iii) listing or quotation on financial markets;
 - (iv) advertising of financial products;
 - (v) offering of financial products to investors; and
 - (vi) communication with members, former members or prospective members (including misleading and deceptive conduct in relation to such communication);
- (d) Member complaints including:
- (i) the manner in which complaints are received, processed and responded to by a Passport Fund or its Operator; and
 - (ii) any requirement for membership of an external dispute resolution scheme;
- (e) Anti-money laundering and counter-terrorism;
- (f) Appointing a local representative or agent in its economy, requiring the Passport Fund or its Operator to register as a foreign company, or both and requirements consequent on such appointment or registration; and
- (g) The exercise of any information gathering, surveillance, enforcement or administrative power relating to compliance with any of the matters above including by a Passport Fund, its Operator or auditor.
- (2) Notwithstanding subsection 2(1)(c) above but subject to any authorisation of a Passport Fund required as part of the authorisation process applied in accordance with Annex 2, an Operator of a Passport Fund, a proposed Operator of a Proposed Passport Fund, a Passport Fund, a proposed Passport Fund, or a person acting on its behalf shall not be required, under the laws and regulations administered by the Host Regulator, to be licensed in the Host Economy for:

- (a) the provision of advice in relation to the issue or offer of interests in a Passport Fund or proposed Passport Fund to or through a qualified distributor (as set out in the table below), where such conduct is undertaken for the purpose of subsequently distributing interests in the Passport Fund when it is authorised by the Host Regulator;
- (b) the issue, subscription or the offer of interests for issue or sale in a Passport Fund through a qualified distributor; or
- (c) the operation of the Passport Fund, except for services provided in the Host Economy as part of the operation of the Passport Fund that are:
- (i) provided to persons other than members of the Passport Fund or the Passport Fund; or
- (ii) related to assets in the Host Economy unless they are provided through a person in the Host Economy that holds any licence required to provide that service in the Host Economy; or
- (d) the redemption of interests in a Passport Fund through a qualified distributor.
- (3) For the purposes of subsection 2(2), a qualified distributor is an entity or person as set out in the following table for the relevant economy as a Host Economy.

**Host Economy of the
Passport Fund**

Qualified distributor

Australia	A financial services licensee authorised for the services provided, or the licensee's authorised representative.
Japan	Financial Instruments Business Operator Engaged in Type 1 Financial Instruments Business or Registered Financial Institution under the Financial Instruments and Exchange Act
Korea	An entity licensed under the Financial Investment Services and Capital Markets Act to engage in 'Investment brokerage business' and 'Investment trading business' of Collective Investment Securities to General Investors
New Zealand	A person registered as a provider of a relevant financial service under the Financial Service Providers (Registration and Disputes Resolution) Act 2008.
Singapore	Exempt persons listed in section 23 of the Financial Advisers Act read with regulation 27(e) of the Financial Advisers Regulations.
Thailand	Entities who have been granted licence type: <ul style="list-style-type: none"> • A (i.e. brokerage companies) • C* (i.e. mutual fund management, private fund management) and • D licence (i.e. commercial banks)

**Host Economy of the
Passport Fund****Qualified distributor**

*Entities obtained licence type C must have in place proper operational system and received approval from the SEC before being recognised as qualified distributor.

- (4) Host Economy Laws and Regulations may require a person referred to in sub-section 2(2) to give prior notification to a Passport Regulator.

3 Additional requirements may be imposed

- (1) No requirements may be imposed in a Host Economy on a Passport Fund or its Operator under the Host Economy Laws and Regulations including in relation to their dealings with members, former members or prospective members that are additional to those imposed on Regulated CIS that are not a Passport Fund and its Operator, unless the additional obligations:
- (a) are not unduly burdensome for the Passport Fund in comparison to Regulated CIS in its economy that is not a Passport Fund; and
 - (b) are reasonable to promote confidence in retail investment in Passport Funds in the Host Economy.
- (2) This Annex does not limit the application of the Host Economy Laws and Regulations to a Passport Fund or its Operator in a Host Economy in areas other than those set out in Section 2.
- (3) If any Host Economy Law and Regulations outside the areas set out in Section 2 applies or will apply to a Passport Fund or its Operator in a Host Economy, a Participant of the Host Economy must notify all other Participants in writing of the law or regulation and in the areas in which the law or regulation covers or will cover. The Joint Committee will publish this notification on the Passport website.

4 Other understanding

Each Participant will ensure that any fee or charge imposed by the Passport Regulator in its economy or other entities that regulate Passport Funds under the supervision of the Passport Regulator in relation to a Passport Fund or its Operator, does not exceed any fee or charge payable in relation to Regulated CIS in that economy or its Operator in like circumstances. If there is no corresponding fee or charge relating to Regulated CIS in that economy, any fee or charge should not exceed a reasonable estimate of the cost to the Participant of performing the relevant function in relation to the Passport Fund.

5 Guidance

Each Participant will ensure that guidance is prepared on the Host Economy Laws and Regulations that will apply to Passport Funds that offer interests in its economy. This guidance will include a comprehensive list of applicable

Host Economy Laws and Regulations. Such guidance, or a hyperlink to such guidance, will be published in English on the Passport website.

6 Recognition frameworks

This Annex does not prevent a Participant from introducing or maintaining a framework for the recognition of Passport Funds or their Operators, provided it:

- (a) is consistent with the Common Regulatory Arrangements in Annex 2; and
- (b) does not impose obligations on Passport Funds that are additional to the Home Economy Laws and Regulations, the Passport Rules, and the understanding relating to Host Economy Laws and Regulations set out in this Annex.

Annex 2: Common Regulatory Arrangements

Part 1 General

1 Purpose

This Annex contains the regulatory arrangements for Passport Funds that each Participant will apply. This Annex is not designed to be directly incorporated into the law of a Participant.

2 Interpretation

Unless otherwise specified:

- (a) all notifications required to be given by this Annex are to be in writing;
- (b) any document required to be given to a Passport Regulator by this Annex must be in or be translated into an official language of the relevant economy, if requested by the Passport Regulator; and
- (c) any public register required to be kept by this Annex must be available on the internet and free of charge.

Part 2 Application process

3 Registering a Regulated CIS as a Passport Fund

- (1) An Operator or a Regulated CIS may lodge an application to register a Regulated CIS or a sub fund of a Regulated CIS as a Passport Fund with the Home Regulator.
- (2) To be considered by the Home Regulator, the application must contain:
 - (a) the general information to be decided by the Participants (Part A);
 - (b) any specific information required by the Home Regulator (Part B); and
 - (c) any fee charged by the Home Regulator.
- (3) The Home Regulator may register a CIS as a Passport Fund only if the Home Regulator is of the opinion that:
 - (a) the CIS is a Regulated CIS or a sub fund of a Regulated CIS in the Home Economy;
 - (b) the Operator of the CIS is an *eligible entity*; and
 - (c) the CIS is likely to be operated in compliance with:
 - (i) the Home Economy Laws and Regulations; and

- (ii) the Passport Rules including subsection 34(3) of the Passport Rules when that subsection is to apply.
- (4) For subsection 3(3), the Operator of the CIS is an *eligible entity* only if at the time of application of each CIS, subject to any exemption or modification in accordance with the Passport Rules;
 - (a) the Operator and its related parties are responsible for the operation of financial asset CIS or have discretionary management powers over others' money with a total asset value of at least USD 500,000,000, excluding any assets directly or indirectly invested in other financial asset CIS, or through other discretionary management arrangements, operated by the Operator or its related parties so as to avoid double counting;
 - (b) it has officers with the relevant qualifications (see section 6 of the Passport Rules);
 - (c) it meets the financial resources test (see section 7 of the Passport Rules);
 - (d) it meets the organisational arrangements test (see section 8 of the Passport Rules);
 - (e) it meets the track record test (see section 9 of the Passport Rules);
 - (f) it meets the good standing test (see section 10 of the Passport Rules); and
 - (g) it has a principal place of business in the Home Economy and is regulated by the Home Regulator for the operation of a Regulated CIS that may be offered to the public generally in the Home Economy.
- (5) To calculate total asset value under subsection 3(4)(a):
 - (a) the same methodology will be used as required under the Passport Rules for valuing assets of a Passport Fund; and
 - (b) if the financial asset CIS is not denominated in USD, it will be calculated using the average of the rates of currency exchange against the USD on the first business day in the capital city of the Home Economy of the year in which an application for registration is made and the first business day in the capital city of the Home Economy in each of the preceding four years.
- (6) If the Home Regulator decides to register a Passport Fund under subsection 3(3), it will allocate the Passport Fund a unique registration code.
- (7) A Regulated CIS or sub fund of a Regulated CIS becomes a Passport Fund on receiving a unique registration code under subsection 3(6).

4 Applying for entry to a Host Economy

- (1) Before offering interests in a Host Economy as a Passport Fund, a Passport Fund must:

- (a) apply to the Host Regulator for entry in accordance with subsection 4(2); and
 - (b) complete the entry process that the Host Economy has implemented under subsection 4(3).
- (2) An application for entry to a Host Economy will contain:
 - (a) the Passport Fund's unique registration code;
 - (b) Part A of the Passport Fund's registration application;
 - (c) any document or information required by the Host Regulator, including in Part B of the Passport Fund's registration application, which is reasonably required under or is necessary to assess the Passport Fund's compliance with the Host Economy Laws and Regulations; and
 - (d) any fee charged consistently with section 4 of Annex 1.
- (3) There will be two entry processes a Participant can implement:
 - (a) the streamlined authorisation process described in section 5; or
 - (b) the notification process described in section 6.
- (4) Under either process described in subsection 4(3), the entry process is not completed if the application is refused.
- (5) An application for entry may only be refused, having afforded procedural fairness to the applicant in accordance with the Host Economy Laws and Regulations, if the Host Regulator is of the opinion that:
 - (a) the Passport Fund, or its Operator, does not comply with or is not likely to comply with:
 - (i) the Host Economy Laws and Regulations;
 - (ii) the Home Economy Laws and Regulations; or
 - (iii) the Passport Rules;
 - (b) it is not in the public interest of the Host Economy to authorise the Passport Fund for offer in the Host Economy or authorising the Passport Fund would breach sanctions applied against another economy by the Host Economy;
 - (c) an exemption from or modification to a Passport Rule has been given to the Passport Fund in accordance with Part 5 of this Annex and the Host Regulator has not consented and does not consent to the exemption or modification;
 - (d) the name of the Passport Fund to be used in the Host Economy is not available for use in the Host Economy because it is already in use or the use of the name is subject to restriction in the Host Economy that also applies to Regulated CIS in the Host Economy, unless the Passport Fund or its Operator notifies the Host Regulator and the Home Regulator in writing that the Passport Fund will adopt an available alternative name

- in the Host Economy because its name in the Host Economy is not available in the Home Economy; or
- (e) action is being taken under subparagraph 8.6 or 8.8 of the MOC.
- (6) Procedural fairness referred to in subsection 4(5) includes:
- (a) any rule of law that a decision maker not be biased; and
 - (b) offering a fair opportunity to the Operator to make written submissions in light of any relevant material on which the decision will be based; but
 - (c) is not required to include a right of review of the decision by a court or other person or authority.
- (7) If a Host Regulator considers that subsections 4(5)(a)(ii) or (iii), or subsection 10(4)(c)(i) may apply, the Host Regulator will request in writing the opinion of the Home Regulator on that particular non-compliance or likely non-compliance identifying the Host Regulator's basis for its concerns, and provide a reasonable time for reply by the Home Regulator before acting on the basis of that subsection.
- (8) The opinion of the Home Regulator will be used by a Host Regulator for the purpose of determining, under subsections 4(5)(a)(ii) or (iii) and subsection 10(4)(c)(i) whether the Passport Fund or its Operator has complied or is likely to comply with a Home Economy Law or Regulation or to a Passport Rule that refers to the opinion of the Home Regulator.
- (9) For the purposes of subsection 4(5)(b), the public interest may not include any benefit to the Host Economy that may arise from limiting competition to the Host Economy's fund management industry.

5 Streamlined entry process

- (1) A Passport Fund completes the streamlined authorisation process when the Host Regulator authorises the Passport Fund for offer in the Host Economy.
- (2) The Host Regulator will assess the application within 21 days from receipt of a complete application (assessment period).
- (3) For the purposes of subsection 5(2), an application is complete if the Host Regulator did not, within 21 days after the day the Passport Fund applies for entry into the Host Economy, notify the Passport Fund, or its Operator that the Host Regulator is of the opinion that the application does not include all the information required in the application in subsection 4(2).
- (4) The Host Regulator and either the Passport Fund or its Operator may consent in writing to extensions of the assessment period for additional periods of up to seven days each time. If both consent before the expiration of the assessment period, it will be extended taking into account any prior extensions.

6 Notification process

- (1) A Passport Fund completes the notification process when 21 days have passed since the Passport Fund made a complete application for entry into the Host Economy (exposure period) and the Host Regulator has not notified the Passport Fund that its application for entry is refused.
- (2) The Host Regulator and the Passport Fund, or its Operator may consent in writing to extensions of the exposure period for additional periods of up to seven days each time. If both consent before the expiration of the exposure period, it will be extended taking into account any prior extensions that have already been agreed upon.
- (3) For the purposes of subsection 6(1), an application is complete if the Host Regulator did not, within 21 days after the day the Passport Fund applies for entry into the Host Economy, notify the Passport Fund, or its Operator that the Host Regulator is of the opinion that it does not include all the information required in the application in subsection 4(2).

7 Register of Passport Funds

- (1) Each Passport Regulator will maintain a current public register of the Passport Funds and Deregistered Passport Funds for which it is the Home Regulator in English, which includes:
 - (a) Part A of a Passport Fund's registration application except the Passport Fund's constituent documents and any portion of Part A marked in the form published by Passport Regulators as confidential;
 - (b) a Passport Fund's unique registration code;
 - (c) a list of host economies in which a Passport Fund has completed the entry process notified to the Home Regulator;
 - (d) any updated information in relation to information provided to the Home Regulator by the Operator of matters on the public register;
 - (e) any notification to the Home Regulator under subsection 12(5) of the Passport Rules;
 - (f) without limiting subsection 13(4), details of any exemption or modification of the Passport Rules applying specifically to the Passport Fund including any exemption or modification in relation to the Passport Fund applying to the Operator or another person who is responsible for compliance in relation to the Passport Fund, any variation or revocation that has occurred to an exemption or modification and, if any, a statement of which other Passport Regulators have given written consent to the exemption, modification or variation;
 - (g) any financial statements and reports of auditors of financial statements of the Passport Fund provided to the Home Regulator; and

- (h) notification to the Home Regulator by the Passport Fund or its Operator that it will use a different name in a Host Economy because its name in the Home Economy is not available for use in the Host Economy.
- (2) The registers referred to in subsection 7(1) may be consolidated.

8 Confidentiality

- (1) Subject to Annex 4 and subsections 8(2) and 8(3) below (including after ceasing to be a Passport Regulator), each Passport Regulator will take all reasonable measures to keep confidential, information provided to it by a Passport Fund or Operator of a Passport Fund on a confidential basis.
- (2) Subject to subsection 8(3) below, a Passport Regulator may disclose information provided to it by a Passport Fund or Operator of a Passport Fund on a confidential basis if the law in the economy of the Passport Regulator requires or permits disclosure.
- (3) Where the Passport Regulator is the Host Regulator and to the extent disclosure is permitted but not required under Host Economy Laws and Regulations, it may be disclosed only when reasonable having regard to:
 - (a) the purposes of the MOC; and
 - (b) the interests of a Passport Fund and Operator of a Passport Fund to which the information relates.

Part 3

Supervisory and investigative powers

9 Supervisory and investigative powers

- (1) A Passport Regulator will have power as Home Regulator or Host Regulator to use in relation to a Passport Fund any supervisory, investigative and information gathering powers that it has in relation to Regulated CIS and Operators in its economy and, any such powers, in relation to auditors of Regulated CIS in its economy, to assist other Passport Regulators in performing their functions under this MOC.

Part 4

Administrative powers

10 Stop orders, suspension or revocation of authorisation, or other actions

Orders issued by the Home Regulator

- (1) In the circumstances set out in subsection 10(2), a Passport Regulator will have the power to notify a Passport Fund or its Operator for which it is the Home Regulator that the Passport Fund or its Operator must not or must no longer offer interests in the Passport Fund to persons in the Home Economy, or take

other action to achieve that outcome, and where the power is exercised, the Passport Regulator will take any action that it reasonably can and, which is appropriate, to preclude any offers of interests in the Passport Fund in each relevant Host Economy.

- (2) The power in subsection 10(1) will be able to be exercised if the Passport Regulator is of the opinion that the Passport Fund is not complying, or is not likely to comply, with:
- (a) the Home Economy Laws and Regulations; or
 - (b) the Passport Rules.

Orders issued by the Host Regulator

- (3) Subject to subsection 10(4), a Passport Regulator may be given the power to notify a Passport Fund or its Operator for which it is the Host Regulator that it must not or must no longer offer interests in the Passport Fund in its economy and ensure that the notification is complied with in the Host Economy, or the power to take other action to achieve that outcome.
- (4) The powers allowed under subsection 10(3) may only be exercised if:
- (a) the circumstances in Paragraph 8.6 or 8.8 of the MOC apply;
 - (b) the Passport Regulator is of the opinion that the Passport Fund or its Operator is not complying or is not likely to comply with any Host Economy Laws and Regulations that apply to the Passport Fund or, in relation to the Passport Fund, its Operator, or
 - (c) both of the following apply:
 - (i) the Passport Regulator is of the opinion that the Passport Fund or in relation to the Passport Fund, its Operator is not complying or is not likely to comply with the Home Economy Laws and Regulations that apply to the Passport Fund or its Operator, or the Passport Rules, and the Passport Regulator has requested in writing the opinion of the relevant Home Regulator on that particular non-compliance or likely non-compliance under subsection 4(7) and uses any opinion provided by the Home Regulator in accordance with subsection 4(8); and
 - (ii) the Passport Regulator is satisfied that the stop order or other action is necessary considering the potential impact of the non-compliance or potential non-compliance on the members or prospective members of the Passport Fund in its economy and any action taken or that may be taken by the Passport Fund's Home Regulator.

