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**Property Funds Association of Australia: ASIC Consultation Paper 296**

We welcome the opportunity to make a submission in respect of the ASIC Consultation Paper 296 released in October 2017.

By way of background, the Property Funds Association of Australia (**PFA**) is the peak body industry body representing the Australian unlisted wholesale and retail property funds sector, currently some \$125 billion in size.

We have provided our comments to each of the questions you have raised in your Proposals Paper, please see attached document.

We again thank you for the opportunity to provide this submission.

Should you have any questions in respect of our submission, please do not hesitate to contact myself ([paul.healy@propertyfunds.org.au](mailto:paul.healy@propertyfunds.org.au)) as we would be happy to be part of the dialogue of the consultation process.



**Paul Healy**  
**Chief Executive Officer**  
**Property Funds Association of Australia**

Proposal	Feedback	Person Responsible	Response/Submission
<b>Registering a managed investment scheme</b>			
<p>B1 Our proposed guidance on registering a managed investment scheme is set out in Section B of draft Regulatory Guide 000 Funds management: Establishing and registering a fund (Attachment 1 to this consultation paper). We propose to make minor changes to our existing policy to clarify our guidance about:</p> <p>(a) when a responsible entity can lodge an application;</p> <p>(b) acceptance of the application for lodgement; and</p> <p>(c) who can sign a directors' statement.</p>	<p>B1Q1 Do you agree with our proposed guidance? If not, why not?</p> <p>B1Q2 Do you have any comments on our proposed guidance?</p> <p>B1Q3 Is there any further guidance we should give? Please give details.</p> <p>B1Q4 Are there any practical problems associated with our guidance? Please give details.</p>	<p>Harry/John</p>	<p>RG 000.29 ASIC should make a commitment to register a passport fund within a certain period of time from being provided all relevant information in a satisfactory form – e.g. within 21 days.</p> <p>RG 000.62 – The RG should set out the process for a review before lodgement.</p>
<p>B2 We propose to require applicants to select more granular asset types (listed in Table 1 below) when applying to register the managed investment scheme. Where it is possible, we also propose to require existing responsible entities to reclassify an existing asset type when they first lodge a notification.</p>	<p>B2Q1 Do you agree with the asset types we have proposed? If not, why not?</p> <p>B2Q2 Is any further guidance required on the asset types we have proposed?</p> <p>B2Q3 Are there any other asset types that should be included? Please give details.</p>	<p>Harry/John</p>	<p>We agree with asset types.</p>
<b>Registering a CCIV and notifying of a sub-fund</b>			

Proposal	Feedback	Person Responsible	Response/Submission
<p>B3 Our proposed guidance on registering a CCIV and notifying us of a sub-fund of a CCIV is set out in Section C of draft Regulatory Guide 000 Funds management: Establishing and registering a fund (Attachment 1 to this consultation paper). We propose to set out guidance about:</p> <p>(a) for registering a CCIV:</p> <p>(i) when a corporate director can lodge an application;</p> <p>(ii) appointment of the depositary;</p> <p>(iii) acceptance of the application for lodgement;</p> <p>(iv) assessment of the application, constitution and compliance plan;</p> <p>(v) deciding whether to register the CCIV; and</p> <p>(vi) where the application is withdrawn; and</p> <p>(b) for notifying us of the establishment of a sub-fund of a CCIV:</p> <p>(i) acceptance of the notification for lodgement; and</p>	<p>B3Q1 Do you agree with our proposed guidance? If not, why not?</p> <p>B3Q2 Do you have any comments on our proposed guidance?</p> <p>B3Q3 Is there any further guidance we should give? Please give details.</p> <p>B3Q4 Are there any practical problems associated with our guidance? Please give details.</p> <p>B3Q5 Please give details of any additional costs associated with the implementation of our guidance. If possible, please quantify these costs.</p> <p>B3Q6 Are there any benefits you consider will result from our guidance? If possible, please quantify these benefits.</p>	<p>Harry/John</p>	<p>We have no comments on this item.</p>

