

RG 000/138 Foreign passport funds

Foreign passport funds is a new RG that has been drafted for foreign passport fund operators and their advisers to assist them understand the requirements for entry into, or operating in, Australia as a host economy under the ARFP.

The main sections in the RG are:

- Entry requirements to passport into Australia
- Ongoing requirements
- Our powers and responsibilities

For a Foreign Passport Fund to be eligible to enter Australia, it must:

- Be a registered foreign company; and
- Have an offer in the Home Economy

Under Australian law, a registered foreign company is a company that is incorporated or formed outside Australia, and that is registered with ASIC to carry on business in Australia

To register with ASIC, a foreign company must have a local agent — either a natural person or a company — who resides in Australia and can accept legal notices on behalf of the foreign company

Under the Passport Rules, a foreign passport fund operator cannot offer interests in the foreign passport fund unless the requirements of an ongoing offer in the Home Economy is met. We have set out our views on the ways that requirement can be met.

Application process for foreign passport funds

The notice of intention must in the prescribed form, submitted through ASIC's online portal, and must include a copy of the foreign passport fund's PDS

Once ASIC receives the notice of intention, including the PDS, we will form an opinion about the information provided under the prescribed form.

If an applicant does not provide all the necessary information as prescribed, we will notify the applicant in writing within 21 days, or any extended period agreed to between ASIC and the applicant. The applicant may re-apply with all the necessary information

Once we have formed the opinion that information required under the prescribed form for the notification has been provided, we will assess the notification against the grounds of rejection as set out in Chapter 8A.

Foreign passport funds that have successfully notified ASIC become known as notified foreign passport funds, and they are subject to ongoing requirements.

While interests in notified foreign passport funds are open in Australia, they are required to meet the following requirements:

- Lodgements of reports — notified foreign passport fund operators must lodge with ASIC:
 - Financial statement reports
 - Audit reports in relation to the financial statement reports
 - Implementation review reports
- Change of event notification
- Compliance with PDS, continuous disclosure, significant event and periodic statement disclosure requirements
- Breach reporting of any breach of Host Economy laws that apply to them if the breach:
 - Might reasonably be regarded as 'significant', including when regarded with other breaches, or
 - When considered on its own or together with any other related breach, adversely affects the value of the assets of the notified foreign passport fund attributable to members in Australia by more than 1%.

Notified foreign passport funds will be required to provide its constitution to members or former members who acquired an interest in the fund in Australia.

They must also provide the register of members to any person in Australia, or any member or former member who acquired interests in the fund in Australia.

Powers and responsibilities

ASIC will have certain powers and responsibilities in relation to notified foreign passport funds and our RG provides some discussions about:

- Our discretionary powers to grant exemptions and modifications
- Our approach to recognising exemptions and modifications granted by other Passport regulators
- Our powers to disclose and use confidential information
- Checking compliance and investigations
- When can we make a stop order
- When can we take civil action
- When can we issue an infringement notice
- When can we accept an enforceable undertaking

- When can we take criminal prosecution action