



**ASIC**

Australian Securities & Investments Commission

## REGULATORY GUIDE 138

# Foreign passport funds

July 2018

### **About this guide**

This guide is for foreign passport fund operators seeking to enter, or operating in, Australia under the Asia Region Funds Passport—a multilaterally agreed framework to facilitate the cross-border marketing of managed funds across participating economies in the Asia region.

It explains our approach as a host regulator to the regulation of foreign passport funds in Australia, including:

- the entry requirements to become a 'notified foreign passport fund';
- ongoing requirements for notified foreign passport funds; and
- the process for removing notified foreign passport funds (denotification).

It also explains our powers and responsibilities in relation to notified foreign passport funds and their operators, including our discretionary powers to grant exemptions and modifications to the Australian Passport Rules.

### About ASIC regulatory documents

In administering legislation ASIC issues the following types of regulatory documents.

**Consultation papers:** seek feedback from stakeholders on matters ASIC is considering, such as proposed relief or proposed regulatory guidance.

**Regulatory guides:** give guidance to regulated entities by:

- explaining when and how ASIC will exercise specific powers under legislation (primarily the Corporations Act)
- explaining how ASIC interprets the law
- describing the principles underlying ASIC's approach
- giving practical guidance (e.g. describing the steps of a process such as applying for a licence or giving practical examples of how regulated entities may decide to meet their obligations).

**Information sheets:** provide concise guidance on a specific process or compliance issue or an overview of detailed guidance.

**Reports:** describe ASIC compliance or relief activity or the results of a research project.

### Document history

This guide was issued in July 2018 and is based on legislation and regulations as at the date of issue.

Note: Some of the regulations on which this guide is based are draft regulations: see [Australian Treasury consultation on draft regulations](#). This guide will be updated to reflect any changes to the associated regulations following commencement.

### Disclaimer

This guide does not constitute legal advice. We encourage you to seek your own professional advice to find out how the Corporations Act and other applicable laws apply to you, as it is your responsibility to determine your obligations.

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## A Overview

### Key points

The Asia Region Funds Passport allows passport funds established and regulated in one participating 'home economy' to offer interests to investors in another participating 'host economy'.

To do this, passport fund operators must comply with entry and ongoing requirements under the Passport Rules agreed between the participating economies and incorporated in each participating economy's law.

ASIC and our fellow passport regulators have established arrangements for cooperation and information sharing in administering the Asia Region Funds Passport.

### The Asia Region Funds Passport

RG 138.1 The Asia Region Funds Passport provides a multilaterally agreed framework to facilitate the cross-border marketing of managed funds across participating economies in the Asia region with limited additional regulatory requirements.

RG 138.2 The [Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport](#) (Memorandum of Cooperation) contains, in Annex 3, the Passport Rules agreed between the participating economies for implementing the Asia Region Funds Passport. Each participating economy has committed to incorporate the Passport Rules into their respective domestic laws.

Note 1: Under s1211(2) of the *Corporations Act 2001* (Corporations Act), the Australian Passport Rules must be substantially the same as the Passport Rules set out in Annex 3 to the [Memorandum of Cooperation](#). The Australian Passport Rules will be taken to be substantially the same when they, together with other provisions of the corporations legislation made by the responsible Minister, have substantially the same effect as the Passport Rules set out in Annex 3 to the [Memorandum of Cooperation](#).

Note 2: In this guide, references to sections (s), chapters (Chs) and parts (Pts) are to the Corporations Act, unless otherwise specified.

RG 138.3 The Asia Region Funds Passport enables an operator of a foreign passport fund established and regulated in one participating home economy to offer interests to persons in another participating host economy. This is so long as the applicable legal and regulatory requirements of the host economy are met, including the host economy Passport Rules.

RG 138.4 The aim of the Asia Region Funds Passport is to promote investment between the participating economies by removing unnecessary regulatory barriers and reducing the cost of raising capital in all participating economies. The Asia Region Funds Passport also maintains investor

protection through supervision and regulation of offerings, and the application of host economy laws in certain areas.

- RG 138.5 This guide will help foreign passport fund operators and their advisers understand our approach to the regulation of ‘notified foreign passport funds’ in Australia.

Note: A notified foreign passport fund is a foreign passport fund that has become a notified foreign passport fund under s1213C.

- RG 138.6 The requirements we administer for foreign passport fund operators seeking to enter, or operating in, the Australian market under the Asia Region Funds Passport are contained in:

- (a) the Corporations Act;
- (b) the Australian Passport Rules;
- (c) the *Australian Securities and Investments Commission Act 2001* (ASIC Act);
- (d) the Corporations Regulations 2001 (Corporations Regulations);
- (e) the Australian Securities and Investments Commission Regulations 2001 (ASIC Regulations); and
- (f) legislative instruments made under the Corporations Act.