Application of orders

- (5) The orders in subsections 10(1) and 10(3) will be able to be expressed to apply either for a particular or indefinite period.

- (6) The period referred to in subsection 10(5) may be extended by notice to the Passport Fund or its Operator if a condition for issuing the order in subsection 10(2) or 10(4) continues to be met.
- (7) Before issuing an order under subsection 10(1) or 10(3) or extending an order under subsection 10(6), the Passport Regulator must afford the Passport Fund, or if applicable its Operator, procedural fairness to the extent that this is practicable in the context of protecting members and prospective members and in accordance with the Laws and Regulations in its economy.
- (8) Procedural fairness referred to in subsection 10(7) includes:
 - (a) any rule of law that a decision maker not be biased; and
 - (b) offering a fair opportunity to the Operator to make written submissions in light of any relevant material on which the decision will be based; but
 - (c) is not required to include a right of review of the decision by a court or other person or authority.
- (9) A Passport Fund or its Operator may make submissions in writing that the conditions for issuing the order or the taking of other action, in subsections 10(2) or 10(4) no longer apply. A Passport Regulator will consider taking action under subsection 10(10) on the basis the submissions are made within a reasonable time.
- (10) A Passport Regulator will revoke, or otherwise cease or negate the effect of an order or action under subsections 10(1) or 10(3) by notice to the Passport Fund or its Operator within a reasonable time from the receipt of a submission under subsection 10(9) if the Passport Fund or its Operator has established to the Passport Regulator's satisfaction that conditions for issuing the order or the taking of other action, in subsections 10(2) or 10(4) no longer apply, and provided that such an order or other action may be revoked or ceased under the relevant Laws and Regulations and any fee required is paid. Where such an order or other action may not be revoked or ceased under the relevant Laws and Regulations, the Passport Regulator will register the Passport Fund in its Home Economy or admit the Passport Fund for entry into the Host Economy, within a reasonable time from the receipt of a submission under subsection 10(9) if it has received a new application is made in accordance with Part 2 of this Annex.

11 Other action

- (1) A Passport Regulator will be able to use any administrative powers that it has in relation to Regulated CIS and their Operators when dealing with Passport Funds and their Operators for which it is the Home Regulator.
- (2) If a Passport Fund, Operator of a Passport Fund or person who has obligations under the Passport Rules is subject to a requirement to do something or not do something under the laws and regulations of the Host Economy that would result in that person contravening the law of the Home Economy, the Passport

Regulator for the Host Economy and the Passport Regulator for the Home Economy will:

- (a) take reasonable steps in relation to any application for exemption to the relevant Passport Regulators for exemptions required to avoid the inconsistency; or
 - (b) consult and take action they can reasonably take to ensure that the person is not subject to inconsistent obligations.
- (3) If an inconsistency remains after the procedures outlined in subsection 11(2) have been completed, then the Passport Regulators will act reasonably in light of the inconsistency.
- (4) The powers referred to in subsection 11(1) could, but are not required to, include the power to:
 - (a) direct or order that a Regulated CIS or Operator do something or refrain from doing something;
 - (b) prohibit, temporarily or permanently, the Operator or its directors or officers from operating or being involved in the operation of a Regulated CIS including by revoking their licence or authorisation;
 - (c) remove or replace the Operator;
 - (d) warn or caution a Regulated CIS or Operator;
 - (e) accept an enforceable undertaking from the Regulated CIS or Operator;
- (5) In addition to the grounds provided for in the Laws and Regulations of its economy for Regulated CIS that are not Passport Funds, a Passport Regulator will be able to exercise the powers referred to in subsection 11(1) in relation to Passport Funds for which it is the Home Regulator if:
 - (a) the Passport Regulator is of the opinion that the Passport Fund has not complied with or is not likely to comply with the Home Economy Laws and Regulations or the Passport Rules; or
 - (b) both of the following apply:
 - (i) a Host Regulator of the Passport Fund is of the opinion that the Passport Fund has not complied with or is not likely to comply with the Host Economy Laws and Regulations; and
 - (ii) the Passport Regulator is satisfied that it should use its administrative powers given the potential impact of the non-compliance or potential non-compliance on the members or prospective members of the Passport Fund.

12 Action by regulators

- (1) In addition to the power to take administrative action in relation to a Passport Fund registered in its economy under section 10, each Passport Regulator will have the power to investigate and either criminally prosecute or take civil pen-

alty proceedings, or refer to a relevant authority in its economy for investigation and to either criminally prosecute or to take civil penalty proceedings in respect of a breach of the Home Economy Laws and Regulations or Passport Rules by a Passport Fund registered in its economy, the Operator or an officer of the Operator where it is the Home Regulator.

- (2) The power of a regulator in subsection 12(1) may be restricted to situations in which there has been a breach that is intentional or dishonest or may extend further for example to include breaches that are serious or material breaches or that involve gross negligence.
- (3) A Passport Regulator may, but is not required to, have the power to issue a fine, order compensation or administrative surcharge or to request a court to issue a fine or order compensation or administrative surcharge in the circumstances referred to in subsection 12(1).
- (4) This section does not limit powers a Passport Regulator may have in relation to a Passport Fund or its Operator for which it is the Home or Host Regulator including the power to freeze the assets of a Passport Fund or its Operator, or cause such assets to be frozen.

Part 5

Exemptions and modifications

13 Exemptions and modifications

- (1) A Passport Regulator may exercise any powers it has to:
 - (a) exempt a Passport Fund, Operator of a Passport Fund or another person who is responsible for compliance in relation to a Passport Fund for which it is the Home Regulator or a class of such persons from the Home Economy Laws and Regulations or modify those Laws and Regulations with respect to that person or class of persons; or
 - (b) exempt a Passport Fund, Operator of a Passport Fund or another person who is responsible for compliance in relation to a Passport Fund for which it is the Host Regulator or a class of such persons from the Host Economy Laws and Regulations that apply to the Passport Fund in its economy or subject to Annex 1, modify those Laws and Regulations with respect to that person or class of persons.
- (2) A Home Regulator may exempt a Passport Fund, Operator of a Passport Fund or another person responsible for compliance with a Passport Rule in relation to a Passport Fund from a Passport Rule or modify a Passport Rule with respect to such Passport Fund, Operator of a Passport Fund or other person responsible for compliance with a Passport Rule in relation to a Passport Fund or vary or revoke an exemption or modification if all Host Regulators of the Passport Fund consent in writing to the exemption or modification or to the variation or revocation of the exemption or modification of the Passport Rule.

- (3) Where an exemption or modification to a Passport Rule is granted, varied or revoked, the Home Regulator must notify any affected Passport Fund or its Operator.
- (4) Each Passport Regulator will maintain or ensure that from the time a Passport Fund is registered as a Passport Fund, there are publicly available records of any exemption or modification granted under this Part, which includes the details of the exemption or modification, any variation or revocation that has occurred to it and a statement of the written consent of any other Passport Regulator to the exemption, modification or variation, and will notify the Joint Committee of the grant, variation or revocation.
- (5) The publicly available records referred to in subsection 13(4) may be consolidated.
- (6) In this section, reference to a Passport Fund includes a Regulated CIS or sub fund applying for registration as a Passport Fund in accordance with section 3.
- (7) In this section, reference to an Operator of a Passport Fund includes a reference to a person who operates a Regulated CIS or sub fund applying for registration as a Passport Fund in accordance with section 3.

Part 6

Deregistration and winding up

14 Deregistration as a Passport Fund

- (1) A Passport Fund may be deregistered as a Passport Fund by the Home Regulator:
 - (a) if the Home Regulator is of the opinion that the Passport Fund is not complying or is not likely to comply with the applicable Home Economy Laws and Regulations or the Passport Rules; or
 - (b) at the request of the Passport Fund if it no longer has any members who became members:
 - (i) after the fund was registered as a Passport Fund; or
 - (ii) on the expectation that the fund would become a Passport Fund.
- (2) The reference to members in subsection 14(1) excludes:
 - (i) the current Operator or any previous Operator; and
 - (ii) related parties of the current Operator or any previous Operator.
- (3) Deregistration as a Passport Fund does not affect the status of the Passport Fund as a Regulated CIS or sub fund.
- (4) A Home Regulator that deregisters a Passport Fund as a Passport Fund will notify in writing each relevant Host Regulator promptly after deregistration.

15 Deregistration as a Regulated CIS

- (1) The deregistration of a Regulated CIS or a sub fund as a Regulated CIS will be in accordance with Home Economy Laws and Regulations applying to Regulated CIS.
- (2) A Home Regulator will not deregister, on the application of a Regulated CIS or Operator or otherwise, a Regulated CIS that was, or had a sub fund which was, a Passport Fund if it is of the opinion that to do so would not be in the interests of members of the sort described in subsection 14(1)(b). In reaching this opinion, a Home Regulator will take into account the implications of deregistration on the Regulated CIS' continued requirement to comply with the Home Economy Laws and Regulations applying to Regulated CIS and the Passport Rules and any other relevant matters.
- (3) If a Passport Fund, or Regulated CIS in which a sub fund is a Passport Fund, is deregistered as a Regulated CIS the affected Passport Fund will immediately cease to be a Passport Fund.
- (4) A Home Regulator that deregisters a Passport Fund as a Regulated CIS will notify in writing each other Passport Regulator promptly after deregistration.

16 Winding up

- (1) Winding up of a Passport Fund will be in accordance with the Passport Fund's Home Economy Laws and Regulations, subject to subsection 16(2).
- (2) Each Participant will ensure that a member of a Passport Fund will not be unfairly disadvantaged under the Home Economy Laws and Regulations relating to the winding up of a Passport Fund by reason of the member not being present, or resident or naturalised in the Home Economy or if the member is a body corporate, the body corporate not being established in the home economy.

Annex 3: Passport Rules

Part 1 Introduction

1 Citation

The rules set out in this Schedule may be cited as the rules, the Passport Rules, or the Passport Rules (Annex 3 to MOC on the Asia Region Funds Passport).

2 Application of Rules in the Economy of a Participant

These rules apply in an economy from the time when they become enforceable in that economy.

3 Interpretation—the Dictionary

- (1) The Dictionary at the end of these rules defines certain words and expressions, and includes references to words and expressions that are defined elsewhere in these rules.
- (2) A definition in the Dictionary applies to each use of the word or expression in these rules unless the contrary intention appears.
- (3) A number of a unit of time refers to calendar days, to be counted so as to exclude the day from which the start of the count is stated to occur and include the day on which the end of the count is stated to occur.

Note: For example, if a time limit is stated to be 7 days and the start of the count is on Monday, 10 May, the time limit is up at the end of Monday, 17 May.

Part 2 Constituent documents

4 Constituent document for a Regulated CIS

- (1) The Operator of a Passport Fund must ensure that the Passport Fund has a compliant constituent document at all times.
- (2) For these rules, the constituent document of a Regulated CIS is the document shown in the following table:

Home Economy of the Passport Fund	Constituent document
Australia	The constitution of the registered scheme required by the <i>Corporations Act 2001</i> (Cth).
Japan	The basic terms conditions of the investment trust (if it is an investment trust) or the certificate of incorporation (if it is an investment company) under the Investment Trusts and Investment Corporations Act.

Home Economy of the Passport Fund	Constituent document
Korea	Constitutional documents of Collective Investment Vehicles as required by the Financial Investment Services and Capital Markets Act of Korea
New Zealand	The governing document for the managed investment scheme required by the Financial Markets Conduct Act 2013 of New Zealand.
Singapore	The trust deed or any other document of incorporation required in respect of the collective investment scheme to be authorised under the Securities and Futures Act of Singapore.
Thailand	In case of a scheme established as a mutual fund, the commitment between the unit holders and the securities company required under the Securities and Exchange Act of Thailand. In a case of a scheme established as a trust, the trust deed as required by the Trust for Transactions in Capital Market Act.

- (3) For this section, the constituent document is *compliant* if the constituent document includes provisions that:
- (a) have the effect that:
 - (i) each member of the Passport Fund is entitled to seek remedy against the Passport Fund, if it is a legal entity, and its Operator, in the member's choice of the Home Economy or a Host Economy of the Passport Fund, including through compensation, in relation to loss suffered by the member due to a breach of the Home Economy Laws and Regulations or breach of the Passport Rules by the Passport Fund, or its Operator unless:
 - (A) the member and the Passport Fund or Operator have agreed in writing that the member is not entitled to seek remedy in that place in relation to the particular proceedings; and
 - (B) the agreement is effected after the conduct that is or is to be subject to the proceedings has first occurred; or
 - (ii) a specified person, on behalf of any member of a Passport Fund when it is in the best interests of members, is entitled to seek remedy against the Passport Fund, if it is a legal entity, or its Operator in the specified person's choice of the Home Economy or a Host Economy of the Passport Fund, including through compensation, in relation to loss suffered by the member due to a breach of the Home Economy Laws and Regulations or breach of the Passport Rules by the Passport Fund or its Operator unless:
 - (A) the specified person and the Passport Fund or Operator have agreed in writing that the member is not entitled to

- seek remedy in that place in relation to the particular proceedings; and
- (B) the agreement is effected after the conduct that is or is to be subject to the proceedings has first occurred;
- (b) have the effect that the Passport Fund, if it is a legal entity, and its Operator agree that where a member of the Passport Fund has commenced proceedings against the Passport Fund or its Operator in a court in the member's economy, that court will be a convenient forum to hear the proceedings, unless:
- (i) a similar action has been commenced against the Passport Fund or its Operator in another economy and it would be reasonable for the member to participate in that action; or
- (ii) the member and the Passport Fund or Operator have agreed in writing that the court will not be a convenient forum in relation to that particular proceeding and the agreement is effected after the conduct that is or is to be subject to the proceedings has first occurred; and
- (c) have the effect that the Passport Fund, if it is a legal entity, and its Operator agree that the convenient forum for the Passport Fund or its Operator bringing an action against a member will be the member's economy unless the member and the Passport Fund or Operator have agreed in writing that the court will not be a convenient forum in relation to the particular proceedings and the agreement is effected after the conduct that is or is to be subject to the proceedings has first occurred.
- (4) For this section, the member's economy in relation to the Passport Fund is:
- (a) the economy in which the member was located when they applied to be accepted as a member of a Passport Fund if that economy is a Participant's economy; or
- (b) in all other cases, the Home Economy.

Part 3

The Operator of a Passport Fund

5 Responsibility of Operator for compliance

Unless these rules provide otherwise, the Operator is responsible for compliance with a provision that is expressed to impose obligations on a Passport Fund.

6 Qualifications of officers

- (1) The Operator of a Passport Fund must ensure that at all times it has officers with the relevant qualifications.

- (2) For this section, the Operator has *officers with the relevant qualifications* only if it has the following officers or employees with the qualifications or experience indicated:
- (a) a chief executive officer (or the equivalent) with at least 10 years' relevant experience within the previous 15 years as an officer or employee in an IOSCO financial services related business, with five of the 10 years in a managerial or supervisory role;
 - (b) at least two executive directors (or the equivalent), which may include the chief executive officer, each with at least five years' relevant experience within the previous seven years as an officer or employee in a managerial or supervisory role in an IOSCO financial services related business; and
 - (c) one or more officers or employees, who are when considered together responsible, whether jointly with others or not, for making or supervising all the discretionary investment decisions of the Passport Fund, each with either:
 - (i) a bachelor degree, or equivalent, or higher qualification in a relevant discipline, together with at least three years' experience within the previous five years as an officer or employee with responsibility for making or supervising discretionary investment decisions in an IOSCO financial services related business; or
 - (ii) at least five years' experience within the previous seven years as an officer or employee with responsibility for making or supervising discretionary investment decisions in an IOSCO financial services related business.
- (3) For this section and section 9, a reference to supervising discretionary investment decisions includes monitoring and evaluating on behalf of an entity the performance of another entity that makes discretionary investment decisions as a delegate of the first entity, and being significantly involved in decisions about whether the second entity should remain as a delegate in light of its performance.

7 Financial resources of the Operator

- (1) The Operator of a Passport Fund must at all times meet the financial resources test.
- (2) For this section, the Operator meets the financial resources test if its equity (converted at the relevant exchange rate, where not denominated in USD) is greater than USD 1,000,000 plus additional capital amount.
- (3) In calculating the Operator's equity:
- (a) a guarantee or undertaking held by the Operator may be counted as if it were an asset if, and only if, it:
 - (i) is unconditional;

- (ii) does not give rise to any liability for the Operator;
 - (iii) is payable on demand; and
 - (iv) is provided by a body that is subject to prudential supervision by a financial supervisory authority in the place of its incorporation which in the written opinion of the Home Regulator, is generally largely compliant with the guidelines of the Basel Committee on Banking Supervision; and
- (b) the maximum amount of cover from time to time provided under an approved personal indemnity insurance policy may be counted but only up to 80% of the additional capital amount.
- (4) For this section:

additional capital amount means $0.001 \times$ (total assets under management in USD converted at the relevant exchange rate minus USD 500,000,000) and is capped at USD 20,000,000 converted at the relevant exchange rate where the Operator's equity is not denominated in USD.

approved PI insurance policy means a professional indemnity insurance policy that has been approved for this section by the Home Regulator.

equity of the Operator means the net equity being assets less liabilities after taking into account losses and includes any net assets reflected in adjustments for valuation or translation, as it would appear on a balance sheet prepared in accordance with the relevant accounting standards.

relevant accounting standards, for a Home Economy listed in the following table, has the meaning given in the following table:

Home Economy of the Passport Fund	Relevant accounting standards
Australia	The accounting standards made by the Australian Accounting Standards Board under section 334 of the <i>Corporations Act 2001</i> (Cth).
Japan	The accounting standards under the Financial Instruments and Exchange Act and related Cabinet Office Ordinance.
Korea	General accounting principles of financial investment under Article 32 of The Financial Investment Services and Capital Market Act of Korea, and standards for accounting under Article 13 of the Act on External Audit of Stock Companies.
New Zealand	The accounting standards issued by the External Reporting Board under Part 2 of the Financial Reporting Act 2013.
Singapore	The accounting standards made by the Accounting Standards Council under the Accounting Standards Act (Cap. 2B) and the Recommended Accounting Practices (or its equivalent) issued by the Council of the Institute of Singapore Chartered Accountants (or its successors).