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(ii) processing the notification.			
B4 We also propose to adopt the more granular asset types listed in Table 1 above for CCIVs and sub-funds of CCIVs.	<p>B4Q1 Do you agree with the asset types we have proposed? If not, why not?</p> <p>B4Q2 Is any further guidance required on the asset types we have proposed?</p> <p>B4Q3 Are there any other asset types that should be included? Please give details.</p>	Harry/John	We have no comments on this item
<b>Registering an Australian passport fund</b>			
<p>B5 Our proposed guidance about registering a registered scheme as an Australian passport fund is set out in Section D of draft Regulatory Guide 000 Funds management: Establishing and registering a fund (Attachment 1 to this consultation paper). We propose to set out guidance about:</p> <p>(a) the interaction between applications to register a managed investment scheme and an Australian passport fund;</p> <p>(b) assessing an application to register as an Australian passport fund;</p> <p>(c) assessing whether the operator meets the eligibility requirements;</p>	<p>B5Q1 Do you agree with our proposed guidance? If not, why not?</p> <p>B5Q2 Do you have any comments on our proposed guidance?</p> <p>B5Q3 Is there any further guidance we should give? Please give details.</p> <p>B5Q4 Are there any practical problems associated with our guidance? Please give details.</p> <p>B5Q5 Please give details of any additional costs associated with the implementation of our guidance. If possible, please quantify these costs.</p> <p>B5Q6 Are there any benefits you consider will result from our guidance? If possible, please quantify</p>	N/A	The ARFP regime is currently not open to unlisted property funds. PFA believes that simple property funds should be included in the passport regime. It is an important asset class attracting considerable interest in the region.

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<p>(d) forming an opinion about the likelihood of compliance with the Corporations Act and Australian Securities and Investments Commission Act 2001 (ASIC Act);</p> <p>(e) assessing the Product Disclosure Statement (PDS); and</p> <p>(f) updating our register of passport funds.</p>	<p>these benefits.</p>		
<p><b>Content of Constitutions</b></p>			
<p>C1 Our proposed guidance on the content requirements for constitutions is set out in draft updated RG 134 (Attachment 2 to this consultation paper). To reflect the new CCIV and Asia Region Funds Passport regimes, we propose to update our guidance on:</p> <p>(a) consideration to acquire interests or shares (see Section B of draft updated RG 134);</p> <p>(b) powers and rights of an investment fund operator (see Section D of draft updated RG 134);</p> <p>(c) complaints, disputes and remedies (see Section E of draft updated RG 134);</p> <p>(d) withdrawal rights (see Section G of draft</p>	<p>C1Q1 Should we exclude foreign members of an Australian passport fund in a host economy under the Asia Region Funds Passport from the relief we give under Class Order [CO 13/656] Equality of treatment impacting on the acquisition of interests from a responsible entity's duty in s601FC(1)(d) to treat members equally or fairly in relation to rights issues or distribution reinvestment plans?</p> <p>C1Q2 Do you agree with our proposed guidance? If not, why not?</p> <p>C1Q3 Do you have any comments on our proposed guidance?</p> <p>C1Q4 Is there any further guidance we should give? Please give details.</p> <p>C1Q5 Are there any practical problems associated</p>	<p>Matthew</p>	<p>Given the very few references in RG 134 to wholesale CCIVs, we query the utility of stating that the guide applies to wholesale CCIVs. RG 134 should be very clear about what aspects of RG 134 applies to wholesale CCIVs.</p> <p>ASIC refers to wholesale CCIVs in a footnote in RG 134.10 to the effect that the constitution of a wholesale CCIV does not need to meet the content requirement in draft s1155 but that if the corporate director is to have any powers these should be set out in the constitution.</p> <p>In addition, Table 1 at RG 134.22 states that section G applies to "investment funds" and "wholesale CCIVs". However, Section G makes no reference to wholesale CCIVs.</p> <p>RG 134.214-215 appears to apply generally to CCIVs</p>

