



COVERSHEET

Minister	Hon Kris Faafoi	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Regulations to Implement the Asia Region Funds Passports Regime	Date to be published	June 2019

List of documents that have been proactively released

Date	Title	Author
May 2019	Cabinet paper: Regulations to Implement the Asia Region Funds Passports Regime	Office of Minister Commerce and Consumer Affairs
May 2019	Cabinet minute: Regulations to Implement the Asia Region Funds Passports Regime	Cabinet Office

Information redacted

NO (*please select*)

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In Confidence

Office of the Minister of Commerce and Consumer Affairs
Chair, Cabinet Legislation Committee

Regulations to implement the Asia Region Funds Passports regime

Proposal

- 1 This paper seeks authorisation to submit the following regulations to Executive Council, in order to give effect to the Asia Region Funds Passport mutual recognition regime:
 - 1.1. Financial Markets Conduct (Asia Region Funds Passport) Amendment Regulations 2019;
 - 1.2. Financial Markets Conduct (Asia Region Funds Passports) Regulations 2019; and
 - 1.3. Financial Markets Conduct (Fees) Amendment Regulations 2019.

Policy

- 2 In April 2016, Cabinet agreed that New Zealand should join the Asia Region Funds Passport initiative [EGI-16-MIN-0080 refers]. It authorised the Financial Markets Authority (FMA), in its capacity as New Zealand's financial markets regulator, to become a signatory to the *Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport* (Memorandum of Cooperation).
- 3 The Memorandum of Cooperation is a mutual recognition arrangement between co-operating Asia-Pacific Economic Cooperation (APEC) member countries. It allows fund managers in one country an easier path to offer managed funds to investors in other countries. The Funds Passport is expected to benefit New Zealand and the region by providing investors with a more diverse range of investment opportunities and deepening the region's capital markets to attract finance for growth in the region. The member countries are Japan, the Republic of Korea, Thailand, Australia and New Zealand.
- 4 Robust investor protections will remain. Where a foreign passport fund is offered to New Zealand investors:
 - 4.1. the fund manager must be licensed in their home jurisdiction;
 - 4.2. the home regulator must sign-off the fund manager as compliant with the passport rules;
 - 4.3. the fund manager has to comply with New Zealand disclosure requirements; and
 - 4.4. the FMA is able to monitor and take enforcement action against the fund manager.
- 5 Changes to regulations are required in New Zealand in order to implement the Funds Passport. This includes tailoring the requirements around what fund managers have to disclose when offering funds under the Funds Passport regime. Domestic law changes were also required in other member countries. Cabinet authorised the Minister of

Commerce and Consumer Affairs to issue drafting instructions to Parliamentary Counsel Office to give effect to the Memorandum of Cooperation [EGI-16-MIN-0080 refers].

- 6 This paper seeks approval for those changes to regulations, which generally implement the highly detailed rules agreed between member countries.
- 7 Japan, Thailand and Australia have completed the necessary changes and the Funds Passport regime has been live in those countries since February 2019. It is important that New Zealand also progresses the necessary changes to regulations to help fulfil its international commitments in line with the other member countries.

Financial Markets Conduct (Asia Region Funds Passport) Amendment Regulations 2019

- 8 The Financial Markets Conduct (Asia Region Funds Passport) Amendment Regulations 2019 amend certain standard requirements applying to all those offering managed funds in New Zealand so that applicable requirements are tailored for passport funds.
- 9 For example, the proposed regulations provide that a foreign fund offered in New Zealand under the Funds Passport regime would be required to include a statement in their disclosure information specifying that some differences from the usual operation of New Zealand laws may apply in respect of that fund. The statement provides that investors may want to seek advice from a financial adviser when considering the effect of these differences on investment decisions.

Financial Markets Conduct (Asia Region Funds Passports) Regulations 2019

- 10 The Financial Markets Conduct (Asia Region Funds Passports) Regulations 2019 set out certain other process requirements for passport funds. For example, a foreign operator seeking to offer its funds into New Zealand would need to seek approval from the FMA to become a recognised Funds Passport offer in New Zealand. A New Zealand operator seeking to offer funds overseas would also first need the FMA's approval.

Financial Markets Conduct (Fees) Amendment Regulations 2019

- 11 The Financial Markets Conduct (Fees) Amendment Regulations 2019 provides for the FMA to charge a fee for considering foreign passport funds' applications to make an offer in New Zealand. The Memorandum of Cooperation anticipates that a fee would be applicable in relation to these matters.
- 12 The proposed regulations provide for the relevant fees to be charged based on time spent by the FMA at its hourly rate (currently \$178.25 per hour). The hourly rate charging method provides the most accurate form of cost recovery and is preferred given the nature of the applications is difficult to predict. It is also consistent with the charging method for certain other matters under the Financial Markets Conduct (Fees) Regulations 2014 where the nature of application may be varied. To address uncertainty for applicants about likely costs, the FMA would, where possible, give applicants an estimate of likely time that will be spent assessing applications.
- 13 Changes to FMA levies will also be separately implemented in the coming months so that foreign passport funds are required to pay an annual levy of \$529 (GST inclusive). That change will be implemented at the same time as other FMA levy changes in relation to the new financial advice regulatory regime are progressed.

