

Asia Region Funds Passport will facilitate the cross-border offering of managed funds

The Asia Region Funds Passport will provide a multilaterally agreed framework for offering high quality regulated managed funds across participating economies without having to go through a full regulatory approval process.

Most New Zealand fund managers will not meet the size requirements so the passport's attractiveness will be limited until offering documentation and tax treatment are covered or aligned. But at least it is a start.

What is the Asia Region Funds Passport?

The Memorandum of Cooperation¹ between New Zealand, Australia, Japan and South Korea came into effect last week (Thursday, 30 June 2016). It sets out the internationally agreed rules and cooperation mechanisms for the Asia Region Funds Passport. Participating economies will need to implement the arrangements through their national laws by 31 December 2017.

The Asia Region Funds Passport provides a framework under which an operator of an eligible managed fund in a Passport member economy will be able to offer interests in that fund to investors in other Passport member economies.

It relieves the operator of the Passport Fund from the need to obtain certain regulatory approvals that would otherwise be required under the host economy laws in respect of the issue or offer of interests in the Passport Fund, provided that the issue or offer is done through a qualified distributor.

The Passport does not, however, go as far as the trans-Tasman mutual recognition scheme. For example, the operator of a Passport Fund must still prepare offer documents in accordance with regulatory requirements of each host economy where the Passport Fund is offered.

What is not covered under the Asia Region Funds Passport?

Each participant economy may still impose additional requirements on the Passport Funds that apply in addition to the Passport Rules, in areas such as:

- disclosure documents and annual and periodic reporting to members
- licensing requirements relating to distribution, provision of financial advice, custody services and dealing in financial products
- advertising of financial products
- anti-money laundering and countering of financial of terrorism, and
- any rules on registration as a foreign company or appointing a local representative.

What are the eligibility criteria for an operator of a Passport Fund?

One of the specific goals of the Passport is to promote investor protection. Therefore, in order to be able to take advantage of the Passport, both the operator and the managed fund itself must comply with strict eligibility criteria.

When the proposed regime is adopted, an operator of a regulated managed fund may lodge an application to register the fund, or its sub fund, as a Passport Fund with the home regulator.

The operator of the regulated managed fund must:

- have its principal place of business in the home economy and be regulated by the home regulator for the operation of the CIS (i.e. any New Zealand based fund manager must be licensed under the Financial Markets Conduct Act (FMCA) as a manager of a managed investment scheme)
- have the minimum of US\$500 million (approximately NZ\$715 million) assets under management
- have at least US\$1 million (approximately NZ\$1.4 million) additional capital (with further amounts depending on the size of the fund)
- have officers that meet the qualification requirements
- meet certain organisational requirements
- have a minimum of five years track record, and
- meet the good standing test.

What are the eligibility criteria for the Passport Fund?

The Passport Fund must:

- be offered to the public generally in the home economy (i.e. any New Zealand based Passport Fund must be a managed investment scheme registered under the FMCA)
- invest in only simple financial products (such as currency, deposits, depository receipts over gold, transferable securities (e.g. shares and bonds) and money market instruments)
- be highly diversified
- comply with the restrictions on derivatives, securities lending and borrowing, and
- restrict the ability to charge performance fees and prohibit short-selling.

Before offering interests in a host economy, the Passport Fund must apply to the host regulator for entry. The application for entry can be refused by the host regulator only under certain limited circumstances.

Who will regulate the Passport Funds and the operator?

The operator and the Passport Fund must comply with both the home economy and host economy laws and regulations. That means any offshore fund manager offering funds in New Zealand under the Passport must comply with the FMCA (including having a PDS and a register entry on the Disclose register).

Timing

The Memorandum of Cooperation came into effect on 30 June 2016. Participating economies will need to implement the arrangements through their national laws by 31 December 2017.

Our view

The Passport will bring limited benefits for the New Zealand fund managers, only some of whom will be able to take advantage of the bigger Asian markets. For foreign fund managers outside the Asia Pacific region, the Passport offers the opportunity to access the market via a single “home regulator” in one of the participating economies.

Currently only four countries have signed up for the Passport. If it is to be successful, more will need to join. Two big challenges will be the high barriers to entry and the possibility for participating economies to impose additional requirements.

The Passport does, however, start the process of gradually aligning the laws and regulations of the home and host economies, and may lead to more streamlined processes in the future.

Footnotes

1. <http://fundspassport.apec.org/files/2016/04/Asia-Region-Funds-Passport-Memorandum-of-Cooperation.pdf>

Our thanks to Sanna Boow, Penny Sheerin and Tim Williams for writing this Brief Counsel. For further information or help with preparing a submission, please contact the lawyers featured.



TIM WILLIAMS – PARTNER
T: +64 9 358 9840
M: +64 27 243 1629
E: tim.williams@chapmantripp.com



PENNY SHEERIN – PARTNER
T: +64 9 358 9817
M: +64 27 556 6516
E: penny.sheerin@chapmantripp.com



MIKE WOODBURY – PARTNER
T: +64 4 498 6324
M: +64 27 459 9014
E: mike.woodbury@chapmantripp.com



BRADLEY KIDD – PARTNER
T: +64 4 498 6356
M: +64 27 224 1271
E: bradley.kidd@chapmantripp.com



ROGER WALLIS – PARTNER
T: +64 9 357 9077
M: +64 27 478 3192
E: roger.wallis@chapmantripp.com



SANNA BOOW – SENIOR LEGAL ADVISOR
T: +64 9 357 9627
M: +64 27 528 2822
E: sanna.boow@chapmantripp.com

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AUCKLAND

23 Albert Street
 PO Box 2206, Auckland 1140
 New Zealand

T: +64 9 357 9000
F: +64 9 357 9099

WELLINGTON

10 Customhouse Quay
 PO Box 993, Wellington 6140
 New Zealand

T: +64 4 499 5999
F: +64 4 472 7111

CHRISTCHURCH

245 Blenheim Road
 PO Box 2510, Christchurch 8140
 New Zealand

T: +64 3 353 4130
F: +64 3 365 4587