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<p>updated RG 134); and  (e) incorporation by reference (see Section J of draft updated RG 134).</p>	<p>with our guidance? Please give details.</p>		<p>and RG 216-228 applies only to retail CCIVs.</p> <p>As RG 134.214-215 seem to be the only sections of Section G that are relevant to wholesale CCIVs and do not impose content requirements for constitutions, we would suggest either removing the reference to wholesale CCIVs to avoid confusion or clarifying in Section G what applies to wholesale CCIVs.</p> <p>We also note that the section of RG 134 that applies to redemption of shares in a CCIV appears to summarise the draft legislation. It does not appear to provide guidance on the content of constitutions for retail CCIVs, in particular whether ASIC's guidance on registered scheme constitutions also applies to retail CCIVs which have similar content requirements. We submit it would be useful for ASIC to do so in RG 134 rather than raise requisitions on CCIV constitutions after registration.</p>
<p>C2 We propose to remove the appendix from RG 134 for managed investment schemes registered before 1 October 2013 and create a new regulatory guide containing the content from this appendix.</p>	<p>C2Q1 Do you agree with our proposed approach? If not, why not?</p>	<p>Matthew</p>	<p>We agree with this approach.</p>
<p><b>Changing the constitution</b></p>			
<p>C3 Our proposed guidance about changing the constitution of an investment fund is set out in Section F of draft updated RG 134</p>	<p>C3Q1 Do you agree with our proposed guidance? If not, why not?</p>	<p>Matthew</p>	<p>We don't have any comments on ASIC's proposed guidance on amending constitutions.</p>

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(Attachment 2 to this consultation paper).	<p>C3Q2 Do you have any comments on our proposed guidance?</p> <p>C3Q3 Is there any further guidance we should give? Please give details.</p> <p>C3Q4 Are there any practical problems associated with our guidance? Please give details.</p> <p>C3Q5 Please give details of any additional costs associated with the implementation of our guidance. If possible, please quantify these costs.</p> <p>C3Q6 Are there any benefits you consider will result from our guidance? If possible, please quantify these benefits.</p>		
<b>Classes and sub-funds</b>			
<p>C4 Our proposed guidance is set out in Section C of draft updated RG 134 (Attachment 2 to this consultation paper). We propose to set out guidance about:</p> <p>(a) establishing sub-funds of CCIVs; and</p> <p>(b) protecting class rights in registered schemes.</p>	<p>C4Q1 Do you agree with our proposed guidance? If not, why not?</p> <p>C4Q2 Do you have any comments on our proposed guidance?</p> <p>C4Q3 Is there any further guidance we should give? Please give details.</p> <p>C4Q4 Are there any practical problems associated with our guidance? Please give details.</p> <p>C4Q5 Please give details of any additional costs</p>	<p>Matthew</p>	<p>Draft s1155(1)(c) requires the constitution of a retail CCIV to make adequate provision for the establishment of sub-funds, and classes of shares referable to sub-funds.</p> <p>We do not agree that with ASIC's proposed guidance in RG 134.120 that the constitution should also set out any rights that apply to members of a sub-fund or class of shares referable to a sub-fund that differ from others. This goes beyond the requirement to make adequate provision to establish the sub-fund or class of shares.</p>

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	<p>associated with the implementation of our guidance. If possible, please quantify these costs.</p> <p>C4Q6 Are there any benefits you consider will result from our guidance? If possible, please quantify these benefits.</p>		<p>There are also potential practical difficulties with ASIC's approach, which could require constitutions to be amended for new sub-funds or share classes to be established. This is not a practical approach for a CCIV which is intended to facilitate an umbrella fund with multiple sub-funds being established, generating efficiencies and economies of scale.</p> <p>For example, a constitution may specify a maximum fee with the ability to charge lower fees for different sub-funds and share classes. To the extent that RG 134.120 would have the effect that the lower fee should be specified in the constitution, we do not agree with this approach. If that is not the intention, then ASIC should clarify this in RG 134.</p>