**Home Economy of the
Passport Fund**

Thailand

Relevant accounting standards

The Accounting Guideline for Investment Management business issued by Association of Investment Management Companies and approved by the SEC Thailand.

relevant exchange rate means the average of the rates of currency exchange on the first business day in the capital city of the Home Economy of the year in which calculation is made, and the first business day in the capital city of the Home Economy in each of the preceding four years.

total assets under management, in relation to an Operator, means the sum of the value of:

- (a) the assets of each CIS for the operations of which it is responsible; and
- (b) any other assets for which it performs discretionary investment management on behalf of another person, whether or not on a collective basis;

as those assets would appear on a balance sheet prepared in accordance with the relevant accounting standards for the entity if they were assets of the Operator.

8 Organisational arrangements of the Operator

- (1) The Operator of a Passport Fund must at all times meet the organisational arrangements test.
- (2) For this section, the Operator of the Passport Fund meets the organisational arrangements test if it has:
 - (a) a well-documented organisational structure that clearly assigns responsibilities and specifies reporting lines;
 - (b) adequate internal control mechanisms including procedures and systems that ensure that:
 - (i) assets are managed in accordance with the current constituent documents and disclosure documents of the Passport Fund as well as the Home Economy Laws and Regulations and these rules;
 - (ii) records are kept to sufficiently explain the transactions of the Passport Fund, and all transactions in the interests of the Passport Fund; and
 - (iii) registers of members are duly kept except for any part of the register of members that is kept by a person identified in registers of the Operator as the person keeping a register in respect of particular interests identified in registers of the Operator where the keeping of that part of the register by the person is regulated or acceptable under the Home Economy Laws and Regulations and, for interests held by a member who acquired them in a Host Econ-

omy, the person keeping the register is regulated by or acceptable to the Passport Regulator of the Host Economy;

- (c) an adequate risk monitoring and management process including a risk management framework for the Passport Fund assets, based on the size, complexity and risk of the assets;
- (d) a compliance framework that ensures ongoing compliance with relevant laws and regulations; and
- (e) adequate procedures to manage conflicts of interest.

9 Track record of Operator

- (1) The Operator of a Passport Fund must at all times meet the track record test.

Track record—experience of the Operator

- (2) For this section, the Operator meets the track record test if the Home Regulator is satisfied that:

- (a) for the past five years the Operator has been responsible for the operation of financial asset CIS that have been regulated in a way that enables interests in the CIS to be offered to the general public in:
 - (i) a Participant; or
 - (ii) an economy that has a regulatory framework applying to financial asset CIS that is broadly similar in effectiveness to that of the Home Economy in the opinion of the Home Regulator, having regard where relevant to the IOSCO principles and IOSCO assessment methodology relating to CIS; and
- (b) if the Operator has undergone a relevant change of control in the past five years:
 - (i) there has been substantial continuity among the officers and employees of the Operator responsible for making or supervising discretionary investment decisions for financial asset CIS; and
 - (ii) the Operator has made decisions in relation to the operation of financial asset CIS without substantial influence by any person who controls the Operator unless in exceptional circumstances.

Track record—experience of a related party of the Operator

- (3) For this section, an Operator is also taken to meet the track record test if the Home Regulator is satisfied that:

- (a) the Operator is able to rely on the experience and expertise of a related party in the operation of financial asset CIS having regard to the degree of commonality between the Operator and the related party concerning:
 - (i) decision-making processes;
 - (ii) business processes; and
 - (iii) staff; and

- (b) the related party meets the track record test in accordance with subsection 9(2).
- (4) For this section, an Operator undergoes a relevant change of control if during the past five years:
 - (a) another entity has commenced to control the Operator; or
 - (b) another entity has ceased to control the Operator.

10 Good standing of Operator

- (1) The Operator of a Passport Fund must at all times meet the good standing test.
- (2) For this section, the Operator meets the good standing test if:
 - (a) the Home Regulator has not notified the Operator that it is of the opinion that there is reason to believe that there is a material risk that a relevant party does not have the integrity or competence required to operate or be involved in the operation of a Passport Fund honestly and competently, and to act in good faith in the interests of the members of the Passport Fund; or
 - (b) where a notification has been issued to the Operator, the Home Regulator has revoked the notification or, if more than one, all of them in writing.
- (3) For this section, *relevant party* means any of the following:
 - (a) the Operator;
 - (b) an officer of the Operator;
 - (c) an entity that controls the Operator; and
 - (d) to the extent that the Home Regulator considers relevant, an officer of an entity that controls the Operator.
- (4) In assessing the matters mentioned in subsection 10(2), the Home Regulator may take into account any relevant information including:
 - (a) any relevant finding about a relevant party made by a regulatory body or dispute resolution service;
 - (b) any relevant enforcement action taken by a regulatory body against a relevant party;
 - (c) any relevant judgement or decision in relation to a relevant party given by a court, tribunal, arbitrator, dispute resolution service or equivalent person or body;
 - (d) any relevant settlement reached by a relevant party with a regulatory body, or in relation to an action or proposed action before a court, tribunal, arbitrator, dispute resolution service or equivalent person or body; and

- (e) any relevant enforceable undertaking or equivalent given by a relevant party to a regulatory body, court, tribunal, arbitrator, dispute resolution service or equivalent person or body.

11 Delegation of functions by Operator

- (1) Subject to any limitations in the Home Economy Laws and Regulations, a function of the Operator of a Passport Fund may be delegated by the Operator or further sub-delegated only if the Operator:
 - (a) remains responsible to members of the Passport Fund for the delegated function;
 - (b) has in place suitable processes to ensure that the delegate or sub-delegate employs an appropriate standard of care when performing the delegated function;
 - (c) has in place suitable processes to:
 - (i) ensure that the activities of the delegate and any sub-delegate in relation to the delegated function are duly monitored and controlled; and
 - (ii) evaluate the performance of the delegate and any sub-delegate in relation to the delegated function;
 - (d) has in place suitable processes to ensure that the Home Regulator is at all times able to access information about the delegated or sub-delegated functions from the Operator, directly from a delegate or any person that was a delegate for a reasonable time after they have ceased to be a delegate; and
 - (e) has in place suitable processes to ensure that the performance of the function by the delegate and any sub-delegate can be effectively monitored and reviewed to ensure compliance with these rules as if done by the Operator.

Limitation on delegation of investment management function

- (2) The Operator must ensure that the function of making investment decisions (the *investment management function*) for the Passport Fund may only be delegated or sub-delegated to an entity (a *qualifying delegate*) that is licensed, authorised or otherwise regulated to carry out or make investment decisions by a regulator that is a signatory to Appendix A of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information.
- (3) The investment management business of every qualifying delegate must be regulated in the economy of a Participant or in an economy that has a regulatory framework applying to investment management functions for financial asset CIS that may be offered to the general public in that economy that is broadly similar in effectiveness to that of the Home Economy in the opinion of the Home Regulator. This subsection does not apply to one or more delegations

which together do not account for more than 20% of the value of the Passport Fund's assets.

- (4) If the Operator of a Passport Fund delegates the investment management function, the Operator must have in place suitable processes to ensure that at all times each of the qualifying delegates has one or more officers or employees who when considered together are responsible, whether jointly with others or not, in making or supervising all the investment decisions of the Passport Fund, each with at least either:
 - (a) a bachelor degree, or equivalent, or higher qualification in a relevant discipline, together with at least three years' experience within the previous five years as an officer or employee of an IOSCO financial services related business with responsibility or joint responsibility, for making or supervising discretionary investment decisions; or
 - (b) at least five years' experience within the previous seven years as an officer or employee of an IOSCO financial services related business with responsibility or joint responsibility, for making or supervising discretionary investment decisions.
- (5) For this section, a reference to supervising discretionary investment decisions includes monitoring and evaluating on behalf of an entity, the performance of another entity that makes discretionary investment decisions as a delegate of the first entity, and being significantly involved in decisions about whether the second entity should remain as a delegate in light of its performance.

Part 4

Accountability

12 Reporting of breaches and changes

Reporting breaches and changes to Home Regulator

- (1) The Operator of a Passport Fund must notify the Home Regulator in writing within seven days after it becomes aware that, without there being a breach of the Passport Rules, a limit set in the following rules has been exceeded for a period of seven days without being remedied:
 - (a) the rules in Division 6.3 (portfolio allocation); or
 - (b) the rules in Division 6.4 (limits on exposure); and
- (2) The Operator of a Passport Fund must notify the Home Regulator in writing as soon as practicable and in any event within seven days after it becomes aware that a breach of these rules has occurred, or will occur in relation to the Passport Fund, and that breach:
 - (a) might reasonably be regarded as significant including having regard to any other breaches; or

- (b) when considered on its own or together with any related breach, adversely affects the value of the assets of the Passport Funds by more than 1%.

Reporting breaches to Host Regulator

- (3) Subsection 12(4) applies to the Operator of a Passport Fund where the Host Economy Laws and Regulations of a particular Host Economy (the *relevant Host Economy*) apply to the Passport Fund.
- (4) The Operator of a Passport Fund must notify the Home Regulator and the relevant Host Regulator as soon as practicable and in any event within seven days after it becomes aware of a breach of the Host Economy Laws and Regulations of the relevant Host Economy in relation to the Passport Fund, and that breach:
- (a) might reasonably be regarded as significant including having regard to any other breaches; or
- (b) when considered on its own or together with any related breach, adversely affects as much of the value of the assets of the Passport Funds as is attributable to members of the Passport Fund in the relevant Host Economy by more than 1%.

Reporting other changes

- (5) If an event listed in the table below occurs, the event must be notified to the Home Regulator and each Host Regulator by the entity listed in the table as soon as practicable and in any case not later than seven days after it became aware of the event having occurred.
- (6) In the table, an associate means a related party except for a person or entity under subsections 57(g) to 57(i) in relation to the definition for a related party.

Event	Entity who must notify of the event
Interests in a Passport Fund are permitted to be lawfully offered as a Passport Fund in a Host Economy.	The Operator of the Passport Fund
The Operator of a Passport Fund has first disclosed to any person, other than an associate of the Passport Fund or its Operator, or by way of a lawful disclosure on a confidential basis in relation to incomplete negotiations relating to a transaction, that it intends to propose a change in the Operator.	The Operator of the Passport Fund
The Operator of a Passport Fund is changed in accordance with the Home Economy Laws and Regulations.	The Operator of the Passport Fund
The Operator of a Passport Fund has first disclosed to any person, other than an associate of the Passport Fund or its Operator, or by way of a lawful disclosure on a confidential basis in relation to incomplete	The Operator of the Passport Fund

Event	Entity who must notify of the event
negotiations relating to a transaction, that it intends to propose the Passport Fund be wound up.	
A Passport Fund commences being wound up in accordance with the Home Economy Laws and Regulations.	The Operator of the Passport Fund
A Passport Fund completes being wound up in accordance with the Home Economy Laws and Regulations.	The Operator of the Passport Fund
The Operator of a Passport Fund has first disclosed to any person, other than an associate of the Passport Fund or its Operator, that it intends to apply for the deregistration of the Passport Fund as a Passport Fund, or as a Regulated CIS.	The Operator of the Passport Fund
The Operator of a Passport Fund applies for the deregistration of the Passport Fund as a Passport Fund, or as a Regulated CIS if the intention to apply has not been notified.	The Operator of the Passport Fund
A Regulated CIS or a sub fund of a Regulated CIS is deregistered as a Passport Fund.	The Operator of the Regulated CIS
A Regulated CIS that has, in accordance with Part 8 of these rules, been deregistered as a Passport Fund and will no longer be required to be operated in compliance with these rules.	The Operator of the Regulated CIS
Redemption of interests in a Passport Fund in accordance with these rules is suspended or ceases to be suspended.	The Operator of the Passport Fund

13 Custody of Passport Fund assets

Legal responsibility for holding Passport Fund assets

- (1) For this section, the responsible holding party of the assets of a Passport Fund under the laws and regulations of the economy of a Participant is the entity who is responsible for the safekeeping of the assets of the Passport Fund, as shown in the following table:

Home Economy of the Passport Fund	Responsible holding party
Australia	The Operator of the Passport Fund.
Japan	The trust company or a financial institution engaged in trust business designated by the Investment Trusts and Investment Corporations Act.
Korea	The trust business entity for the collective investment scheme under the Financial Investment Services and Capital Markets Act of Korea.

**Home Economy of the
Passport Fund**

New Zealand

Responsible holding party

The supervisor of the registered managed investment scheme who is licensed under the Financial Markets Supervisors Act 2011.

Singapore

An approved trustee under the Securities and Futures Act of Singapore of an authorised scheme.

Thailand

In case of a scheme established as a mutual fund, the mutual fund supervisor appointed for the mutual fund under the Securities and Exchange Act of Thailand. In case of a scheme established as a trust, the entity approved by the Securities and Exchange Commission under the Trust for Transactions in Capital Market to perform the custodial function of assets of the authorised scheme.

- (2) The function of holding Passport Fund assets may, subject to any limitation in the Home Economy Laws and Regulations, be delegated, or sub-delegated, only if the responsible holding party remains legally responsible for the safe-keeping of Passport Fund's assets as if it held the assets itself.

Entities that hold Passport Fund assets

- (3) For this section, a custodian for a Passport Fund is an entity that holds assets of the Passport Fund.
- (4) The responsible holding party of a Passport Fund must ensure that:
- (a) each custodian meets one of the following criteria:
 - (i) the custodian is authorised in its place of business to carry on a business of holding assets on behalf of others; or
 - (ii) the asset holding activity of the custodian is subject to regulatory requirements in the Home Economy or the custodian's place of business; and
 - (b) the Operator is not the custodian.

Note: The effect of subsection 13(4)(b) in Australia is that, subject to subsection 13(10), the Operator must delegate the function of holding the assets of a Passport Fund to another entity.

Assets must be accounted for

- (5) A custodian of the Passport Fund must ensure that the assets of the Passport Fund which it holds are properly accounted for as the Passport Fund's assets and identifiable as such in the custodian's records.

Assets must be held separately or in a permitted omnibus account

- (6) The custodian of a Passport Fund must hold the Passport Fund assets:
- (a) separately from assets that are not assets of the Passport Fund; or
 - (b) in an omnibus account with the following characteristics:

- (i) it is managed in accordance with good custodial practice where the account is held and in accordance with reasonable standards;
 - (ii) it is reconciled each business day in the place where the account is held;
 - (iii) it does not also hold any assets of the custodian other than contingent amounts; and
 - (iv) the custodian recovers any contingent amount as soon as practicable.
- (7) For subsection 13(6), an amount paid into an omnibus account by the custodian is a *contingent* amount if:
 - (a) it is paid solely to prevent the continuation of a shortfall that occurred because of circumstances that were beyond the custodian's control or that was not intended by the custodian to arise; and
 - (b) the custodian will be entitled to recover the amount when the circumstances are rectified or addressed.
- (8) The custodian of a Passport Fund must ensure that there is separation between the functions of asset holding and investment such that activities that relate to asset holding are being performed by persons who are separate from, and able to act independently from, investment officers, including by ensuring that:
 - (a) no investment officer of the custodian is involved in or responsible for ensuring the holding of the assets of the Passport Fund; and
 - (b) no investment officer of the custodian directly supervises any other officer of the custodian who is involved in or responsible for ensuring the holding of the assets of the Passport Fund; and
 - (c) each officer of the custodian that is involved in or responsible for ensuring the holding the assets of the Passport Fund is independent from each investment officer of the custodian.
- (9) For subsection 13(8), an *investment officer* of a custodian is an officer or employee of the custodian whose responsibilities include investment decisions or trading decisions, whether in relation to the Passport Fund or otherwise, other than decisions that relate to:
 - (a) deposit accounts; or
 - (b) currency transactions that are conducted for the purposes of facilitating purchase and sale of assets of the Passport Fund, or other payment obligations of the Passport Fund, or the redemption, issue, subscriptions, cancellation or repurchase of interests in the Passport Fund.
- (10) Subsection 13(4)(b) does not apply to a custodian in relation to the following assets held on trust for the members of the Passport Fund, or, if the Passport Fund is body corporate, as an asset of the Passport Fund, if the Operator is subject to regulatory requirements in the Home Economy in relation to holding:

- (a) deposits with an entity which is subject to prudential regulation by a financial supervisory authority in an economy where the entity was incorporated that is in the written opinion of the Home Regulator generally largely compliant with the guidelines of the Basel Committee on Banking Supervision if:
 - (i) the entity holds other assets of the Passport Fund under subsection 13(4); or;
 - (ii) the Operator reasonably considers that holding the deposit taking facility by another person would raise unreasonable operational difficulties or be impracticable;
- (b) assets held for operational purposes that it would not be reasonably practicable for an entity other than the Operator to hold; or
- (c) a derivative and any contractual right for the payment of any balance owing to the Operator in relation to dealings in derivatives including margining those dealings through transactions in a deposit taking facility.

