



COVERSHEET

Minister	Hon Andrew Bayly	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Financial Markets Conduct (Asia Region Funds Passport) Amendment Regulations 2024	Date to be published	12 July 2024

List of documents that have been proactively released

Date	Title	Author
May 2024	Financial Markets Conduct (Asia Region Funds Passport) Amendment Regulations 2024	Office of the Hon Andrew Bayly
23 May 2024	Financial Markets Conduct (Asia Region Funds Passport) Amendment Regulations 2024 LEG-24-MIN-0104 Minute	Cabinet Office

Information redacted

NO

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Cabinet Legislation Committee

Financial Markets Conduct (Asia Region Funds Passport) Amendment Regulations 2024

Proposal

- 1 This paper seeks authorisation to submit to the Executive Council the Financial Markets Conduct (Asia Region Funds Passport) Amendment Regulations 2024 which will amend the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019.

Policy

- 2 In April 2016, a previous Government agreed that New Zealand should join the Asia Region Funds Passport (**ARFP**) initiative and authorised the Financial Markets Authority (**FMA**) to enter into the Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport (the **MoC**) on behalf of the New Zealand Government [EGI-16-MIN-0080].
- 3 The ARFP regime is a non-binding mutual recognition arrangement between co-operating Asia-Pacific Economic Cooperation (**APEC**) member countries. It allows fund managers in one member country an easier path to offer managed funds to investors in other member countries. Under the regime, a fund manager from one country is not required to obtain a licence in the other countries, provided certain criteria are met. The FMA will assess if international fund managers' applications meet the requirements before they are able to use the ARFP regime in New Zealand. Approved fund managers will be subject to ongoing obligations and compliance, such as having officers with relevant qualifications, meeting a financial resources test, track record test and good standing test. The FMA can use its usual powers to remedy breaches.
- 4 The ARFP regime makes it easier for New Zealand businesses to raise international capital by offering their managed funds outside the country. It also provides New Zealand investors with a more diverse range of investment opportunities and deepens the region's capital markets to attract finance for growth in the region. There is broad support from New Zealand fund managers about the benefits that they could receive under the ARFP regime, and the changes proposed in this paper enable the ARFP regime to be run effectively.
- 5 The member countries of the ARFP regime are Japan, the Republic of Korea, Thailand, Australia and New Zealand. Domestic law changes were made in

New Zealand and other member countries to implement the regime. The regime has been operational since 2019.

- 6 Member countries have been working to make minor administrative improvements to update the MoC. There are two types of changes to the MoC:
 - 6.1 Process for amending the MoC. Previously, a change to the MoC would only take effect if all member countries had made the necessary change to their domestic laws. This change to the MoC now means that the Joint Committee of member countries could agree a date that the MoC change takes effect, and even if one has not made necessary domestic law changes, the amended MoC applies.
 - 6.2 Minor tidy ups. These changes generally correct or update references to other member countries' legislation and do not change the substance of how the MoC operates from New Zealand's perspective. One change addresses an oversight from when the MoC was first agreed. The change allows the FMA to share information received from its foreign counterparts with other New Zealand regulators, such as the Commerce Commission, if required by New Zealand law. This sharing would be subject to confidentiality and other safeguards but would not require the consent of the foreign regulator.
- 7 In January 2024, with my authorisation, the FMA signed a formal agreement to these minor changes to the MoC. This did not require Cabinet approval because they are required to have the regime continue and are administrative in nature.
- 8 To give effect to these minor and administrative changes, this paper seeks approval to make the consequential changes to the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019 to give effect to the proposed MoC changes.
- 9 The legislative changes need to come into force by 30 June 2024, otherwise all other member countries will have to roll back any amendments they have made to their domestic legislation.
- 10 My officials have reviewed the amendments in consultation with the FMA and Parliamentary Counsel Office and are satisfied they reflect the agreed changes to the MoC.
- 11 These changes will have no substantive impact on New Zealand laws, or New Zealand providers or investors, and will improve the efficiency of the regime.

Timing and 28-day rule

- 12 The proposed regulations will come into force on 30 June 2024 which fulfils the requirement that regulations come into force no sooner than 28 days after notification in the Gazette.

Compliance

- 13 The proposed regulations comply with:
- 13.1 the principles of the Treaty of Waitangi;
 - 13.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 13.3 the principles and guidelines set out in the Privacy Act 2020;
 - 13.4 relevant international standards and obligations;
 - 13.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 14 Before making the proposed regulations, I am required under the Financial Markets Act 2013 to:
- 14.1 consult the FMA;
 - 14.2 be satisfied that it is appropriate for certain New Zealand laws to apply to financial products offered to persons in other member countries; and
 - 14.3 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.
- 15 I have consulted the FMA and I am satisfied that the above requirements have been met.

Regulations Review Committee

- 16 I do not consider that there are grounds for the Regulations Review Committee to draw the regulations to the attention of the House under Standing Order 327.

Certification by Parliamentary Counsel

- 17 The regulations were certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 18 The Treasury's Regulatory Impact Analysis team has determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

- 19 The Climate Implications of Policy Assessment (**CIPA**) team has been consulted and confirms that CIPA requirements do not apply to this proposal as it is not expected to result in any significant, direct emissions impacts.

Publicity

- 20 The FMA will notify stakeholders of the changes and publish them on the ARFP website. The Ministry of Business, Innovation and Employment (**MBIE**) will proactively release this paper.

Proactive release

- 21 A version of this paper will be published on MBIE's website following Cabinet agreement to the proposals set out in this paper. The paper will be published subject to withholdings that are consistent with the grounds provided for in the Official Information Act 1982.

Consultation

- 22 Representatives of financial services law firms as well as a New Zealand fund manager interested in the initiative were consulted on an exposure draft of the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019. No additional public consultation was done on these changes given they are administrative in nature, and have no substantive impact on New Zealand laws, or New Zealand providers or investors.
- 23 The FMA was consulted on these proposed regulations. The FMA and the Ministry of Foreign Affairs and Trade was consulted on this Cabinet paper.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that in April 2016, a previous government 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];
- 2 **note** that member countries, including New Zealand, have agreed to minor changes to the Memorandum of Cooperation to amend the process for making changes to the Memorandum of Cooperation and also make other minor tidy-ups;
- 3 **note** that Financial Markets Conduct (Asia Region Funds Passport) Amendment Regulations 2024 give effect to the changes referred to in paragraph 2 above;
- 4 **authorise** the submission to the Executive Council of the Financial Markets Conduct (Asia Region Funds Passport) Amendment Regulations 2024;

- 5 **note** that the Financial Markets Conduct (Asia Region Funds Passport) Amendment Regulations 2024 will come into force on 30 June 2024.

Authorised for lodgement

Hon Andrew Bayly

Minister of Commerce and Consumer Affairs