### Compliance management systems

<p>D1 Our proposed guidance about compliance management systems is set out in Section B of draft updated R G 132 (Attachment 3 to this consultation paper). We propose to set out guidance about the key features of an effective and responsive compliance management system for responsible entities, wholesale scheme operators, corporate directors, IDPS operators and MDA providers to meet their obligations in s912A.</p>	<p>D1Q1 Do you agree with our proposed guidance? If not, why not?</p> <p>D1Q2 Do you have any comments on our proposed guidance?</p> <p>D1Q3 Is there any further guidance we should give? Please give details.</p> <p>D1Q4 Are there any practical problems associated with our guidance? Please give details.</p> <p>D1Q5 Please give details of any additional costs associated with the implementation of our guidance.</p>	<p>Linda Dintino</p>	<p>D1Q1 – No comment for proposed guidance.</p> <p>MIS/CCIV compliance management systems and processes will generally be implemented/documented as a result of the governing structure, strategy etc of the investment fund operator and the MIS/CCIV.</p> <p>D1Q2 – CCIV compliance management systems should operate alongside the existing MIS/MIT compliance management systems.</p> <p>Draft RG132 provides further guidance to enhance compliance management systems, compliance plans and oversight which should already exist within a</p>
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Proposal	Feedback	Person Responsible	Response/Submission
	<p>If possible, please quantify these costs.</p> <p>D1Q6 Are there any benefits you consider will result from our guidance? If possible, please quantify these benefits.</p>		<p>responsible entity’s current compliance/risk framework. Suggestions for improvement are welcomed as RG132 has not been updated since 1998 when managed investment scheme reform came into effect.</p> <p>With regards to property funds (unlisted/listed) further guidance and steps required to transition a property fund to CCIV.</p> <p>Further guidance on new/updated current ASIC reliefs to assist if REs consider transitioning to CCIV model.</p> <p>D1Q3 – See D1Q1 response. Further guidance on an appropriate implementation/transition timeframes.</p> <p>D1Q4 – Further guidance on what other regulatory obligations/impacts for the investment fund operator for CCIV investors, ie. Privacy, AML-CTF, CRS.</p> <p>D1Q5 – Potential for increased compliance costs associated with implementing enhanced controls as it relates to compliance monitoring systems, compliance resourcing, and compliance committee service fees.</p> <p>D1Q6 – Appreciate proposed guidance has reflected on the roles and responsibilities of compliance professionals and for the investment fund operator to ensure the compliance function is appropriately resourced for MIS and CCIV regime.</p>

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<b>Compliance plans</b>			
<p>D2 Our proposed guidance about compliance plans is set out in Section C of draft updated RG 132 (Attachment 3 to this consultation paper). We propose to set out guidance about how the investment fund operator can establish measures that will be adequate to meet s601HA. We propose to provide guidance about the identification of compliance risks and compliance controls at the group level and the level of the registered scheme or sub-fund of the retail CCIV. We also propose to give guidance about the additional compliance risks and compliance controls for an Australian passport fund.</p>	<p>D2Q1 Do you agree with our proposed guidance? If not, why not?</p> <p>D2Q2 Do you have any comments on our proposed guidance?</p> <p>D2Q3 Do you agree with the types of risks identified for different types of investment funds? If not, why not?</p> <p>D2Q4 Are there further risks that should be identified for any of the different investment fund types? Please give details.</p> <p>D2Q5 Is there any further guidance we should give? Please give details.</p> <p>D2Q6 Are there any practical problems associated with our guidance? Please give details.</p> <p>D2Q7 Please give details of any additional costs associated with the implementation of our guidance. If possible, please quantify these costs.</p> <p>D2Q8 Are there any benefits you consider will result from our guidance? If possible, please quantify these benefits.</p>	<p>Linda</p>	<p>D2Q1 – CCIV compliance plans should operate alongside the existing MIS/MIT compliance plans.</p> <p>MIS/CCIV compliance plans (in most instances for retail funds) will generally be documented as a result of the governing structure, strategy etc of the investment fund operator and the MIS/CCIV.</p> <p>D2Q2 – Opportunity for REs to review and enhance existing MIS compliance plans. Noting the RG132 has not been updated since 1998 when managed investment scheme reform came into effective.</p> <p>D2Q3 – Risks identified by proposed guidance should align with ASIC RG259 Risk management systems of responsible entities. Consideration of further risks be conducted by the investment fund operator as appropriate to the size, nature and complexity of the investment fund operator and/or the MIS or CCIV.</p> <p>D2Q4 – Refer response in D2Q3.</p> <p>D2Q5 – Further guidance for grandfathering existing MISs for new RG132 requirements.</p> <p>Further guidance and steps required to transition a property fund compliance plan to a CCIV compliance plan.</p> <p>Further guidance on an appropriate implementation /</p>