14 Independent oversight entity of a Passport Fund

- (1) For these rules, the *independent oversight entity* of a Passport Fund in a Participant is the body shown in the following table:

Home Economy of the Passport Fund	Independent oversight entity
Australia	Each of the external directors of the Operator or, if there is a compliance committee of the registered scheme under the Corporations Act, the compliance committee.
Japan	Each external member of board of company auditors, audit committee, or audit and supervisory committee designated by the Companies Act, or the trust company or a financial institution engaged in trust business designated by the Investment Trusts and Investment Corporations Act.
Korea	The trust business entity for the collective investment scheme under the Financial Investment Business and Capital Markets Act of Korea
New Zealand	The supervisor of the registered managed investment scheme who is licensed under the Financial Markets Supervisors Act 2011.
Singapore	An approved trustee under the Securities and Futures Act of Singapore of an authorised scheme.
Thailand	In case of a scheme established as a mutual fund, the mutual fund supervisor appointed for the mutual fund under the Securities and Exchange Act of Thailand. In case of a scheme established as a trust, the entity approved by the Securities and Exchange Commission

**Home Economy of the
Passport Fund****Independent oversight entity**

under the Trust for Transactions in Capital Market Act to perform such oversight function over the trust.

- (2) The independent oversight entity must:
- (a) monitor the Operator for compliance with the constituent documents of the Passport Fund, the Home Economy Laws and Regulations relating to the operation of the Passport Fund and Divisions 6.2 to 6.5 of the Passport Rules; and
 - (b) if, in the reasonable opinion of the independent oversight entity, the Operator is required by section 12 of the Passport Rules to report non-compliance with the constituent documents of the Passport Fund or the Home Economy Laws and Regulations relating to the operation of the Passport Fund including the Passport Rules to a Passport Regulator but fails to do so, notify its opinion including particulars of the non-compliance to the Passport Regulator as soon as practicable but no later than seven days after forming the opinion.
- (3) The independent oversight entity must exercise reasonable care and diligence in performing the functions listed in subsection 14(2) considering the interests of the members of the Passport Fund.
- (4) The Operator must provide any assistance required by the independent oversight entity to perform its functions.

15 Annual implementation review

Annual implementation reviews must be conducted

- (1) The Operator of a Passport Fund must ensure that an implementation review of the operation of the Passport Fund that complies with this section is conducted in relation to each period for which it prepares, or is required to prepare, a financial statement for the Passport Fund under the Passport Rules (the *review period*).
- (2) If the Home Regulator has notified the Operator of a Passport Fund and each Host Regulator that this section does not apply, because the Home Regulator is satisfied non-application is appropriate having regard to actions taken or to be taken by the Home Regulator to check compliance during the review period or on an ongoing basis, and, if applicable, reports to be provided by the independent oversight entity during the review period or on an ongoing basis, then this section does not apply to the Passport Fund or its Operator for the review period or until revoked as the case may be, as set out in the notice.

Requirements for the implementation reviewer

- (3) Subject to subsection 15(4), the implementation review for a Passport Fund registered in the economy of a Participant listed in the following table must be conducted by a reviewer that is an entity of the kind shown in the table:

Home Economy of the Passport Fund	Entity that can conduct implementation reviews (the implementation reviewer)
Australia	A registered company auditor, audit firm or authorised audit company under the Corporations Act.
Japan	An external member of board of company auditors, audit committee, or audit and supervisory committee designated by the Companies Act, the trust company or a financial institution engaged in trust business designated by the Investment Trusts and Investment Corporations Act or a Certified Public Accountant or an Auditing Corporation designated by the Certified Public Accountants Act.
Korea	A trustee under the Financial Investment Services and Capital Markets Act of Korea.
New Zealand	A licensed auditor under the Auditor Regulation Act 2011 or the supervisor of the registered managed investment scheme who is licensed under the Financial Markets Supervisors Act 2011.
Singapore	A public accountant who is registered or deemed to be registered under the Accountants Act of Singapore or a trustee approved under the Securities and Futures Act.
Thailand	An auditor as defined by the Securities and Exchange Commission or the mutual fund supervisor appointed for the mutual fund under the Securities and Exchange Act of Thailand.

(4) The implementation review must not be conducted by:

- (a) the Operator; or
- (b) a related party of the Operator.

Assistance must be given to the reviewer

(5) Each of the following entities must do all things reasonably necessary to assist the conduct of the implementation review:

- (a) the Operator;
- (b) any delegate of the Operator;
- (c) any custodian of the Passport Fund;
- (d) the responsible holding party; and
- (e) the independent oversight entity.

Requirements applying where the review must be conducted

(6) The Operator of a Passport Fund must ensure that an implementation reviewer is engaged for the Passport Fund for the purposes of this section at all times.

(7) The implementation review must be conducted independently in accordance with standards acceptable to the Home Regulator.

Report of the implementation review

- (8) The report of the implementation review must be addressed to the Operator, the independent oversight entity (where applicable), the Home Regulator and each Host Regulator.
- (9) The report must state:
- (a) whether any matter has come to the attention of the implementation reviewer that causes the reviewer to believe that, or to believe that it is likely that, the Passport Fund was not operated in accordance with these rules during the review period in all respects that may be material to the persons to whom it is addressed;
 - (b) if so, particulars of each matter including details explaining the reasons why the reviewer has reason to believe that the Passport Fund was not operated in accordance with, or was likely not to have been operated in accordance with, these rules during that period; and
 - (c) information on the basis for the statements made in (a) and (b) above.
- (10) The Operator of a Passport Fund must, within three months after the end of the review period, provide a copy of the report to:
- (a) the Home Regulator;
 - (b) each Host Regulator for an economy where the Passport Fund had, during the review period, members who became members of the Passport Fund following an application made in that economy
 - (c) each Host Regulator of each economy in which interests in the Passport Fund were offered during the period from the beginning of the review period to the time the reports are provided to the Home Regulator; and
 - (d) the independent oversight entity for the Passport Fund.

16 Financial reporting and auditing

- (1) The Operator of a Passport Fund must, in accordance with this section:
- (a) prepare reports containing financial statements for the Passport Fund; and
 - (b) ensure that those financial statements are audited, and that an audit report is prepared; and
 - (c) lodge those reports with the Home Regulator and each Host Regulator.

Note: In addition to complying with this section, the Operator of a Passport Fund may be required by the Host Economy Laws and Regulations to prepare financial reports and ensure they are audited and an audit report is prepared in accordance with the Host Economy Laws and Regulations, and lodge those reports with the Host Regulator.

Financial statements of a Passport Fund

- (2) The Operator must, at least annually, in accordance with the prevailing practice for the preparation of audited financial statements for Regulated CIS in the Home Economy, prepare a report containing the financial statements for the Passport Fund for the period covered by the report (the *review period*).
- (3) The financial statements of a Passport Fund must be prepared in accordance with the financial reporting requirements applying to the Passport Fund.
- (4) For this section, the *financial reporting requirements* applying to a Passport Fund registered in a Participant are those shown in the following table:

**Home Economy of the
Passport Fund****Financial reporting requirements**

Australia	Requirements imposed under Chapter 2M of the <i>Corporations Act 2001</i> and the accounting standards made by the Australian Accounting Standards Board under that Act.
Japan	The relevant accounting standards under the Financial Instruments and Exchange Act and related Cabinet Office Ordinance.
Korea	The accounting standards under Article 240 of the Financial Investment Services and Capital Markets Act of Korea.
New Zealand	Requirements imposed under Part 7 of the Financial Markets Conduct Act 2013.
Singapore	The relevant accounting standards made by the Accounting Standards Council under the Accounting Standards Act (Cap. 2B) and the Recommended Accounting Practices (or its equivalent) issued by the Council of the Institute of Singapore Chartered Accountants (or its successors).
Thailand	The Accounting Guidelines for Investment Management business issued by Association of Investment Management Companies and approved by the SEC Thailand.

Audit of financial statements

- (5) The Operator of a Passport Fund must ensure that the financial statements of the Passport Fund are audited by a person (the *auditor*) who is permitted to audit the financial statements of a Regulated CIS in the Home Economy of the Passport Fund to satisfy the financial reporting requirements.
- (6) The Operator must:
- (a) ensure that the auditor prepares a report on the financial statements of the Passport Fund that states that the audit and the report were completed in accordance with the audit requirements applying to audits of financial statements of the Passport Fund in the following table; and

- (b) provide all reasonable assistance to the auditor in relation to the audit.

**Home Economy of the
Passport Fund**

	Home audit requirements
Australia	Requirements imposed under Chapter 2M of the <i>Corporations Act 2001</i> (Cth) and the auditing standards made by the Auditing and Assurance Standards Board under that Act.
Japan	The relevant home audit requirements under the Financial Instruments and Exchange Act and related Cabinet Office Ordinance.
Korea	The accounting standards under Article 240 of the Financial Investment Services and Capital Markets Act of Korea. The guidelines for accounting audit of collective investment property under Article 265(2) of Enforcement Decree of the Financial Investment Services and Capital Markets Act of Korea.
New Zealand	Requirements imposed under Part 7 of the Financial Markets Conduct Act 2013.
Singapore	Singapore Standards on Auditing.
Thailand	Thai Standards on Auditing.

Lodgement of reports

- (7) The Operator of a Passport Fund must, within three months after the end of the review period, lodge a copy of both:
- (a) the report containing those financial statements; and
 - (b) the audit report relating to those financial statements,
- with:
- (a) the Home Regulator;
 - (b) each Host Regulator for an economy where the Passport Fund had, during the review period, members who became members of the Passport Fund following an application made in the Host Regulator's economy; and
 - (c) each Host Regulator of each economy in which interests in the Passport Fund were offered during the period from the beginning of the review period to the time the reports are provided to the Home Regulator.

Part 5

Offers in Home Economy

17 Requirement of offer in Home Economy

The Operator of a Passport Fund must not offer interests in the Passport Fund in a Host Economy as a Passport Fund unless:

- (a) all of the following are satisfied when the interests are offered:
 - (i) there is an ongoing offer of interests in the Passport Fund in the Home Economy;
 - (ii) the offer of interest in the Passport Fund is subject to the Home Economy Laws and Regulations that would normally apply to an offer of interests in a Regulated CIS to the general public; and
 - (iii) the offer is bona fide and does not exclude general subscription by retail investors resident in the Home Economy; or
- (b) all of the following are satisfied when the interests are offered:
 - (i) there is an ongoing offer of interests in a sub fund which forms part of the same Regulated CIS as the Passport Fund;
 - (ii) the offer of interest in that sub fund is subject to the Home Economy Laws and Regulations that would normally apply to an offer of interests in a Regulated CIS to the general public; and
 - (iii) the offer is bona fide and does not exclude general subscription by retail investors resident in the Home Economy; or
- (c) both of the following were satisfied at the time the Operator seeks to be permitted to offer interests in the Passport Fund in the Participant as a Passport Fund;
 - (i) at least 30% of the value of interests in CISs for the operation of which the Operator is responsible are held by members of those CISs who have provided an address in the Home Economy, unless the Operator is aware the person is not a resident of the Home Economy; and
 - (ii) the Operator has provided a disclosure document to the Home Regulator that meets the requirements for a disclosure document for an offer of interests in the Passport Fund that would normally apply to an offer of interests in a Regulated CIS that is a Passport Fund to the general public in the Home Economy.

Part 6

Passport Fund Investments

Division 6.1 Operational goods and services

18 Part does not apply to operational goods and services

Goods and services acquired by a Passport Fund for operational reasons, rather than for investment purposes, are not considered assets of the Passport Fund for this Part. Nothing in this Part prevents a Passport Fund from acquiring and holding goods or services for operational reasons.

Division 6.2 Permitted investments

19 Permitted assets and arrangements

- (1) A Passport Fund must not acquire assets, or enter into a derivative or a securities lending arrangement, other than in accordance with this Part.
- (2) Unless otherwise provided for in this Part, a Passport Fund may only acquire assets, in addition to entering into derivatives or securities lending arrangements, of the following kinds:
 - (a) currency;
 - (b) deposits;
 - (c) depository receipts over gold;
 - (d) transferable securities; and
 - (e) money market instruments.

20 Jurisdiction requirement for assets

A Passport Fund may hold an asset listed in section 19(2) only if it is issued in an IOSCO jurisdiction.

21 Requirements for deposits

- (1) A Passport Fund may make a deposit only with a deposit-taking institution that is regulated by a financial supervisory authority in its place of incorporation which is in the written opinion of the Home Regulator is generally largely compliant with the guidelines of the Basel Committee on Banking Supervision.
- (2) A Passport Fund may make a deposit only if:
 - (a) the amount deposited can be withdrawn under the terms of the deposit on no more than 31 days' notice; and
 - (b) it is not subject to loss of interest or to penalty if the amount is withdrawn more than 12 months after it was deposited.

22 Meaning of depository receipts over gold

For these rules, a *depository receipt over gold* means an enforceable and documented obligation from an entity that is authorised in its principal place of business to carry on banking business (the issuer), to make available a specified amount of gold at the direction of the holder of the depository receipt over gold (the holder). Under a depository receipt over gold, where the issuer has an obligation enforceable by the holder that the issuer will at all time until performance hold sufficient gold:

- (a) of a specified amount that is allocated to the holder and that will be made available at the holder's direction; or

- (b) which is sufficient in amount and available to enable performance of the obligation to the holder and any other obligations of the issuer in relation to gold held by the issuer.

23 Requirements for transferable securities

- (1) For these rules, each of the following is a *transferable security* only if title to it can be transferred from one party to another or redeemed from the issuer:
 - (a) a share or stock in a body corporate;
 - (b) a bond or other form of debt security (other than a money market instrument);
 - (c) an interest in a CIS;
 - (d) any interest in an asset covered by subsections 23(1)(a), 23(1)(b) or 23(1)(c); and
 - (e) a right to be issued an asset covered by subsections 23(1)(a), 23(1)(b), 23(1)(c) or 23(1)(d) on payment of a specified amount for that asset that is granted by the issuer of that asset.
- (2) A Passport Fund must not acquire a transferable security if liability could arise from holding it under the terms of the security, whether on the basis that the security is partly paid or otherwise, other than in the case of:
 - (a) a partly-paid share or stock in a body corporate or interest in a CIS that is quoted on a financial market and in relation to which no holders have an ongoing right to redeem their membership for payment of an amount reflecting the value of their share, stock or interest; or
 - (b) a share or stock in a body corporate or interest in a CIS which is intended to be quoted on a financial market within seven days of acquisition and in relation to which no holders have an ongoing right to redeem their membership for payment of an amount reflecting the value of their share, stock or interest.
- (3) A Passport Fund must not acquire a transferrable security under subsection 23(2) unless:
 - (a) the Passport Fund holds assets that the Operator of the Passport Fund reasonably believes will be available and able to be converted into sufficient assets to meet the liability; and
 - (b) in the case of a partly-paid share or stock in a body corporate or interest in a CIS that is quoted on a financial market, the Operator must reasonably believe that the share or stock in a body corporate or interest in a CIS can be reliably valued and while held will be able to be closed out or sold for that value on any business day in the place in which the security is acquired by the Passport Fund.

24 Requirements for money market instruments

A Passport Fund must not acquire a money market instrument unless the Operator reasonably believes the following conditions are satisfied:

- (a) the instrument:
 - (i) has maturity at issuance or a residual maturity of not more than 397 days; or
 - (ii) may be reasonably expected to undergo regular yield adjustments that are in line with money market conditions at least once every 397 days; and
- (b) on any business day in the place in which it is acquired by the Passport Fund, the instrument:
 - (i) can be reliably valued; and
 - (ii) can be closed out or sold for that value.

25 Requirements for derivatives

- (1) A Passport Fund may enter into a derivative only if:
 - (a) the underlying asset or index from which the value of the derivative is determined is one or more of the following:
 - (i) an asset that the Passport Fund may hold under subsection 19(1);
 - (ii) a rate of interest;
 - (iii) a rate of inflation that is calculated, endorsed or determined by a government or government agency; or
 - (iv) an eligible index;
 - (b) the fair value of the derivative in the economy in which it is acquired by the Passport Fund can readily be determined, in accordance with Division 7.2; and
 - (c) other than in exceptional circumstances, the derivative can be closed out or sold for that value, in that economy, on any business day in the place of the relevant office of the counterparty or if the derivative is traded on a financial market, when the financial market is open for trading of derivatives.

Meaning of 'derivative'

- (2) For these rules, a *derivative* is an arrangement between an entity and another party (the *counterparty* for the derivative):
 - (a) where the arrangement is not:
 - (i) currency;
 - (ii) a deposit;
 - (iii) a loan of moneys or securities;

- (iv) a transferable security;
- (v) a money market instrument; or
- (vi) a depository receipt over gold; and
- (b) under the arrangement:
 - (i) one party must, or may be required to, provide consideration of a particular kind to the other on a future day;
 - (ii) the consideration or, if arrangements of that kind are commonly sold or closed out before performance, the value of the arrangement on sale or close out, is ultimately determined by or modified by reference (wholly or in part) to a variable;
 - (iii) no substantial part of the consideration provided by either party under the contract is the provision of services;
 - (iv) the consideration is not the provision of goods that the fund is to use for operational purposes; and
 - (v) no party will be under an obligation to deliver an asset that is not a permitted asset under subsection 19(2).

26 Requirements for embedded derivatives

- (1) A Passport Fund may acquire a transferable security or money market instrument that embeds a derivative only if the embedded derivative satisfies:
- (a) section 25; and
 - (b) section 27 where the counterparty risk of the embedded derivative is or may be transferred to the Passport Fund;

as if the embedded derivative were a derivative and the Passport Fund were a direct party to that derivative.

Meaning of 'embeds a derivative' and 'embedded derivative'

- (2) For these rules, a transferable security or money market instrument in question *embeds a derivative*:
- (a) if it includes a component (the *embedded derivative*) that:
 - (i) results in some or all of the cash flows that would otherwise be payable under the transferable security or money market instrument which functions as the host contract to be modified by reference (wholly or in part) to a variable other than, for shares or stock of a body corporate, the discretion of the body corporate as to payment of dividends or repayment of capital or amounts payable on its winding up;
 - (ii) has benefits and risks that are not closely related to economic characteristics of the transferable security or money market instrument which functions as the host contract;

- (iii) has a significant impact on the risks in holding, and the price of, the transferable security or money market instrument in question; and
 - (iv) is not transferable independently of the transferable security or money market instrument or is not treated by the Passport Fund as a separate asset; or
- (b) if it would be a derivative but for being a transferable security or a money market instrument, and the terms were designed to meet the specific needs of a Passport Fund.