Notification of implementation

- 14 Once the regulations have been made and corresponding changes have been made to the FMA's processes and the register of financial products, the FMA will give notice to the Joint Committee of member countries that New Zealand has completed implementation of the Memorandum of Cooperation and is ready to accept Funds Passport applications.

Timing and 28-day rule

- 15 The proposed regulations will come into force 28 days after notification in the Gazette.

Compliance

- 16 The proposed regulations comply with:
- 16.1. the principles of the Treaty of Waitangi;
 - 16.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 16.3. the principles and guidelines set out in the Privacy Act 1993 (if the regulations raise privacy issues, indicate whether the Privacy Commissioner agrees that they comply with all relevant principles);
 - 16.4. relevant international standards and obligations; and
 - 16.5. *the LAC Guidelines on the Process and Content of Legislation* (2014 edition), which are maintained by the Legislation Design and Advisory Committee.
- 17 Before making the proposed regulations, I am required under the Financial Markets Conduct Act 2013 to:
- 17.1. consult the FMA;
 - 17.2. be satisfied that it is appropriate for certain New Zealand laws to apply to financial products offered to persons in other member countries; and
 - 17.3. be satisfied that it is in the public interest to exempt foreign passport funds from certain requirements in New Zealand law after having regard to the securities laws of the foreign member country and the interests of New Zealand investors.
- 18 I have consulted the FMA and I am satisfied that the above requirements have been met.

Regulations Review Committee

- 19 There are no grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

- 20 The regulations have been certified by Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact analysis

- 21 An impact statement was prepared and submitted at the time that Cabinet approval was sought for New Zealand to enter into the Funds Passport initiative [EGI-16-MIN-0080 refers].

Publicity

- 22 The Ministry of Business, Innovation and Employment and the FMA will communicate these changes to affected stakeholders.

Proactive Release

- 23 I intend to release this paper proactively in whole within 30 days. The Ministry of Business, Innovation and Employment will publish a copy of this paper on its website.

Consultation

- 24 The Treasury, the Ministry of Foreign Affairs and Trade, and the Financial Markets Authority have been consulted on the contents of this paper. The Department of the Prime Minister and Cabinet (Policy Advisory Group) has been informed.
- 25 Representatives of financial services law firms as well as a New Zealand fund manager interested in the Funds Passport initiative were consulted on an exposure draft of the regulations. Their feedback has been incorporated into the final draft of the regulations.

Recommendations

I recommend that the Cabinet Economic Development Committee:

- 1 **note** that in April 2016 the Cabinet Economic Growth and Infrastructure Committee agreed that New Zealand should join the Asia Region Funds Passport initiative and authorised the Financial Markets Authority to enter into the Memorandum of Cooperation on the Establishment and Implementation of the initiative on behalf of the New Zealand Government [EGI-16-MIN-0080 refers];
- 2 **note** that the:
- 2.1. Financial Markets Conduct (Asia Region Funds Passport) Amendment Regulations 2019;
- 2.2. Financial Markets Conduct (Asia Region Funds Passports) Regulations 2019; and
- 2.3. Financial Markets Conduct (Fees) Amendment Regulations 2019
- give effect to the decision referred to in paragraph 1 above;
- 3 **note** that the Memorandum of Cooperation contemplates that fees would be applicable in relation to applications to regulators under the Funds Passport initiative and the Financial Markets Conduct (Fees) Amendment Regulations 2019 provide for those fees to be charged based on the Financial Markets Authority's hourly rate;
- 4 **authorise** the submission to the Executive Council of the:

4.1. Financial Markets Conduct (Asia Region Funds Passport) Amendment Regulations 2019;

4.2. Financial Markets Conduct (Asia Region Funds Passports) Regulations 2019; and

4.3. Financial Markets Conduct (Fees) Amendment Regulations 2019;

5 **note** that the regulations referred to in paragraph 4 will come into force on 14 June 2019;

6 **note** that before making the above regulations, the Minister of Commerce and Consumer Affairs is required under the Financial Markets Conduct Act 2013 to:

6.1. consult the Financial Markets Authority;

6.2. be satisfied that it is appropriate for certain New Zealand laws to apply to financial products offered to persons in other member countries; and

6.3. be satisfied that it is in the public interest to exempt foreign passport funds from certain requirements in New Zealand law after having regard to the securities laws of the foreign member country and the interests of New Zealand investors;

7 **note** the advice of the Minister of Commerce and Consumer Affairs that the requirements in paragraph 6 above have been met; and

8 **note** that after the regulations are made, the Financial Markets Authority will, at the appropriate time, notify the Joint Committee of member countries overseeing the implementation of the Funds Passport initiative that New Zealand has completed implementation.

Authorised for lodgement

Hon Kris Faafoi

Minister of Commerce and Consumer Affairs