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			<p>transition timeframes.</p> <p>D2Q6 – Refer response in D2Q5.</p> <p>D2Q7 – Increased compliance/operational costs to enhance existing compliance/operational frameworks for MISs, eg. system changes, compliance plan re-lodgements, compliance plan audit fees.</p> <p>New costs for governance licensing / compliance / operational /audit / depositary, etc to implement CCIV – from a retail perspective.</p> <p>Potential for compliance plan auditors to increase their fees for conducting audits on revised/enhanced MIS compliance plans and new CCIV compliance plans.</p> <p>Further guidance on ASIC portal for registering MIS and CCIV compliance plans online, easier payment methods/processes noting new ASIC fees which will apply for new MISs from 1 July 2018.</p> <p>Further guidance on what impact, if any, on Treasury's proposal for Design and Distribution Obligations and Product Intervention Powers for MIS and proposed CCIV.</p> <p>D2Q8 – Opportunity to streamline MIS and proposed CCIV compliance plan process.</p>

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**Oversight**

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Proposal	Feedback	Person Responsible	Response/Submission
<p>D3 Our proposed guidance about oversight of registered schemes, CCIVs and Australian passport funds is set out in Section D of draft updated RG 132 (Attachment 3 to this consultation paper). We propose to set out guidance about:</p> <p>(a) for compliance committees:</p> <p>(i) the experience, qualifications and competence required by a compliance committee member to carry out their duties and functions;</p> <p>(ii) the terms of appointment of compliance committee members, which should set out clear requirements; and</p> <p>(iii) meeting regularly and keeping records;</p> <p>(b) for compliance plan auditors:</p> <p>(i) the scope of the audit under s601HG;</p> <p>(ii) testing of master compliance plans;</p> <p>(iii) lodgement of consolidated or single compliance plans; and</p> <p>(iv) the period covered by the audit opinion;</p> <p>Note: We also include summary guidance</p>	<p>D3Q1 Do you agree with our proposed guidance? If not, why not?</p> <p>D3Q2 Do you have any comments on our proposed guidance?</p> <p>D3Q3 Is there any further guidance we should give? Please give details.</p> <p>D3Q4 Are there any practical problems associated with our guidance? Please give details.</p> <p>D3Q5 Please give details of any additional costs associated with the implementation of our guidance. If possible, please quantify these costs.</p> <p>D3Q6 Are there any benefits you consider will result from our guidance? If possible, please quantify these benefits.</p>	<p>Linda</p>	<p>D3Q1 – CCIV oversight should operate alongside the existing MIS/MIT oversight of compliance committees.</p> <p>D3Q2 – Enhancement to existing MIS compliance committee oversight, however should be already in place for existing MISs.</p> <p>No further comment for APFs.</p> <p>D3Q3 – Further guidance if the depositary, when licensed, will have NTA requirements as it applies for current custodians.</p> <p>D3Q4 – Further guidance and steps required if transition a property fund to a CCIV the approach for changing from custodian to a depositary if retail.</p> <p>Tender process to consider the appropriate depositary before applying for CCIV.</p> <p>D3Q5 – Increased costs for CCIV to enter into an arrangement with a depositary. Increased costs if retain custodian for holding assets.</p> <p>D3Q6 – No comment.</p>