27 Counterparties to derivatives

- (1) A Passport Fund must not enter into a derivative that is to be cleared through a central clearing counterparty unless it is an assessed central clearing counterparty.
- (2) A Passport Fund must not enter into a derivative that is not cleared through a central clearing counterparty unless:
- (a) the counterparty to the derivative:
 - (i) is subject to prudential supervision broadly under the guidelines of the Basel Committee on Banking Supervision by a financial supervisory authority in a principal place of business of the counterparty; or
 - (ii) is both:
 - (A) regulated by a regulatory authority that is a member or associate member of IOSCO; and
 - (B) subject to obligations in relation to holding financial resources and having adequate arrangements to manage risk; and
 - (b) where the counterparty to the derivative is a related party to the Operator and there are adequate arrangements in place to manage conflicts of interest.
- (3) For these rules, a central clearing counterparty to a derivative is an *assessed central clearing counterparty* if:
- (a) it is regulated as a central clearing counterparty in an economy that is:
 - (i) the economy of a Participant; or
 - (ii) a member of the Organisation for Economic Cooperation or Development; or
 - (b) all of the following conditions are satisfied:
 - (i) it is regulated as a central clearing counterparty in an IOSCO jurisdiction;

- (ii) the Operator of the Passport Fund believes on reasonable grounds, having regard to independent sources of information, that there is very low risk of the central clearing counterparty defaulting in any of its obligations over the subsequent five year period; and
- (iii) the Operator of the Passport Fund has recorded in writing its reasons for holding that belief.

28 Counterparties and collateral for securities lending arrangements

- (1) For these rules, a *securities lending arrangement* is an arrangement under which an asset of the Passport Fund is transferred to another party and there is an obligation on that party to transfer that asset, or an equivalent asset, back to the Passport Fund.
- (2) A Passport Fund may enter into a securities lending arrangement only if:
 - (a) the counterparty to the transaction:
 - (i) is subject to prudential supervision broadly by a financial supervisory authority under the guidelines of the Basel Committee on Banking Supervision in an economy where the counterparty has a principal place of business; or
 - (ii) is both:
 - (A) regulated by a regulatory authority that is a member or associate member of IOSCO; and
 - (B) subject to obligations relating to holding financial resources and having adequate arrangements to manage risk; and
 - (b) there is an agreement between the Passport Fund and the counterparty to the transaction that provides that:
 - (i) the counterparty will provide to the Passport Fund collateral by way of a transfer of asset to the Passport Fund free of any encumbrance, that exceeds the value of the asset transferred by the Passport Fund under the agreement; and
 - (ii) if the current value on any business day of the collateral provided to meet the requirement under subsection 28(2)(b)(i) where all the collateral was tendered in cash does not exceed the fair value of the asset transferred by the Passport Fund under the agreement, or if the collateral tendered included money market instruments, is less than 103% of the fair value of the asset on that business day, the counterparty must provide additional collateral to the Passport Fund:
 - (A) no later than the close of business on the next business day (shortfall payment day) in the place of the relevant office of the counterparty for the shortfall amount below 100%; and

- (B) if the collateral includes money market instruments, no later than the close of business on the business day in the place of the relevant office of the counterparty after the shortfall payment day for the excess 3%.
 - (c) where the counterparty to the transaction is a related party to the Operator, there are adequate arrangements in place to manage potential conflicts of interest; and
 - (d) the Operator has assessed the risk of loss from the counterparty not meeting its obligations to the Passport Fund under the arrangement or arrangements with the counterparty that include the arrangement, having regard to the counterparty, the collateral, the terms of the arrangement and any other relevant matter, is very low and recorded this assessment in writing.
- (3) Any collateral relied on by the Passport Fund to satisfy subsection 28(2) must be:
 - (a) cash; or
 - (b) money market instruments:
 - (i) that do not embed derivatives;
 - (ii) that have been assessed by the Operator of the Passport Fund as having acceptable risk; and
 - (iii) whose fair value exceeds 103% of the amount of cash collateral that would otherwise be required to satisfy subsection 28(2).
- (4) The Passport Fund must not sell, reinvest, or encumber securities lending collateral other than as permitted by this section or following default in compliance by the counterparty to the securities lending arrangement.
- (5) The Passport Fund may reinvest securities lending collateral that is cash if:
 - (a) the reinvestment is in money market instruments that have been assessed by the Operator of the Passport Fund as having acceptable risk; and
 - (b) the value of the assets that the Passport Fund will receive from the reinvestment excluding cash exceeds 103% of the fair value of the securities transferred under the securities lending arrangement less any cash collateral that will be held.
- (6) Collateral accepted in relation to a derivative or securities lending arrangement is to be treated as assets acquired by the Passport Fund for the requirements under Division 6.3 whether the collateral is provided by way of transfer.

Division 6.3 Restrictions on portfolio allocation

29 Exceeding limits in this Part

- (1) A Passport Fund must not acquire an asset or enter into a derivative or securities lending arrangement if it would result in a limit in this Part being exceeded or exceeded to a greater extent.
- (2) A Passport Fund that exceeds a limit in this Part must cease to exceed the limit as soon as practicable but no later than three months from the date the limit was exceeded.
- (3) The period in subsection 29(2) may be extended for a period or further period of no more than one month by notice in writing to the Operator by the independent oversight entity if the Operator satisfies the independent oversight entity that it is in the best interests of the members of the Passport Fund for extension.
- (4) A Passport Fund does not breach a rule in this Part if it exceeds a limit otherwise than by the acquisition of an asset or the entry into a derivative or securities lending arrangement and it complies with this section.

Note: See also the reporting requirements under section 12.

30 Single entity limit

- (1) The value of a holding for the purpose of this section and sections 31 and 33 is the higher of:
 - (a) the amount after considering any reduction in risk due to offsetting exposures; or
 - (b) the value disregarding the offsetting effects of derivatives.
- (2) Subject to subsection 30(3) and section 33, no more than 5% of the value of the assets of a Passport Fund may be held in assets or arrangements that:
 - (a) relate to the same entity, that is not an entity that:
 - (i) is an assessed central clearing party; or
 - (ii) is subject to prudential supervision by a financial supervisory authority in its place of incorporation which is in the written opinion of the Home Regulator to be generally compliant with the guidelines of the Basel Committee on Banking Supervision in an economy where the counterparty has a principal place of business and in the reasonable opinion of the Operator is of low risk; and
 - (b) are of any one or more of the following types:
 - (i) transferable securities other than:
 - (A) interests in financial asset regulated CISs; and
 - (B) risk-assessed government securities;

- (ii) money market instruments other than risk-assessed government securities;
 - (iii) derivatives;
 - (iv) securities lending arrangements.
- (3) Subject to section 33, the single entity limit set out in subsection 30(2) may be raised to 10% in relation to assets or arrangements that:
 - (a) have been assessed by the Operator as having an acceptable risk;
 - (b) having considered a written opinion of a credit rating agency that is regulated in providing credit ratings in an IOSCO jurisdiction and any other information of which it is aware under its risk assessment and risk management procedures, the Operator has no reason to doubt have an acceptable risk; or
 - (c) excluding assets and arrangements referred to in subsection 30(3)(a) or 30(3)(b) do not, in aggregate, exceed 40% of the value of the assets of the Passport Fund.
- (4) Subject to section 33, no more than 15% of the value of the assets of a Passport Fund may be held in assets or arrangements that:
 - (a) relate to the same entity that is subject to prudential supervision by a financial supervisory authority in its place of incorporation which is in the written opinion of the Home Regulator generally compliant with the guidelines of the Basel Committee on Banking Supervision in an economy where the counterparty has a principal place of business and in the reasonable opinion of the Operator is of low risk; and
 - (b) are of any one or more of the types mentioned in subsection 30(2)(b).
- (5) Subject to section 33, no more than 20% may be held in assets that:
 - (a) relate to the same entity other than an assessed central clearing party; and
 - (b) are of any one or more of the following types:
 - (i) the types mentioned in subsection 30(2)(b);
 - (ii) deposits.
- (6) The limits under subsections 30(2) and 30(5) do not apply to deposits funded from:
 - (a) money received from the issue or sale of interests in the Passport Fund before the commencement of investment by the Passport Fund;
 - (b) liquidation of investments in the process of winding up a Passport Fund, where the Operator reasonably believes that complying with any of those subsections would not be in the interests of the members of the Passport Fund; or

- (c) money received from sales of assets of a Passport Fund to meet the redemption requests, where the Operator reasonably believes that complying with any of those subsections would not be in the interests of the members of the Passport Fund.
- (7) No more than 35% of the value of the assets of a Passport Fund may be held in assets that are risk-assessed government securities relating to the same government entity.
- (8) For this section, an asset or arrangement *relates* to an entity if the asset is of a type listed in the following table and has the connection with the entity shown:

Item	This type of asset or arrangement...	...relates to an entity if:
1	transferable security (including those transferred under a securities lending arrangement)	it is issued or guaranteed by the entity
2	money market instrument (including those transferred or which are collateral for an obligation to the Passport Fund under a securities lending arrangement)	it is issued or guaranteed by the entity
3a	derivative the price or value of which depends on the price of a transferable security or money market instrument as the reference asset; or	the reference asset is issued or guaranteed by the entity
3b	asset that embeds such a derivative	
4a	derivative whose counterparty is not an assessed central clearing counterparty; or	the entity is the counterparty
4b	asset that embeds such a derivative, if the counterparty risk is, or may be, transferred to the Fund	
5	securities lending arrangement	the entity is the counterparty
6	deposit	is with the entity

Note: An asset may relate to more than one entity. It must be counted for purposes of the application of subsections (1) to (4) to each of those entities.

Meaning of 'government securities'

- (9) For this section and section 31, an asset is a *government security* only if:
- (a) the asset is:
- (i) a transferable security other than an interest in a financial asset Regulated CIS; or
 - (ii) a money market instrument; and
- (b) the entity to which it relates is:
- (i) the government of an economy;
 - (ii) a central bank; or
 - (iii) a supranational organisation.

Meaning of 'risk-assessed government security'

- (10) For these rules, a government security is a *risk-assessed government security* only if the holding is assessed as having an acceptable risk.
- (11) In this section and section 31, in a situation where an entity, other than the responsible holding party or its delegate, holds an asset referred to in subsections 23(1)(a), 23(1)(b) or 23(1)(c) on behalf of a Passport Fund:
- (a) if the asset is segregated from the other assets of that entity such that Passport Fund will have enforceable legal claim to that asset that is distinct from and superior to the legal claims of general creditors of the entity holding the asset in the event of insolvency of that entity, then the issuer of a transferable security under subsection 23(1)(d) is taken to be the issuer of the asset referred to in subsections 23(1)(a),(b) or(c) to which it relates and not the person holding the asset referred to in subsections 23(1)(a), 23(1)(b) or 23(1)(c); and
 - (b) in all other cases, the issuer of a transferable security under section 23(1)(d) is taken to be both the issuer of the asset referred to in subsection 23(1)(a), (b) or (c) to which it relates and the person holding or taking into custody the asset referred to in subsection 23(1)(a),(b) or(c);
- (12) In this section and section 31, where a transferable security is an interest in a CIS, the issuer is taken for this section and section 31 to be the CIS, even if the CIS is not a person, and not the operator of the CIS.

31 Group limit

- (1) Subject to subsection 30(6) and section 33, no more than 20% of the value of the assets of a Passport Fund may be held in assets that:
- (a) relate to the same group of entities; and
 - (b) are of any one or more the following types:
 - (i) the types mentioned in section 30(2)(b); and
 - (ii) deposits.
- (2) The limits under subsection 31(1) do not apply to deposits funded from:
- (a) money received from the issue or sale of interests in the Passport Fund before the commencement of investment by the Passport Fund;
 - (b) liquidation of investments in the process of winding up a Passport Fund, where the Operator reasonably believes that complying with any of those subsections would not be in the interests of the members of the Passport Fund; or
 - (c) money received from sales of assets of a Passport Fund to meet the redemption requests, where the Operator reasonably believes that complying with any of those subsections would not be in the interests of the members of the Passport Fund.

Meaning of 'relate' to the same group of entities

- (3) For this section:
- (a) two entities are *linked* if one entity is the controller of the other;
 - (b) two entities are also *linked* if both entities are linked to a third entity; and
 - (c) a set of entities forms a *group of entities* if each entity in the set is linked to each other entity.
- (4) For this section, an asset relates to a group of entities if:
- (a) the asset is not a government security; and
 - (b) the asset is of a type listed in the following table and has the connection with a group of entities shown:

Item	This type of asset...	...relates to the same group of entities if:
1	transferable security (including those transferred under a securities lending arrangement)	it is issued or guaranteed by an entity that is in the group of entities
2	money market instrument (including those transferred or received as collaterals under a securities lending arrangement)	it is issued or guaranteed by an entity that is in the group of entities
3a	derivative the price or value of which depends on the price of a transferable security or money market instrument as the reference asset; or	the reference asset is issued or guaranteed by an entity that is in the group of entities
3b	asset that embeds such a derivative	
4a	derivative whose counterparty is not an assessed central clearing counterparty; or	the counterparty is in the group of entities
4b	asset that embeds such a derivative, if the counterparty risk is, or may be, transferred to the Fund	
5	securities lending arrangement	the counterparty is in the group of entities
6	deposit	is with an entity that is in the group of entities

32 Valuation of derivatives and securities lending arrangements

- (1) For sections 30 and 31 the value of a derivative as it relates to an entity is assessed as follows:
- (a) if it relates to the entity in the manner described in item 3a and 3b of the tables in subsections 30(8) or 31(4), the value is assessed in accordance with Appendix B to these rules and may be a negative value in case of a permitted short exposure; or
 - (b) if it relates to the entity in the manner described in item 4a and 4b of the tables in subsections 30(8) or 31(4), the value is assessed as the maxi-

imum potential loss in accordance with Appendix A of these rules and may be determined:

- (i) after netting off any liability of the Passport Fund to the entity where:
 - (A) the Passport Fund has a netting arrangement with its counterparty which creates a single legal obligation, covering all included transactions, such that, in the event of the counterparty's failure to perform owing to default, bankruptcy, liquidation or any other similar circumstance, the Passport Fund would have a claim to receive or an obligation to pay only the net sum of the transactions subject to the netting arrangement; and
 - (B) the Operator is reasonably satisfied that the netting arrangement is legally effective under the law of the jurisdiction in which the counterparty is incorporated and, if a foreign branch of an entity is involved, also under the law of the jurisdiction in which the branch is located, the law that governs the individual included transactions and the law that governs the netting agreement, and
- (ii) after deducting the fair value of any collateral for an obligation of the Passport Fund under the arrangement, which is held by the Passport Fund as an asset of the fund and without encumbrance that is in the form of legal title to the asset, and that is:
 - (A) cash; or
 - (B) money market instruments that have been assessed by the Operator of the Passport Fund as having acceptable risk.

33 Application of certain restrictions to index funds and benchmark funds

- (1) This section applies to a Passport Fund that is an index fund or a benchmark fund.
- (2) If the assets of the Passport Fund or the underlying assets of the derivatives of the Passport Fund are constituents of the index then the limitation on the exposure of the fund to the entity, or group of entities, to which the asset or assets relate relative to the value of the assets of the Passport Fund is instead the lower of:
 - (a) the percentage of the index that the asset or assets represent as constituents plus 2%; and
 - (b) 25%, or, only for an index fund, 40% if the eligible index relates to an established market or market sector that is widely used by investors including in economies other than the economy to which the market or market sector relates and no other exposure of the Passport Fund to another entity or group of entities exceeds 25%.

- (3) Subsection (2)(b) applies only if the Home Regulator has given written notice to the Operator that in the Home Regulator's opinion there are exceptional market circumstances relevant to the fund and that the eligible index relates to an established market or market sector that is widely used by investors including in economies other than the economy to which the market or market sector relates and has not revoked that notice by written notice to the Operator.

34 Restrictions on portfolio allocation—Financial Asset Regulated CISs

- (1) No more than 10% of the value of the assets of a Passport Fund may be held in:
- (a) interests in a single financial asset Regulated CIS other than a Passport Fund or sub fund of a financial asset Regulated CIS other than a Passport Fund; and
 - (b) a derivative where the value is determined by or varied with respect to the price of the interests in a single financial asset Regulated CIS other than a Passport Fund or, if the financial asset Regulated CIS other than a Passport Fund has sub funds, a sub fund of the financial asset Regulated CIS other than a Passport Fund.
- (2) No more than 30% of the value of the assets of a Passport Fund may be held in:
- (a) interests in financial asset Regulated CISs other than a Passport Fund and sub funds of financial asset Regulated CISs other than Passport Funds; and
 - (b) derivatives where the value is determined by or varied with respect to the price of the interest in, a financial asset Regulated CIS other than a Passport Fund or, if the financial asset Regulated CIS other than a Passport Fund has sub funds, a sub-fund of a financial asset Regulated CIS other than a Passport Fund.
- (3) Subsections 34(1) and 34(2) do not apply to holdings of interests in a financial asset Regulated CIS or sub fund of a financial asset Regulated CIS that is a Regulated CIS in the Home Economy, if:
- (a) the operator of the financial asset Regulated CIS is the Operator of the Passport Fund;
 - (b) the Passport Fund would comply with the requirements of sections 19 to 42 as if the assets, liabilities, derivatives and securities lending arrangement attributable to the interests held in each financial asset Regulated CIS or sub fund of a financial asset Regulated CIS in which investment is permitted because of this subsection 34(3), were assets, liabilities, derivatives or securities lending arrangements of the Passport Fund instead of the financial assets Regulated CIS or sub fund; and
 - (c) the financial assets Regulated CIS or sub fund does not hold more than 10% by value of its assets in a single financial assets Regulated CIS or more than 30% by value of its assets in financial assets Regulated CISs.