Note 1: The Corporations Regulations, the ASIC Regulations and the ASIC Supervisory Cost Recovery Levy Regulations 2017 (ASIC Supervisory Cost Regulations) are expected to be amended to include provisions relating to notified foreign passport funds: see [Australian Treasury consultation on draft regulations](#). Where relevant, draft amendments are referred to in this guide as the draft Corporations Regulations or the draft ASIC Supervisory Cost Regulations.

Note 2: In this guide, references to reg 7.9.74 (for example) are to a regulation of the Corporations Regulations, unless otherwise specified.

- RG 138.7 There are other requirements under Australian law that apply, which are administered by other Australian Government agencies and are not covered in this guide. These include requirements relating to:

- (a) taxation—see the [Australian Taxation Office](#) (ATO) website;
- (b) members’ privacy—see the [Office of the Australian Information Commissioner](#) website;
- (c) competition—see the [Australian Competition and Consumer Commission](#) website;
- (d) anti-money laundering and counter-terrorism financing—see the [Australian Transaction Reports and Analysis Centre](#) website; and
- (e) foreign acquisition of interests in Australian real estate or business—see the [Foreign Investment Review Board](#) website.

Note: For general guidance on Australian requirements, including in relation to privacy, taxation and anti-money laundering, see the Joint Committee, [Guidance on host economy laws and regulations relating to the Asia Region Funds Passport](#) (PDF 937 KB), 25 July 2017.

- RG 138.8 Australian state and territory governments may also levy taxes, such as ‘stamp’ duties on the execution of particular documents. Notified foreign passport funds, their operators and agents, and any person appointed to act on behalf of these entities, may be liable to pay these taxes.

Note: For more information, including contact details for state and territory revenue offices, see [State and territory taxes](#) on the ATO’s website.

## Requirements for foreign passport funds and their operators

- RG 138.9 Australian financial services (AFS) licensing, conduct and disclosure obligations in the Corporations Act apply to entities when carrying on a financial services business in Australia. These obligations generally apply in the same way to Australian and non-Australian entities.
- RG 138.10 Under the Asia Region Funds Passport, foreign passport fund operators seeking to carry on a financial services business of issuing interests in a notified foreign passport fund to persons in Australia are exempt from some requirements in the Corporations Act that would normally apply.
- RG 138.11 Foreign passport fund operators seeking to issue interests in a notified foreign passport fund in Australia under the Asia Region Funds Passport may take one of two approaches. They can:
- (a) offer and sell directly to Australian investors; or
  - (b) offer and sell through an AFS licensee that is authorised to offer interests for sale, or a representative of this AFS licensee (an ‘authorised representative’).
- RG 138.12 If a foreign passport fund operator decides to offer interests directly to persons in Australia, the operator must hold an AFS licence and meet the general obligations of AFS licensees.
- Note: For more information, including on our eLicensing system, see [Applying for and managing an AFS licence](#) on our website. See also [Regulatory Guide 121 Doing financial services business in Australia](#) (RG 121).
- RG 138.13 If a foreign passport fund operator uses an AFS licensee or its authorised representative to offer interests in Australia (a distributor), the operator does not need to hold an AFS licence. This is so long as the offer is covered by the AFS licensee’s licence: see s911A(2)(b).

### Notified foreign passport fund requirements

- RG 138.14 Whether offering and selling interests directly to Australian investors, or through a distributor, a foreign passport fund operator must not offer interests in the foreign passport fund unless it is a notified foreign passport fund: see s1213C.

RG 138.15 For a foreign passport fund to become a notified foreign passport fund, its operator must submit a ‘notice of intention’ to ASIC to offer fund interests in Australia. The foreign passport fund will become a notified foreign passport fund if, by the end of the consideration period:

- (a) we have not told the operator that required information has not been provided;
- (b) we have not rejected the notice of intention; and/or
- (c) the notice of intention has not been withdrawn.

Note: The consideration period is 15 business days beginning on the day after a notice of intention is lodged with ASIC, or any extended period we have agreed with the foreign passport fund operator: see s1213D.

RG 138.16 The entry requirements to become a notified foreign passport fund, ongoing requirements for notified foreign passport funds, and the process for removing notified foreign passport funds (denotification) are summarised in Table 1 and explained in Sections B, C and D of this guide.

Note: See the ‘Key terms’ at the end of this guide for an explanation of the terms used in this guide.

## Our role

RG 138.17 ASIC is an independent agency of the Australian Government that regulates registered companies, financial markets and financial services providers by enforcing and administering relevant legislation, including the Corporations Act.