Proposal	Feedback	Person Responsible	Response/Submission
<p>about removing an auditor and reporting to ASIC, with cross-references to our existing guidance.</p> <p>(c) for depositaries of CCIVs performing an oversight role:</p> <p>(i) establishing, implementing and reviewing procedures and processes in relation to acting on instructions;</p> <p>(ii) performance of their supervisory duties; and</p> <p>(iii) supervision where activities of the CCIV are outsourced; and</p> <p>(d) in relation to the oversight obligations for Australian passport funds:</p> <p>(i) the role of the independent oversight entity; and</p> <p>(ii) the annual implementation review.</p>			
<b>Holding assets</b>			
<p>E1 Our proposed guidance about holding assets is set out in draft updated RG 133 (Attachment 4 to this consultation paper). To reflect the new CCIV and Asia Region Funds Passport regimes, we propose to update our</p>	<p>E1Q1 Do you agree with our proposed guidance? If not, why not?</p> <p>E1Q2 Do you have any comments on our proposed</p>	<p>Matthew</p>	<p>The exposure draft explanatory materials for the draft CCIV legislation released on 25 August 2017 provide that the assets of a wholesale CCIV may be held:</p>

Proposal	Feedback	Person Responsible	Response/Submission
guidance on:	guidance?		<ul style="list-style-type: none"> <li>by the CCIV itself;</li> </ul>
(a) minimum standards and related requirements for asset holders;	E1Q3 Is there any further guidance we should give? Please give details.		<ul style="list-style-type: none"> <li>on trust by a depositary; or</li> </ul>
(b) requirements when engaging another asset holder;	E1Q4 Are there any practical problems associated with our guidance? Please give details.		<ul style="list-style-type: none"> <li>on trust by a person other than the CCIV,</li> </ul>
(c) compliance controls for licensed custody providers—excluding registered schemes, CCIVs, IDPSs and MDAs;	E1Q5 Please give details of any additional costs associated with the implementation of our guidance. If possible, please quantify these costs.		<p>(see para 4.37 of the explanatory materials and s1142A of the exposure draft legislation).</p> <p>The provision in the draft legislation relating to wholesale CCIVs does not apply to an asset of a class of assets determined by the CCIV rules. (see s1142A(3)).</p>
Note: Compliance measures for registered schemes, CCIVs, IDPSs and MDAs are set out in draft updated RG 132 (see Section D of this consultation paper).	E1Q6 Are there any benefits you consider will result from our guidance? If possible, please quantify these benefits.		<p>ASIC's proposed guidance in RG 133.21 provides that for wholesale CCIVs, ASIC considers a corporate director may:</p>
(d) protection of rights for land used in registered schemes; and			<ul style="list-style-type: none"> <li>hold the assets of the CCIV under a licence to do so;</li> </ul>
(e) for registered schemes and CCIVs, relief from the obligation to separate assets.			<ul style="list-style-type: none"> <li>appoint a depositary; or</li> <li>engage a licensed custody provider.</li> </ul>
			<p>ASIC's proposed guidance is inconsistent with the position in the exposure draft legislation for wholesale CCIVs, which contemplates the <i>CCIV itself</i> (and not the corporate director) may hold the assets of the wholesale CCIV.</p> <p>A wholesale CCIV is a separate legal entity to the</p>