35 Restrictions on portfolio allocation—Limit on unquoted transferable securities

No more than 10% of the value of the assets of a Passport Fund may be held in unquoted transferable securities other than financial asset Regulated CISs or derivatives where the value is determined by or varied with respect to the price of unquoted transferable securities.

36 Restrictions on portfolio allocation—Limit on investments conferring significant management influence

- (1) A Passport Fund that is not an index fund or a benchmark fund must not hold a legal or equitable interest in votable transferable securities accounting for more than 20% of the voting rights in that entity when added to any voting rights held by any of the Passport Fund's related parties of which it is aware or has reason to believe are held.
- (2) A Passport Fund that is an index fund or a benchmark fund must not hold a legal or equitable interest in votable transferable securities such that the Passport Fund or its Operator, together with its related parties, exert significant influence on the management of the business of the entity in which the votable transferable securities is held.
- (3) For this section, *votable transferable securities* of an entity means transferable securities that:
 - (a) relate to the entity; and
 - (b) carry voting rights in the entity that may be cast on a resolution at a meeting of members of the entity generally or that are otherwise able to be voted in determining the directors of the entity.

37 Limit on share of transferable securities or money market instruments on issue

- (1) A Passport Fund must not hold more than 10% of the non-voting securities of an entity.
- (2) A Passport Fund must not hold more than 10% of the debt securities of an entity.
- (3) A Passport Fund must not hold more than 10% of the money market instruments for which an entity is, or may be, liable.

38 Limit on depository receipts over gold

No more than 25% of the value of the assets of a Passport Fund may be held in depository receipts over gold including its derivatives where the value of the derivatives is determined by or modified by reference to the price of depository receipts over gold.

Division 6.4 Limits on exposures

39 Derivatives and securities lending arrangements—global exposure limit

- (1) The global exposure of a Passport Fund to derivatives, securities referred to in subsection 23(1)(e), securities permitted under subsection 23(2) under which liability could arise from holding of the securities under the terms of the securities as well as securities lending arrangements must not be more than:
 - (a) 100% of the value of the assets of a Passport Fund that:
 - (i) is an index fund; and
 - (ii) uses derivatives traded on a financial market for the purposes of index replication, where derivatives are used predominantly to reflect the returns on the index; or
 - (b) 20% of the value of the assets of the Passport Fund otherwise.
- (2) For this section, the *global exposure* of a Passport Fund to derivatives, securities referred to in subsection 23(1)(e), securities under which liability could arise from holding of the securities under the terms of the securities and securities lending arrangements is the sum of the following amounts:
 - (a) the sum of the absolute values (calculated according to Appendix B to these rules) of the exposures of each derivative or transferable security referred to in subsection 23(1)(e) held by the Passport Fund that is not involved in relevant netting arrangements or relevant hedging arrangements;
 - (b) the sum of the absolute values (calculated according to Appendix B to these rules) of the net exposures of each derivative entered into by the Passport Fund that is involved in relevant netting arrangements or relevant hedging arrangements, after taking into account those arrangements;
 - (c) the fair value of collateral for obligations to the Passport Fund under derivatives and securities lending arrangements which are reinvested other than in a deposit account that can be withdrawn without prior notice during business hours of the entity taking the deposit;
 - (d) if the Passport Fund holds any transferable security or money market instrument that embeds a derivative, the sum of the values of the exposures of the embedded derivatives calculated as if the derivative were held as a separate asset; and
 - (e) for securities under which liability could arise from holding of the securities under the terms of the securities, the amount of the liability under the terms of the security.

40 Netting and hedging arrangements

- (1) For these rules, a *relevant netting arrangement* is the netting of positions between:
 - (a) derivatives with the same underlying assets or index (disregarding any difference in the maturity dates of the derivatives);
 - (b) derivatives and the assets to which the derivative relates; or
 - (c) derivatives and all of the assets that are components of the relevant underlying index to which the derivatives relate that are held by the fund in the proportions that each of those assets are weighted in the index.
- (2) For the rules, a *relevant hedging arrangement* is any holding of a derivative that the Operator of the Passport Fund:
 - (a) reasonably expects will reduce either:
 - (i) both of the following types of risks:
 - (A) the general market risk for a class of assets held by the Passport Fund; and
 - (B) specific risks arising from holding assets in that class; or
 - (ii) the risk of receiving application moneys or having to pay redemption in a currency that differs from that for which the assets of the Passport Fund are or are likely to be required for the transactions of the Passport Fund;
 - (b) concludes with the sole purpose of offsetting those risks; and
 - (c) reasonably expects does not provide an offsetting exposure that is greater than 105% of the exposure being offset at the time of entering into the arrangement.
- (3) For these rules, the net exposure of a relevant netting or hedging arrangement is determined by calculating the net value of the derivatives and assets to which the arrangements applies, using where applicable Appendix B to these rules and the exposures under any holding of the assets to which the arrangements applies.
- (4) The Operator of a Passport Fund must document the reasons on which any expectations referred to in subsections 40(2) are based.

41 Securities lending limit

No more than 50% of the value of the assets of a Passport Fund may be held in assets that have been transferred to the Passport Fund under securities lending arrangements.

42 Derivative—covering exposures

- (1) If a Passport Fund enters into a derivative that gives rise, or may give rise, to a future commitment of the Passport Fund, the Passport Fund must hold at all

times assets that the Operator of the Passport Fund reasonably believes will be available and able to be converted into sufficient assets:

- (a) in the case of a derivative that will, or may, be cash-settled, to enter an offsetting derivative so as to eliminate the exposure or have the counterparty to the derivative agree to terminate it; or
- (b) in the case of a derivative that requires, or may require, physical delivery of the underlying asset, to be delivered as required to meet the actual or potential delivery obligation.

Division 6.5 Other restrictions

43 Prohibition on provision of loans, guarantees and underwriting

- (1) A Passport Fund must not lend money.
- (2) For subsection 43(1), a Passport Fund does not lend money if it holds a deposit as permitted under Division 6.2.
- (3) A Passport Fund must not act as guarantor for another person or entity.
- (4) A Passport Fund must not underwrite securities by agreeing to acquire securities if they are not acquired by another person under an offer or to ensure a certain amount is raised from an offer.

44 Borrowing

- (1) A Passport Fund must not borrow unless all of the following conditions are satisfied:
 - (a) the total amount of borrowings of the Passport Fund does not exceed 10% of the value of the Passport Fund assets at the time of borrowing;
 - (b) the purpose of the borrowing is:
 - (i) to enable payment of redemption requests that:
 - (A) have been made; or
 - (B) are reasonably expected to be made; or
 - (ii) to enable payment of expenses properly payable by the Passport Fund other than:
 - (A) fees payable from the Fund to an Operator; or
 - (B) fees payable from the Fund to the independent oversight entity; or
 - (C) expenses associated with making an additional investment; or
 - (iii) to enable payment of dividends or distributions to members.
 - (c) there is a material risk that, without the borrowing, the Passport Fund will be unable to:
 - (i) meet redemption requests; or

- (ii) pay expenses of the kind mentioned in subsection (1)(b)(ii) above;
 - (d) the borrowing is in the form of a trade credit, loan or overdraft from a financial institution licensed or regulated in the institution's principal place of business;
 - (e) the Passport Fund intends to repay the amount:
 - (i) in full in less than 31 days; and
 - (ii) without relying on other borrowings or financed amount; and
 - (f) the Operator of the Passport Fund has documented cash flow projections prepared on reasonable assumptions that show that the amount will be repaid within that period.
- (2) For the purposes of subsection 44(1)(a), any amount payable to the Passport Fund by the lender is not taken to reduce the amount borrowed.
- (3) A Passport Fund must not enter into a securities lending arrangement for the purpose of acquiring any collateral provided to the Passport Fund except to cover an unexpected shortfall of holdings in the collateral that is necessary to meet an obligation to another person.

45 Short-selling prohibited

- (1) A Passport Fund must not sell or be under an obligation to transfer a Passport Fund asset unless, at the time of the sale:
- (a) the Passport Fund has a presently exercisable and unconditional right to give title to the asset to the buyer (a *transferable title*); or
 - (b) the Passport Fund has an agreement to buy the asset to be sold that:
 - (i) will enable the Passport Fund to acquire a transferable title to the asset before it is to be transferred; and
 - (ii) is conditional only on:
 - (A) payment of the consideration;
 - (B) the exercise of an option on the part of the Passport Fund; or
 - (C) receipt of the proper instrument of transfer or receipt of the title documents.
- (2) For subsection 45(1), a transferable title to an asset, or an agreement to buy an asset that meets the conditions in subsection 45(1)(b), may only support one agreement to transfer the asset or equivalent asset including by way of sale or under a securities lending arrangement.

46 Liability of members

A Passport Fund must ensure that no member of the Passport Fund has a monetary liability to the Passport Fund or creditor of the Passport Fund in that person's capacity as a member of the Passport Fund.

47 Performance fees

A Passport Fund or its Operator must not permit a fee to be paid by the Passport Fund whether to an Operator or a delegate of the Operator based on any returns of the Passport Fund or any increase in the value of any assets of the Passport Fund relative to a measure, unless:

- (a) taking into account the arrangements to manage risk of the Passport Fund, the basis for the fees charged has not resulted and is not likely to result in:
 - (i) risks being taken by the Operator in relation to the Passport Fund that are excessive, having regard to information made available to members or persons being offered an interest in the Passport Fund concerning the Passport Fund's investment objectives and strategy and the risks that will apply to achieving it; or
 - (ii) the Passport Fund's investment objectives not being followed, to obtain or increase fees;
- (b) the calculation of the fees is verified by the Operator or its auditor as consistent with the agreed basis for the fee before payment and can be verified from that time for at least five years by the independent oversight entity or the auditor of the financial statements of the Passport Fund; and
- (c) the independent oversight entity or the entity responsible for the compliance review has during the previous 13 months stated in writing to the Operator that it is not aware of any reasons to believe that the fees payable by the Passport Fund will result in the Operator not complying with written policies and procedures for fees of the Operator for the Passport Fund designed to ensure compliance with subsections 47(1)(a) and (b).

Part 7**Redemption and valuation for pricing**

Division 7.1 Redemption

48 Rights to redemptions—exchange traded Passport Funds

- (1) This section applies to a Passport Fund if:
 - (a) it is an index fund or benchmark fund; and
 - (b) it is traded on one or more relevant financial markets.
- (2) The Operator must take reasonable steps to ensure that each member of the Passport Fund is able to sell the member's interests in the fund on the relevant financial markets at a price that is not materially different from the net asset value per interest of the Passport Fund.

- (3) Subject to this Division and any requirements of the economy in which the member is located, a member of the Passport Fund may request a redemption of the members' interests under section 49 if trading of the interests has been suspended on all the relevant financial markets for five consecutive days on which one or more of the financial markets is open for business (not counting days on which the redemptions of interests in the Passport Fund are suspended under section 51).
- (4) Subsection 48(3) does not apply to a Passport Fund if it became a Regulated CIS before 1 January 2015.
- (5) For this section, a financial market is *relevant* to a Passport Fund if:
 - (a) it is operated in a Participant; and
 - (b) under the operating rules of the financial market, interests in the Passport Fund are admitted, and remain admitted, to trading status.

49 Rights to redemptions—other Passport Funds

- (1) This section applies to a Passport Fund other than one to which section 48 applies.
- (2) Subject to any requirements of the economy in which the member is located, a member of the Passport Fund may at any time request a redemption of the member's interests under section 50.
- (3) Subsection (2) does not apply if the Operator has suspended redemptions in accordance with section 51.

50 Processing redemption requests

- (1) When the Operator of a Passport Fund receives a request for redemption under sections 48 or 49, the Operator must, within the redemption period, process the redemption request and pay the member at a price per interest (the *redemption price*) that is:
 - (a) the valuation entity's estimation of the net asset value per interest of the Passport Fund, taking into account any redemption fees or transaction costs associated with redemption that have been disclosed to the member before the request; and
 - (b) calculated using a valuation of the assets of the Passport Fund that is conducted after the request for redemption is received from the member.
- (2) The *redemption period* for requests for redemption must not exceed 15 days after the request is received by the Operator, unless the Operator has notified any member in writing that it will be a shorter period, in which case the shorter period applies as the maximum, or if there is a suspension permitted under section 51 or redemption is deferred under section 52.
- (3) If a notification by the Operator under subsection 50(2) is in effect, the Operator may not increase the redemption period without reasonable notice to members.

- (4) In the case of a request under section 48, the Operator may not charge a redemption fee that is more than reasonably proportionate to the fee charged to any person who is entitled, under an arrangement with the Operator, to redeem interests other than under section 48.
- (5) The Operator must give the member the option of having the redemption price paid out in the currency in which the member paid for its interests in the Passport Fund, at the exchange rate available to the Operator at the time of the redemption, subject to any reasonable costs based on a reasonable estimate of costs for any foreign currency exchange that the Operator considers necessary for the purpose.

51 Suspension of redemptions

Operator of a Passport Fund must suspend or restrict redemptions in certain circumstances

- (1) The Operator of a Passport Fund must suspend redemptions in the Passport Fund if it is directed to do so by the Home Regulator in writing and the direction has not been revoked in writing.
- (2) The Operator of a Passport Fund must suspend redemptions in the Passport Fund if the Passport Fund is in the process of being wound up. This does not prevent an interim or final distribution on a pro rata basis during the winding up the fund.
- (3) The Operator of a Passport Fund must suspend redemptions in the Passport Fund during a period when:
 - (a) the Operator considers that a suspension is in the best interests of members;
 - (b) the Operator considers that a suspension is fair as between members; and
 - (c) either:
 - (i) the Operator considers that:
 - (A) a proportion of the assets of the Passport Fund are not able to be reliably valued;
 - (B) that proportion is such that, in the reasonable opinion of the Operator, there is a material risk that the redemption price will contain an error; and
 - (C) the error in the redemption price is likely to affect the decision of members of the Passport Fund about whether or not to redeem their interests; or
 - (ii) the Operator reasonably expects that more than 20% of the value of the assets of the Passport Fund could not be realised at or above the fair value of the assets within the period for satisfying redemption requests; and

- (d) the Home Regulator has not directed the Operator in writing not to suspend redemptions or to cease suspension of redemptions.

Other Passport Funds must not otherwise suspend or restrict redemptions

- (4) The Operator of a Passport Fund must not suspend redemptions in circumstances other than those set out in subsections 51(1), 51(2), and 51(3).

Note: Funds to which section 48 applies (exchange-trade Passport Funds) are only required to provide redemptions in the circumstances set out in that section.

52 Deferral of redemptions

- (1) This section applies in relation to a Passport Fund if, on a dealing day:
- (a) the redemption request is due for redemption; and
 - (b) any deferred redemption requests under subsections 52(5) and 52(6); together, amount to more than 10% by value of the interests in the Passport Fund.
- (2) The Operator does not contravene this Part if it limits the interests that will be redeemed on the day to a proportion of the interests in the Passport Fund (the *daily limit*) that is at least 10% by value of the interests in accordance with this section.
- (3) The Operator must divide the requests into priority groups based on the days on which they were received, giving higher priority to requests received on earlier days.
- (4) The Operator must process the requests by priority group.
- (5) If redeeming all the requests in a priority group would take the interests redeemed on that day beyond the daily limit, the Operator must:
- (a) redeem the same proportion of each request in the priority group; and
 - (b) treat each request in the priority group as a *deferred redemption request* for the remainder of the interests requested, to be dealt with on the next dealing day.
- (6) If the daily limit is filled before a priority group is reached, the Operator must treat the whole of each request in that priority group as a *deferred redemption request*, to be dealt with on the next dealing day.
- (7) For this section:
- dealing day*, in relation to a Passport Fund, means a day on which the members of the Fund have a right to redeem their interests in the Fund including following a deferral under this section.

Division 7.2 Valuation of assets

53 Valuation of Passport Fund assets

- (1) For this section, the *valuation entity* for a Passport Fund registered in a Participant is the entity shown in the following table:

Home Economy of the Passport Fund	Valuation entity
Australia	The Operator
Japan	The Operator
Korea	The Operator
New Zealand	The Operator
Singapore	The manager of the collective investment scheme authorised by the Monetary Authority of Singapore under the Securities and Futures Act
Thailand	The Operator

- (2) When calculating the value of the assets of the Passport Fund for pricing, the valuation entity must ensure that the valuation is calculated in accordance with this section.
- (3) The value of an asset of the Passport Fund is its market value.
- (4) The value of a derivative that is not regularly traded on a financial market must not be calculated in a way that relies solely on a valuation provided by the counterparty to the derivative.

Part 8 Effect of Deregistration

54 Effect of deregistration

- (1) A Regulated CIS or a sub fund of a Regulated CIS that has been deregistered as a Passport Fund must be operated in accordance with these rules until the Regulated CIS or sub fund does not have any members who:
- (a) became members:
 - (i) when the deregistered fund was a Passport Fund; or
 - (ii) on the expectation that the fund would become a Passport Fund; and
 - (b) are not:
 - (i) the current Operator or any previous Operators; or
 - (ii) related parties of the entities listed in subsection (b)(i).
- (2) After a Regulated CIS or a sub fund of a Regulated CIS is deregistered as a Passport Fund neither the Regulated CIS or its Operator nor any sub fund or its

Operator may charge any fee on withdrawal of a member who satisfies subsections 54(1)(a) and 54(1)(b).

- (3) After a Regulated CIS or a sub fund of a Regulated CIS is deregistered as a Passport Fund neither the Regulated CIS or its Operator nor any sub fund or its Operator may issue any interest in, nor accept any money or money's worth for an issue of an interest in the Regulated CIS or sub fund of the Regulated CIS on the basis the fund is or was a Passport Fund.