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			<p>corporate director, which is to be contrasted with the position for the trustee of an unregistered scheme holding assets (where the scheme itself is not a separate legal entity).</p> <p>Accordingly, where the CCIV itself holds the assets of a wholesale CCIV (as contemplated by the exposure draft legislation), the corporate director will not be the entity holding the assets and the CCIV will not need a licence to hold the assets because it is a corporate vehicle and is not holding assets on trust for members.</p> <p>In light of the above comments, it is also not clear what ASIC means in RG 133.21(d) by saying the CD may "engage a custodian to hold the assets under the corporate director's licence", as the custodian will hold the assets on trust for the CCIV (as reflected in draft s1142A(2)) and not the corporate director.</p> <p>We submit the proposed guidance should therefore be amended so that it is consistent with the position in the draft legislation.</p>

### Our approach to individual relief

<p>F1 Our proposed guidance about granting relief is set out in Section B of draft updated RG 136 (Attachment 5 to this consultation paper). We propose to set out guidance on:</p> <p>(a) our powers to give relief;</p>	<p>F1Q1 Should we remove this section and rely on the policy in RG 51 instead?</p> <p>F1Q2 Are there any other factors we should take into account when considering whether to grant relief? Please give details.</p>	<p>Harry/John</p>	<p>This section should remain as it provides specific guidance.</p> <p>We have not comments on the proposed guidance.</p>
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Proposal	Feedback	Person Responsible	Response/Submission	
(b) the interaction between RG 51 and draft updated RG 136; and	F1Q3 Do you agree with our proposed guidance? If not, why not?			
(c) some of the factors we may take into account in applying the principles under RG 51 that we have identified from our experience in assessing applications for individual relief from the provisions in Ch 5C of the Corporations Act, and which we anticipate may also be relevant for assessing relief applications from provisions of draft Chs 7A and 8A and from the Australian Passport Rules.	F1Q4 Do you have any comments on our proposed guidance?			
	F1Q5 Are there any practical problems associated with our guidance? Please give details.			
<b>Common forms of individual relief</b>				
F2 Our proposed guidance about common forms of relief is set in Section C of draft updated RG 136 (Attachment 5 to this consultation paper). For managed investment schemes, we propose to set out guidance on:	F2Q1 Are there any types of relief that are not included that should be? If so, why should they be included?	Harry/John	It would be more efficient and costs effective for both ASIC and industry if the common forms of individual relief were instead made on a class order basis so as to reduce the time, costs and effort for both ASIC and industry.	
(a) when we have granted, and may grant, relief in relation to:	F2Q2 Are there any types of relief that are included that should not be? If so, why should they be removed?			The relief described for marketplace lending should conceptually apply to all schemes where investors invest on a class basis and that class is liquid.
(i) when a compliance plan is required;	F2Q3 Do you agree with our proposed guidance? If not, why not?			Relief should also be included which avoids the need for a class of interest in a managed investment scheme to separately be registered as a managed investment scheme, subject to conditions that ASIC has imposed in the past.
(ii) compliance plan audit;	F2Q4 Do you have any comments on our proposed guidance?			
(iii) extensions for establishing the compliance committee;	F2Q5 Are there any practical problems associated			



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<p>(iv) extensions of time to appoint a new or replacement compliance plan committee member;</p> <p>(v) stapled securities arrangements;</p> <p>(vi) change of the responsible entity (where the change is to a related body corporate, there are a small number of members, or significant interests are held by non-voting platforms);</p> <p>(vii) offers to foreign members in a restructure;</p> <p>(viii) withdrawal (where members of a 'frozen fund' are suffering hardship, to enable 'rolling' withdrawal offers, or for illiquid marketplace lending schemes); and</p> <p>(ix) voluntary deregistration; and</p> <p>(b) when we may make a determination that a number of managed investment schemes are closely related and each need to be registered.</p>	<p>with our guidance? Please give details.</p>		<p>The above concepts would be essential and consistent with the intention that there is no regulatory benefit from choosing one structure (MIS/CCIV) over another.</p>
<p><b>Approval to offer interests in Australia as a foreign passport fund</b></p>			
<p>G1 Our proposed guidance about notifications by foreign passport fund operators for entry into Australia is set out in Section B of draft Regulatory Guide 000 Foreign passport funds</p>	<p>G1Q1 Do you agree with our proposed guidance? If not, why not?</p> <p>G1Q2 Do you have any comments on our proposed</p>	<p>N/A</p>	<p>The ARFP regime is currently not open to unlisted property funds. PFA believes that simple property funds should be included in the passport regime. It is an important asset class attracting considerable</p>