Part 9 Dictionary

55 Definitions

For these rules:

assessed as having an acceptable risk: in relation to a holding of assets and arrangements by a Passport Fund means when the Operator has performed the following within a period of no more than one month before the most recent acquisition of the asset or arrangement and subsequent to any event that gives the Operator reason to doubt the previous assessment performed:

- (a) assessed the creditworthiness of the issuers, guarantors or counterparties of the assets or arrangements in accordance with written policies and procedures which include having regard to independent sources of information;
- (b) assessed the risk for members of the Passport Fund of holding the proposed concentration of the assets given the creditworthiness of the issuers, guarantors or counterparties;
- (c) concluded there was no disproportionate risk relative to the risks associated with the Passport Fund's investment strategy; and
- (d) documented the assessments and the reasons for the conclusion.

assessed central clearing counterparty: see section 27.

benchmark fund means a Passport Fund that has publicly disclosed that it has an investment strategy of seeking to achieve returns that meet or exceed an eligible index.

business day means a day that banks in the place are generally open for business.

Collective Investment Scheme or *CIS* means a scheme or an arrangement that is intended to have the following features:

- (a) at least two persons or a person acting on behalf of more than one beneficiary or group of beneficiaries (*members*) contribute money or money's worth for the right to the benefits produced by the scheme;

- (b) the contributions are pooled to produce financial benefits or an interest in property for the contributors or persons directly or indirectly acquiring their rights from the contributors (members);
- (c) not all the members, in their capacities as members take part in day to day management of the scheme; and
- (d) the pool is managed as a whole for the benefit of the members collectively.

Conflict: includes an actual or potential conflict

constituent document: see section 4.

control: see section 57

custodian: see section 13.

depository receipt over gold: see section 22.

Derivative: see section 25.

eligible index: an index is an *eligible index* for a Passport Fund if:

- (a) it predominantly relates to financial assets or commodities that are regularly traded;
- (b) it has a clearly defined objective or the market or sector which it aims to represent is clearly defined;
- (c) it represents a reasonable benchmark for a market or market sector for which it is widely used;
- (d) it is made up entirely of constituents that, with the exception of those related to commodity prices are investments that a Passport Fund would be permitted to hold under these rules;
- (e) it is defined and calculated by a person who is not a related party of the Operator of the Passport Fund unless, where the two parties are related parties, there are adequate arrangements in place for managing the specific conflicts of interest that might arise in this situation;
- (f) it has no:
 - (i) constituent, or
 - (ii) for commodity indexes – group of constituents relating to substantially the same commodity, exceeding 25% of the index; and
- (g) information about it (including information about the composition of the index and the methodology used to construct and rebalance the index) is readily accessible to the public.

embeds a derivative and embedded derivative: see section 26.

fair value, in relation to an asset or an interest is the market price of the asset or an interest, or the value that the Operator would reasonably expect to receive if it were sold on the current market if it is:

- (a) an asset that is not traded on a financial market; or
- (b) an asset of a Passport Fund in relation to which the valuation entity under section 53 is satisfied that the market price is either unavailable or does not reasonably represent the value of the asset.

financial asset CIS means a CIS that predominantly holds assets that a Passport Fund is permitted to hold under Division 6.2 and may not be reasonably regarded as predominantly a vehicle for investment in:

- (a) physical assets, other than depository receipts over gold; or
- (b) derivatives where the value is determined by or varied with respect to the price of physical assets, other than gold.

financial asset Regulated CIS means a financial asset CIS whose members are generally able to redeem their interests from the arrangement or sell their interests on a financial market for a price that is not materially different from the net asset value per interest that is a Regulated CIS or a CIS that in the opinion of the Home Regulator notified in writing to the Operator by the Home Regulator is subject to regulation that is broadly similar in effectiveness to that applying to Regulated CIS in the Home Economy having regard to the IOSCO Principles relating to collective investments.

financial market means a facility through which offers to acquire or dispose of assets in which a Passport Fund may invest under section 19 are regularly made or accepted that is regulated in an IOSCO jurisdiction.

Home Economy, in relation to a Passport Fund, means the jurisdiction of a Participant in which the Passport Fund is a Regulated CIS if it is a Regulated CIS only in one jurisdiction, or the jurisdiction of the Participant in which the Passport Fund is first registered or approved as a Regulated CIS if it is a Regulated CIS in more than one jurisdiction of the Participants.

Home Economy Laws and Regulations means the laws of the Home Economy, associated regulations, and any other regulatory requirements administered by the Home Regulator that apply in relation to Regulated CISs or their Operators in that economy.

Home Regulator, in relation to a Passport Fund, means the Passport Regulator of its Home Economy.

Host Economy, in relation to a Passport Fund, means the jurisdiction of a Participant, other than the Home Economy, in which the Passport Fund is:

- (a) permitted to be offered; or
 - (b) proposed to be permitted to be offered;
- as a Passport Fund.

Host Economy Laws and Regulations means the requirements administered by the Host Regulator that apply to a Passport Fund under the laws of a Host Economy and associated regulations, and any other source of regulation in the Host Economy.

Host Regulator means the Passport Regulator of the Host Economy of a Passport Fund.

interest means the right to a benefit produced by a CIS.

index fund means a Passport Fund that has publicly disclosed that it has an investment strategy of seeking to achieve returns that track an eligible index excluding on a leverage or an inverse basis.

independent oversight entity: see section 14.

IOSCO means the International Organization of Securities Commissions.

IOSCO assessment methodology means the IOSCO Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation published in September 2011, as revised from time to time.

IOSCO financial services related business means an entity that carries on business in a financial, capital markets or financial services industry and is regulated in an IOSCO jurisdiction or an entity that provides legal, accounting or compliance services related to that kind of business or consultation services relating to, and addressing particular issues arising in, the operation of CIS.

IOSCO jurisdiction means a jurisdiction in which the securities regulator is an ordinary or associate member of IOSCO.

IOSCO Principles means the Objectives and Principles of Securities Regulation published by IOSCO, as revised from time to time.

jurisdiction includes any administrative region that has a securities regulator that is a member of IOSCO.

market price, in relation to an asset or an interest, is the prevailing price at which it was last transacted or bid for on the financial market on which it was last traded at the time of valuation and if traded simultaneously the financial market determined by the valuation entity under section 53.

member of a CIS means a person who holds interest in the CIS.

money market instrument: see section 24.

net asset value per interest of a Passport Fund means the market value of the assets of the Passport Fund, calculated in accordance with Division 7.2 less any liabilities, other than liabilities to members as members, divided by the number of interests in the Passport Fund and if there is more than one class of interest in a Passport Fund on the basis of the assets, liabilities and interests attributable to the class.

officer of an entity includes a director and a Chief Executive Officer of the entity, or their equivalents.

Operator of a Regulated CIS: see section 56.

Participant means a party to the MOC and includes a Subsequent Participant under the MOC.

Passport Fund means a Regulated CIS, or a *sub fund* of a Regulated CIS, that is registered as a Passport Fund by its Home Regulator.

Passport Regulator, for a Passport economy, has the meaning shown in the following table and includes an entity that is a successor the regulatory functions of a Passport Regulator:

Participant	Passport Regulator
Australia	Australian Securities and Investments Commission
Japan	Financial Services Agency
Korea	Financial Supervisory Service and Financial Services Commission
New Zealand	Financial Markets Authority
Singapore	Monetary Authority of Singapore
Thailand	Securities and Exchange Commission

Regulated CIS: see section 56.

relevant netting arrangements: see section 40.

relevant hedging arrangements: see section 40.

related party: see section 57.

risk-assessed government securities: see section 30.

securities lending arrangement: see section 28.

sub fund means a CIS forming part of a Regulated CIS that also includes another CIS if assets of the first-mentioned CIS cannot be lawfully applied under any laws of the Home Economy except in meeting liabilities or otherwise for that CIS or the entitlements of members in that CIS.

transferable security: see section 23.

unquoted transferable security means a transferable security that the Operator does not reasonably believe on any business day in the place in which it is acquired by the Passport Fund, can be reliably valued and sold for that value and includes any transferable security that:

- (a) is not traded on a financial market; and
- (b) is not approved for trading on a financial market.

USD means the lawful currency of the United States of America

value of the assets of a Passport Fund: means the market value of the assets of the Passport Fund, including derivatives and securities lending arrangements, after deducting any liabilities of the Passport Fund other than liabilities to members as members.

56 Meaning of Regulated CIS and Operator

For these rules:

- (a) a *Regulated CIS* in a Participant listed in the table below is a scheme that:
- (i) was established in the Participant; and
 - (ii) has the legal character specified in the table below; and
- (b) its *Operator* is the entity shown in the table.

Home Economy of the Passport Fund	Legal character of CIS	Operator
Australia	A CIS registered under the <i>Corporations Act 2001</i>	The person licensed to operate the CIS under the <i>Corporations Act 2001</i>
Japan	A scheme under the Investment Trusts and Investment Corporations Act	The operator under Investment Trusts and Investment Corporations Act
Korea	A CIS under the Financial Investment Business and Capital Markets Act of Korea	The collective investment business entity of the CIS
New Zealand	A managed investment scheme registered under the Financial Markets Conduct Act 2013 of New Zealand	The manager of the managed investment scheme licensed under the Financial Markets Conduct Act 2013
Singapore	A CIS authorised under the Securities and Futures Act of Singapore	The manager of the authorised scheme
Thailand	A CIS under the Securities and Exchange Act of Thailand	The securities company approved to manage the mutual fund

Note: The Operator will be a body corporate.

57 Meaning of control and related party

- (1) For these rules, an entity *controls* a second entity if the first entity holds a majority of the voting shares of the second entity or the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies.
- (2) In determining whether the first entity has this capacity:
- (a) the practical influence the first entity can exert (rather than the rights it can enforce) is the issue to be considered; and
 - (b) any practice or pattern of behaviour affecting the second entity's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).

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- (3) The first entity does not control the second entity merely because the first entity and a third entity jointly have the capacity to determine the outcome of decisions about the second entity's financial and operating policies, unless the first entity controls the third entity or vice versa or there is an entity that controls both the first entity and the third entity.
- (4) If the first entity is under a legal obligation to exercise a shareholding or use a capacity for the benefit of someone other than the first entity's members, it shall be disregarded in determining if there is control;
- (5) For these rules, each of the following is a related party of an entity (the first entity):
- (a) a director of the first entity;
 - (b) an entity which has a director in common with the first entity;
 - (c) an entity (the controlling entity) that controls the first entity, whether directly or by intermediate entities that it controls;
 - (d) a director of the controlling entity;
 - (e) the persons that comprise the controlling entity, if the controlling entity is not a corporation;
 - (f) other entities controlled by any of the above;
 - (g) a relative of any of the persons listed in (a), (d) or (e);
 - (h) an entity or person that is reasonably likely to become covered by (a) to (g); or
 - (i) an entity or that was a related party in the past six months under (a) to (h).

Appendix A

- (1) For these rules, the maximum potential loss of a derivative or securities lending arrangement is the sum of:
- (a) the current replacement cost at market value;
 - (b) for derivatives– the greater of the notional principal amount or the market value of the underlying multiplied by the percentage in table below subject to subsection (2);
 - (c) the fair value of any collateral that has been transferred to the counterparty to a derivative or securities lending arrangement but not including where the collateral is held by the Passport Fund and an encumbrance over it is provided to the counterparty to secure the obligations of the Passport Fund to the counterparty under the derivative or securities lending arrangement.
- (2) The market value of the underlying is:
- (a) if the underlying is an asset – the market value of the asset;
 - (b) if the underlying is an interest rate or rate of inflation on which an interest rate is based – the notional value of the principal to which that rate is applied; or
 - (c) if the underlying is an index – the market value of the assets represented in the index.

Residual Term	Interest rate contracts	Currency Exchange rate contracts	Equity derivative contracts	Total return swaps and Credit default swaps	Other contracts
1 year or less	0%	1%	6%	10%	10%
> 1 year and < 5 years	0.5%	5%	8%	10%	12%
> 5 years	1.5%	7.5%	10%	10%	15%

- (3) In the case of credit default swaps where the Passport Fund is entitled to payments unaffected by a credit event of the person liable under the underlying, the relevant percentage is 0% unless the credit default swap contract incorporates a provision on closeout upon insolvency of the counterparty in which case the amount to be added is 10% of any unpaid amount that may become payable to the Passport Fund at the time of the calculation that is not covered by collateral at fair value.

Appendix B

- (1) The value of a derivative is:
- (a) if the derivative is listed in the table below – as specified in the table;
 - (b) if the derivative is not listed in the table below or if a value specified in the table does not give a reasonable relative estimation of the market risk, by determining a value which in the reasonable opinion of the Operator has appropriate relativity to the values of other derivatives calculated in accordance with (a) above, taking into account the market value of the equivalent position in the underlying asset.
- Example:* A value calculated in accordance with the table may not give a reasonable relative estimation of the risks for certain binary options or whether the notional contract value is determined in an un-assumed manner.
- (2) The Operator may demonstrate compliance with a requirement of Passport Rules affected by a value of a derivative by using instead of the value under (1) above, a value for a derivative calculated by reference to the notional value of derivative where the amount is higher.
- (3) If the value of a derivative is calculated in accordance with subsection (1)(b), the Operator must:
- (a) document why the value is appropriate; and
 - (b) keep a copy of that documentation for 5 years after the derivative has been terminated.

Types of derivatives	Commitment value
<i>Plain vanilla options (including bought/sold puts and calls)</i>	
Bond option	Notional contract value × market value of underlying reference bond × delta
Currency option	Notional contract value of foreign currency leg(s) × delta
Equity option	Notional contract size × market value of underlying equity share if the contract size is determined by the number of underlying shares × delta
Index option	Notional contract value × index level × delta or point value × index level × delta if appropriate
Interest rate option	Notional contract value × delta
Warrant and Rights	Number of shares/bonds × market value of underlying referenced instrument × delta
<i>Futures</i>	
Bond future	Notional contract size × market price of the cheapest-to-deliver reference bond
Currency future	Number of contracts × notional contract size
Equity future	Notional contract size × market price of underlying equity transferable security
Index future	Notional contract size × index level
Interest rate future	Number of contracts × notional contract size

Types of derivatives	Commitment value
Commodity future	Notional contract size × market price of underlying commodity
<i>Swaps</i>	
Contract for differences	Number of shares/bonds × market value of underlying referenced instrument
Credit default swap	Protection buyer: market value of the underlying reference asset Protection seller: the higher of the market value of the underlying reference asset or the notional value of the credit default swap
Currency swap	Notional value of foreign currency leg(s)
Interest rate swap	Market value of underlying (the notional value of the fixed leg may also be applied)
Total return swap	Market value of underlying reference asset(s)
<i>Forwards</i>	
Forward rate agreement	Notional value
FX forward	Notional value of foreign currency leg(s)

- (3) For this Appendix, *delta* means the proportionate amount that Operator reasonably believes the value of the derivative to the Passport Fund would fall if there was a marginal adverse change in amount of the underlying for that derivative.
- (4) For this Appendix all values are to be calculated in the currency of the Home Economy by applying the exchange rate reasonably determined by the Operator.

Annex 4

Arrangements Concerning Cross-Border Supervisory Cooperation

Part 1

Introduction

1 Purpose

- (1) This Annex sets out the arrangements among Passport Regulators to consult, cooperate and exchange information in connection with the supervision and oversight of Regulated Entities for the purpose of the implementation and operation of the Asia Region Funds Passport, in a manner consistent with, and to the extent permitted by, the laws and regulations that govern the Passport Regulators.
- (2) The Participants anticipate that cooperation will be primarily achieved through ongoing, informal, oral consultations, supplemented by more in-depth, ad hoc cooperation.
- (3) This Annex is intended to support such informal and oral communication as well as to facilitate the written exchange of non-public information in accordance with applicable law where necessary.

2 Definitions

- (1) For purposes of this Annex:
 - (a) Cross-border On-Site Visit means any regulatory visit by one Passport Regulator to the premises of a Regulated Entity located in another Passport Regulator's jurisdiction, for the purposes of performing the Passport Regulator's functions under this MOC.
 - (b) Emergency Situation means the occurrence of an event that could materially impair the financial or operational condition of a Regulated Entity, its clients, or financial markets under the regulation of any Passport Regulator.
 - (c) Governmental Entity means the following:
 - (i) where the Requesting Regulator is ASIC, a House or Committee of the Parliament of Australia, the Australian Department of the Treasury, a Minister with responsibility for ASIC, the Reserve Bank of Australia and/or the Australian Prudential Regulation Authority or any person that is a successor to any of these bodies;
 - (ii) where the Requesting Regulator is the FSC/FSS, Ministry of Strategy and Finance (MOSF);
 - (iii) where the Requesting Regulator is MAS, the Singapore Prime Minister's Office and the Singapore Ministry of Finance; or

- (iii) where the Requesting Regulator is the SEC Thailand, Ministry of Finance, Bank of Thailand.
 - (d) Person means a natural person, unincorporated association, partnership, trust, corporation or (where applicable) a Regulated Entity;
 - (e) Regulated Entity means an Operator, a Passport Fund, a Regulated CIS or sub fund in relation to which an application for registration as a Passport Fund has been made, a Person applying for a Regulated CIS or sub fund to be a Passport Fund or other Persons that may be or is proposed to be involved in the operation of the Passport Fund or the proposed Passport Fund including any responsible holding party, compliance reviewer, financial statement auditor, and independent oversight entity or Person proposed to perform any of those roles;
 - (f) Relevant Contact Person in relation to a Passport Regulator means the person from time to time notified in writing to other Participants as the contact person for that Passport Regulator by a Participant of that economy for the purposes of this Annex;
 - (g) Requested Regulator means the Passport Regulator to whom a request is made under this Annex or the Passport Regulator who may provide information under this Annex; and
 - (h) Requesting Regulator means the Passport Regulator making a request under this Annex or the Passport Regulator to whom information is provided under this Annex.
- (2) All other terms that are defined in Annex 3 have the same meaning when used in this Annex.

Part 2

General matters

3 Effect of this Annex

- (1) In keeping with Paragraph 15 of the MOC, this Annex does not confer upon any Person the right or ability directly or indirectly to obtain, suppress, or exclude any information or to challenge the execution of a request for assistance under this Annex.
- (2) The Annex complements, but does not alter the terms and conditions of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMOU), to which the Passport Regulators are signatories, which covers information-sharing but in the context of enforcement investigations.
- (3) This Annex complements but does not alter the terms and conditions of any other existing memoranda of understanding or arrangements that may be in place with any other authorities, including another Passport Regulator; how-

ever, a Passport Regulator may rely on the commitments in this Annex without any limitation that applies in any other MOC.

- (4) This Annex does not limit a Passport Regulator's supervisory, oversight or regulatory functions. In particular, this Annex does not affect any right of a Passport Regulator to communicate with, or obtain information or documents from, any Regulated Entity subject to its jurisdiction that is established in the territory of any other Passport Regulator.

Part 3

Cooperation

4 General Cooperation

- (1) The Passport Regulators will, within the framework of this Annex, provide one another with the fullest cooperation permissible under their respective laws in relation to the performance of their functions under this MOC including the regulation (for example, surveillance, supervision and investigation) of Regulated Entities. Following consultation between a Requesting Regulator and a Requested Regulator, cooperation under this Annex may be denied by the Requested Regulator in any of the following circumstances:
 - (a) where the cooperation would require the Requested Regulator to act in a manner that would violate domestic law;
 - (b) where criminal proceedings have already been initiated in the jurisdiction of the Requested Regulator based upon the same facts and against the same Regulated Entities and the cooperation requested relates to the subject matter of those proceedings;
 - (c) where the cooperation sought is in the context of enforcement investigations conducted for the purpose in whole or in part of taking legal proceedings for (i) a criminal offence or (ii) other penalty to be imposed on a Person;
 - (d) where a request for assistance is not made in accordance with the terms of this Annex;
 - (e) where the cooperation sought is not for the purpose of considering or providing grounds for:
 - (i) admission of a Passport Fund to a Host Economy;
 - (ii) registration of a Passport Fund in a Home Economy;
 - (iii) imposition of a stop order or action having similar effect;
 - (iv) deregistration of a Passport Fund;
 - (v) removal, cancellation or suspension of, or the application of additional restrictions, directions or conditions on, any relevant licence, authority, approval or registration of a Regulated Entity;

- (vi) imposition of a ban on engaging in regulated activity; or
 - (vii) granting an exemption or modification as a Home Regulator or Host Regulator; or
 - (viii) civil proceedings or administrative proceedings, other than proceedings before a court or other external body for a penalty as set out under subsection 4(1)(c) of this Annex;
- (f) a request for assistance is made under the terms and conditions of the IOSCO MMOU, or under the terms and conditions of any other memoranda of understanding or agreements between a Passport Regulator and another authority, including a Passport Regulator; or
 - (g) on the grounds of the public interest or essential national interest notified in writing.
- (2) The Requesting and Requested Regulators will consult about cost sharing if it appears that the Requested Regulator will incur substantial costs in responding to a request for assistance under this Annex.
 - (3) Each Participant has notified other Participants of laws and regulations that it has identified that may restrict co-operation, except those laws and regulations that are highly unlikely to be relevant.
 - (4) If a Participant becomes aware that a law or regulation not previously disclosed to other Participants is likely to significantly impede cooperation that would otherwise be provided in accordance with this Annex, other than in a circumstance that the Participant reasonably believes will not be likely to arise, the Participant will notify each other Participant in writing. The existence of any such law or regulation may be raised as a difference under Paragraph 8 of the MOC.

5 Informal consultations

The Participants recognise the importance of close communication among Passport Regulators, and intend Passport Regulators to consult one another regarding:

- (a) general supervisory issues, including with respect to regulatory, oversight or other developments;
- (b) issues relevant to the operations, activities, and regulation of Regulated Entities in relation to Passport Funds registered or offered in their economies;
- (c) any other areas of mutual supervisory interest, including refusing a Passport Fund's application for entry to an economy or issuing a stop order or taking action to similar effect, use of banning or other administrative orders and deregistration of Passport Funds; and
- (d) the making of any determination under the Common Regulatory Arrangements or the Passport Rules by a Passport Regulator:

- (i) that the Passport Regulator considers gives rise to an unreasonable risk of inconsistency in regulatory arrangements between the Passport Regulators; or
- (ii) where the Passport Regulator is a Host Regulator and relates to action relating to compliance with the Passport Rules or the Home Economy Laws and Regulations.

6 Exchange of information

- (1) To supplement consultations, each Participant intends that the Requested Regulator will provide the Requesting Regulator, upon written request and subject to applicable laws, with assistance in obtaining information, documents or statements where reasonable, having regard to other availability of that information to the Requesting Regulator and reasonable assistance in understanding such information so as to enable the Requesting Regulator to assess compliance with its laws and regulations in relation to Regulated Entities. Such assistance may where appropriate include:
 - (a) provision of information held by the Requested Regulator;
 - (b) obtaining information and documents from Persons where reasonable; and
 - (c) taking statements from Persons where reasonable.
- (2) Where a Passport Regulator seeks to obtain information directly from a Regulated Entity, other than in furtherance of contact previously notified to the Passport Regulator in whose jurisdiction the Regulated Entity is established or in relation to an application made to the Passport Regulator by the Regulated Entity, the Passport Regulator will unless otherwise agreed between the relevant Passport Regulators, give prior notification where reasonably practicable or otherwise notify as soon as practicable, to the Passport Regulator in whose jurisdiction the Regulated Entity is established.

7 Notification

- (1) Subject to a Passport Regulator (the '*first-mentioned Passport Regulator*') being aware that the entity in question is a Regulated Entity regulated by another Passport Regulator or a Regulated Entity in relation to a Passport Fund where interests in the Passport Fund are offered in the jurisdiction of another Passport Regulator under the Passport, the first-mentioned Passport Regulator will inform the other Passport Regulator within a reasonable time period of:
 - (a) pending regulatory changes in its economy that, in its opinion, are likely to have a significant adverse impact on the operations, activities, or reputation of the Regulated Entity in connection with a Passport Fund;
 - (b) any information it has about an event of which it is aware that in its opinion is likely to have a significant adverse impact on a Regulated Entity in connection with a Passport Fund (including changes in the

operating environment, operations, financial resources, management, or systems and control of a Regulated Entity in connection with a Passport Fund);

- (c) any enforcement or regulatory actions or sanctions, taken in the economy of the first-mentioned Passport Regulator against the Regulated Entity in connection with a Passport Fund (including the refusal, revocation, suspension or adverse modification of relevant licences, authorisations, approvals or registrations in respect of an Operator) which, in the opinion of the first-mentioned Passport Regulator, may have a significant impact on the other Passport Regulator's confidence in the Regulated Entity's ability or willingness to comply with the Laws and Regulations of the other Passport Regulator including the Passport Rules; and
 - (d) any action taken as permitted by section 10 of Annex 2.
- (2) Subject to a Passport Regulator being aware that the entity in question is a Regulated Entity and is regulated by another Passport Regulator or is a Regulated Entity in relation to a Passport Fund where interests in the Passport Fund are offered in the jurisdiction of another Passport Regulator under the Passport, where the first mentioned Passport Regulator intends to take enforcement or adverse regulatory actions or sanctions against the Regulated Entity, that Passport Regulator will, as soon as practicable, notify the other Passport Regulator, in writing of its intention.

8 Unsolicited information

- (1) Without prior request for assistance, the Passport Regulators may transmit to one another information they hold and which they may consider useful to another Passport Regulator in the performance of its functions and for the purposes that may be specified in the transmission letter.
- (2) In this event, the terms and conditions of this Annex will apply if the providing Passport Regulator specifies that the information is given under this Annex.
- (3) Without prior request, the Passport Regulators will inform one another of any significant change in any Laws and Regulations and any announcements, circulars, guidelines and notices of their respective jurisdictions, which affects or is relevant to the implementation and operation of the Asia Region Funds Passport, or will have significant impact on the protection afforded to members of a Passport Fund.

9 Regular consultations and review

The Participants will engage in consultations with each other regarding investment management activity in their markets, review the arrangements provided under this Annex periodically for the purpose, inter alia, of expanding or altering the scope or operation of this MOC should that be determined appropriate and assess the operation of the Passport including in light of any significant regulatory changes.

Part 4

Execution of requests for assistance

10 Cross-border on-site visits

- (1) The Participants intend that Passport Regulators will facilitate on-site access to Regulated Entities, operating in their respective territories for the purposes of regulation in relation to Passport Funds to the extent that they are able reasonably to provide facilitation including having regard to whether the Regulated Entity is regulated in the economy of the Passport Regulator.
- (2) Any facilitation for a Cross-border On-Site Visit of a Regulated Entity by a Passport Regulator under this Annex is subject to any laws or regulations of the jurisdiction in which the Regulated Entity is operating which apply to that Passport Regulator.
- (3) Passport Regulators will discuss and reach common understanding on the terms regarding any Cross-border On-Site Visits or alternative means to obtain requested information, taking into full account each other's sovereignty, legal framework and statutory obligations in particular in determining the respective roles and responsibilities of the Passport Regulators.
- (4) Generally, the Passport Regulators will act in accordance with the following procedure before conducting a Cross-border On-Site Visit:
 - (a) when establishing the scope of the Cross-border On-site Visit, the Passport Regulator seeking to conduct the visit will give due and full consideration to the supervisory activities of the other Passport Regulator and any information that was made available or is capable of being made available by that Passport Regulator;
 - (b) the Passport Regulator seeking to conduct the visit will request the other Passport Regulator and provide information on the purpose and proposed timeframe for the visit;
 - (c) the Passport Regulators will assist each other in obtaining and understanding public and non-public documents and information from relevant Persons and furnish such additional information as it may have that may be reasonably relevant and may be requested by the Passport Regulator seeking to conduct the Cross-border On-Site Visit;
 - (d) the Passport Regulator seeking to conduct a visit will provide notice to the other Passport Regulator of its desire to conduct a Cross-border On-Site Visit and the Passport Regulators will then consult with a view to reaching an understanding on the intended timeframe for and scope of the Cross-border On-Site Visit; and
 - (e) the Passport Regulator facilitating access to Regulated Entities operating in that Passport Regulator's territory will decide whether any visiting Passport Regulator is to be accompanied by its officials during the visit.

11 Form of requests

- (1) To the extent possible, a request for assistance pursuant to Part 4 and subsection 6(1) and paragraph 10(4)(b) of this Annex will be made in writing and addressed to the Relevant Contact Person.
- (2) A request will specify the following:
 - (a) the assistance, including information, sought by the Requesting Regulator;
 - (b) a concise description of the matter which is the subject of the request and the purpose for which the assistance is sought (including details of the rule or law pertaining to the matter which is the subject of the request where appropriate);
 - (c) to whom, if anyone, onward disclosure of information is likely to be necessary and the reason for such disclosure; and
 - (d) the desired time period for reply.

12 Emergency situations

- (1) A Passport Regulator who considers an Emergency Situation has arisen will notify other Passport Regulators who it is aware may have an interest of the Emergency Situation as soon as practicable and, while in the opinion of the Passport Regulator the Emergency Situation continues, communicate information to the other as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts taken to address the Emergency Situation.
- (2) From the time it is agreed by at least two Passport Regulators that there is an Emergency Situation, requests for information may be made among Passport Regulators in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

Part 5**Uses of information and consent****13 Permitted uses of information**

- (1) Subject to subsection 13(4), the Requesting Regulator may use non-public information obtained under this Annex solely for the purpose of performing their functions under this MOC, seeking to ensure compliance with the laws or regulations of the Requesting Regulator or considering or providing grounds for taking action referred to at subsections 4(1)(e)(i) to (viii).
- (2) Except with the written consent of the Requested Regulator, the Requesting Regulator may not use non-public information obtained under this Annex for criminal proceedings or legal or administrative proceedings before a court or other external body for the imposition of a penalty. If written consent is given,

use of the information will be subject to the terms and conditions in the IOSCO MMOU.

- (3) Except with the written consent of the Requested Regulator, any non-public information provided without prior request for assistance to a Passport Regulator pursuant to section 8 may not be used for any purposes other than those stated in the transmission letter or, otherwise, as permitted in section 14.
- (4) Except with the written consent of the Requested Regulator, any non-public information provided to the Requesting Regulator under this Annex on the basis it is to be used for a particular purpose, may only be used for that purpose.
- (5) If separate inquiries made by a Requesting Regulator result in the requested information being obtained, the Requesting Regulator may use the information even if it has been provided under this Annex and its use will not be subject to this section.

Part 6

Confidentiality of information and onward sharing

14 Confidentiality of information and onward sharing

- (1) Except for disclosures in accordance with this Annex, and uses of information given consent or permitted under section 13, each Passport Regulator will keep confidential to the extent permitted by law, all non-public information shared under this Annex, requests made under this Annex, the contents of such requests, and any other matters arising under this Annex.
- (2) To the extent legally permissible, the Requesting Regulator will notify the Requested Regulator of any legally enforceable demand for non-public information provided by the Requested Regulator under this Annex prior to compliance with the demand, and the Requesting Regulator will assert all appropriate legal exemptions or privileges with respect to such information as may be available to avoid the requirement to disclose.
- (3) In certain circumstances as required by law, it may be required for the Requesting Regulator to share information obtained under this Annex with other Governmental Entities in its jurisdiction. In these circumstances and to the extent permitted by law:
 - (a) the Requesting Regulator will notify the Requested Regulator prior to passing on the information; and
 - (b) if required by the Requested Regulator, the Requesting Regulator concerned will endeavour to provide adequate assurances concerning the Governmental Entity's use and confidential treatment of the information, including, as necessary, assurances that the information will not be shared with other parties without getting the prior written consent of the Requested Regulator.

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- (4) Except as provided in subsections 14(2) and 14(3), the Requesting Regulator must obtain the prior consent of the Requested Regulator before disclosing non-public information received under this Annex other than to a Passport Regulator.
 - (5) If consent is not obtained from the Requested Regulator, the relevant Passport Regulators will consult one another to discuss the reasons for withholding consent to the use and the circumstances, if any, under which the intended use by the Requesting Regulator might be allowed.
 - (6) The Passport Regulators intend that the sharing or disclosure of non-public information, including but not limited to deliberative and consultative materials, pursuant to the terms of this MOC, will not constitute a waiver of privilege or confidentiality of such information.

Annex 5:
**Subsequent Participants: Form of Notification of the Joint
Committee by an Accepted Prospective Subsequent Participant**

Acceptance By [Insert Name of Economy] of Commitments in the
Memorandum of Cooperation on the Establishment and Implementation
of the Asia Region Funds Passport

The [insert relevant Participant] of [insert name of economy] acknowledges the communication dated [insert date X] from the Chair of the Joint Committee established under the Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport (the MOC).

That communication advised that [insert name of Participant] had been accepted by MOC Participants as a Subsequent Participant to the MOC.

The [insert relevant Signatory or Signatories – Government/Agency/Regulator] of [insert name of economy] hereby accepts the commitments in the MOC with effect from [insert date Y]. In accordance with Paragraph 11 of the MOC, [insert name of economy] will therefore become a Subsequent Participant to that MOC on [insert date Y].

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations come into force on 14 June 2019.

These regulations are related to amendments made to the Financial Markets Conduct Regulations 2014 (the **2014 regulations**) by the Financial Markets Conduct (Asia Region Funds Passport) Amendment Regulations 2019.

These regulations and the amendments made to the 2014 regulations provide for a new recognition and application regime to be implemented under subpart 6 of Part 9 of the Financial Markets Conduct Act 2013 (the **Act**). This gives effect to the Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport (the **memorandum**) entered into between New Zealand and Australia, Japan, the Republic of Korea, and Thailand.

Under these arrangements,—

- investments in certain overseas managed investment schemes (**foreign passport funds**) are able to be offered in New Zealand. Each foreign passport fund

is primarily regulated under the laws of its home country (instead of New Zealand law); and

- investments in certain New Zealand managed investment schemes (**New Zealand passport funds**) are able to be offered in Australia, Japan, the Republic of Korea, and Thailand. The New Zealand passport fund is primarily regulated under New Zealand law (for example, the governance requirements of Part 4 of the Act) rather than overseas law.

In summary, these regulations—

- exempt certain offers of investments in foreign passport funds from most governance requirements in Part 4 of the Act and from financial reporting obligations in Part 7 of the Act (*see regulations 6 to 10*). The disclosure requirements in Part 3 of the Act still apply to these offers in New Zealand:
- provide for the exemptions to apply only if certain preconditions are met (*see regulations 11 to 16*). For example, the operator must apply to the Financial Markets Authority (the **FMA**) for entry of the foreign passport fund in accordance with the memorandum:
- require the operator of the foreign passport fund to comply with certain terms and conditions (*see regulations 17 to 22*). For example, the operator must comply with the rules under the memorandum:
- require the operator of the foreign passport fund to notify certain information to the FMA (*see regulations 23 and 24*):
- provide for the application of the Act and the 2014 regulations (apart from disclosure requirements in Part 3 of the Act) to be extended when a New Zealand offeror offers managed investment products in Australia, Japan, the Republic of Korea, or Thailand under a passport fund recognition scheme (*see Part 2*).

Regulatory impact assessment

The Ministry of Business, Innovation, and Employment produced a regulatory impact assessment on 7 April 2016 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact assessment can be found at—

- <https://www.mbie.govt.nz/assets/bffe1d5d39/ris-joining-the-asia-region-funds-passport.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 16 May 2019.

These regulations are administered by the Ministry of Business, Innovation, and Employment.