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<p>(Attachment 6 to this consultation paper). We propose to set out guidance on:</p> <p>(a) the eligibility requirements to apply for entry under the Corporations Act;</p> <p>(b) the notification process;</p> <p>(c) how ASIC will assess a notice of intention to offer interests; and</p> <p>(d) when interests in a notified foreign passport fund can commence being offered in Australia.</p>	<p>guidance?</p> <p>G1Q3 Is there any further guidance we should give? Please give details.</p> <p>G1Q4 Are there any practical problems associated with our guidance? Please give details.</p> <p>G1Q5 Please give details of any additional costs associated with the implementation of our guidance. If possible, please quantify these costs.</p> <p>G1Q6 Are there any benefits you consider will result from our guidance? If possible, please quantify these benefits.</p>		<p>interest in the region.</p>
<b>Ongoing requirements for notified foreign passport funds</b>			
<p>G2 Our proposed guidance about ongoing requirements for notified foreign passport funds is set out in Section C of draft Regulatory Guide 000 Foreign passport funds (Attachment 6 to this consultation paper). We propose our guidance will outline the following ongoing requirements under the Corporations Act, including the Australian Passport Rules, for notified foreign passport funds and their operators:</p> <p>(a) lodging financial statements, audit reports and implementation review reports;</p>	<p>G2Q1 Do you agree with our proposed guidance? If not, why not?</p> <p>G2Q2 Do you have any comments on our proposed guidance?</p> <p>G2Q3 Is there any further guidance we should give? Please give details.</p> <p>G2Q4 Are there any practical problems associated with our guidance? Please give details.</p> <p>G2Q5 Please give details of any additional costs associated with the implementation of our guidance.</p>	<p>N/A</p>	<p>The ARFP regime is currently not open to unlisted property funds. PFA believes that simple property funds should be included in the passport regime. It is an important asset class attracting considerable interest in the region.</p>

Proposal	Feedback	Person Responsible	Response/Submission
(b) notifying ASIC of certain change of events and reporting significant breaches to ASIC;	If possible, please quantify these costs.		
(c) providing the required point of sale disclosure to Australian investors; and	G2Q6 Are there any benefits you consider will result from our guidance? If possible, please quantify these benefits.		
(d) maintaining appropriate internal and external dispute resolution arrangements.			

### ASIC's powers and responsibilities

G3 Our proposed guidance about ASIC's powers and responsibilities in relation to foreign passport funds is in Section D of draft Regulatory Guide 000 Foreign passport funds (Attachment 6 to this consultation paper). We propose to set out guidance on:	G3Q1 Do you agree with our proposed guidance? If not, why not? G3Q2 Do you have any comments on our proposed guidance? G3Q3 Is there any further guidance we should give? Please give details. G3Q4 Are there any practical problems associated with our guidance? Please give details. G3Q5 Please give details of any additional costs associated with the implementation of our guidance. If possible, please quantify these costs. G3Q6 Are there any benefits you consider will result from our guidance? If possible, please quantify these benefits.	N/A	The ARFP regime is currently not open to unlisted property funds. PFA believes that simple property funds should be included in the passport regime. It is an important asset class attracting considerable interest in the region.
(a) our powers to grant exemptions and modifications to the Australian Passport Rules and some other applicable laws that we administer;			
(b) recognition of exemptions and modifications granted by other passport regulators;			
(c) disclosure and use of confidential information;			
(d) our powers to check compliance and conduct investigations of foreign passport			

Proposal	Feedback	Person Responsible	Response/Submission
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funds and their operators;

(e) our powers to take administrative action against a foreign passport fund operator; and

(f) our powers to take civil action and/or criminal prosecution action against a foreign passport fund operator.

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