Note: For more information on the laws we administer, see [Laws we administer](#) on our website.

RG 138.18 Our vision is for a fair, strong and efficient financial system for all Australians.

RG 138.19 Among other things, we license and monitor financial services businesses and markets to ensure that they operate efficiently, honestly and fairly. These businesses are typically involved in pension funds, managed funds, shares and company securities, derivatives and insurance.

RG 138.20 We are a passport regulator under the Asia Region Funds Passport with responsibilities to enforce and administer the Australian Passport Rules, including maintaining an Asia Region Funds Passport register.

Note: See Section E for information on the main powers we have to administer the Asia Region Funds Passport.

## How we will work with other passport regulators

RG 138.21 The [Memorandum of Cooperation](#) sets out the agreed rules and cooperation arrangements for passport regulators to consult, cooperate and exchange information, and to oversee passport funds, under the Asia Region Funds Passport.

Table 1: Overview of requirements

Stage	Requirement	Guidance
<b>Entry requirements (before making an offer)</b>	<p>For a foreign passport fund to become a notified foreign passport fund in Australia, the operator must:</p> <ul style="list-style-type: none"> <li>• be a registered foreign company (see s1213(1));</li> <li>• meet the ongoing offer of interests in the fund's home economy requirement in one of the available ways (see section 17 of the Australian Passport Rules);</li> <li>• check if the name of the foreign passport fund is available to use;</li> <li>• complete and submit a notice of intention to offer interests in Australia (see s1213(2)); and</li> <li>• pay the relevant fee, which is set out in the notice of intention.</li> </ul>	Section B
<b>Ongoing requirements</b>	<p>In addition to responsibilities under the Australian Passport Rules, notified foreign passport funds and their operators must comply with certain ongoing requirements under Australian law: see the <a href="#">Memorandum of Cooperation</a>. These requirements include:</p> <ul style="list-style-type: none"> <li>• satisfying ongoing obligations of a registered foreign company;</li> <li>• observing AFS licence exemption requirements, or holding an AFS licence;</li> <li>• meeting Product Disclosure Statement (PDS) requirements, transaction confirmation requirements and cooling-off requirements;</li> <li>• complying with the prohibition on conflicted and other banned remuneration, and with advertising requirements;</li> <li>• maintaining a register of members;</li> <li>• providing ongoing disclosures, periodic statements, financial reports and auditors' reports to members;</li> <li>• providing additional information about the interest on request, certain documents on request, or copies of books on court order;</li> <li>• making annual lodgements, providing change of event notifications and lodging registers of members;</li> <li>• reporting breaches to ASIC;</li> <li>• meeting internal and external requirements for handling Australian member complaints; and</li> <li>• paying an annual levy for ASIC supervisory costs.</li> </ul>	Section C
<b>Denotification requirements</b>	<p>A notified foreign passport fund may be removed from the Asia Region Funds Passport Register either voluntarily or by ASIC.</p>	Section D

RG 138.22 Regulatory cooperation is central to the continuing operation of the Asia Region Funds Passport because host regulators place considerable reliance on home regulators to regulate the operation of passport funds. This is to avoid unnecessary duplication of regulatory requirements.

RG 138.23 These cooperation arrangements are intended to complement and not override existing cross-border regulatory cooperation arrangements.



## B Entry requirements

### Key points

Before offering interests in a foreign passport fund to persons in Australia under the Asia Region Funds Passport, a foreign passport fund operator must apply through the notification process: see RG 138.24–RG 138.27.

To be eligible to apply, the foreign passport fund operator must:

- be a registered foreign company (see RG 138.28–RG 138.33); and
- have an ongoing offer of interests in the fund (or a sub-fund of the fund) in the home economy, or at least 30% of the value of interests for which the operator is responsible must be held by members whose address is in the home economy (see RG 138.34–RG 138.35).

The foreign passport fund must have an acceptable name: see RG 138.36–RG 138.42.

The foreign passport fund operator must submit a completed notice of intention to offer interests in Australia and attach a copy of the PDS, and pay the relevant fee: see RG 138.43–RG 138.49.

We will assess the notice of intention against grounds for rejection during a 15-day ‘consideration period’ if the notice is not withdrawn (see RG 138.52–RG 138.74), and will confirm the foreign passport fund’s status after the consideration period has passed: see RG 138.75–RG 138.77.

Certain information provided during the notification process will be published on the Asia Region Funds Passport Register: see RG 138.78–RG 138.79.

### Steps to take before submitting a notice of intention

RG 138.24 A foreign passport fund operator may offer interests in a foreign passport fund to persons in Australia if it successfully completes the notification process. The foreign passport fund will become a notified foreign passport fund if, by the end of the consideration period:

- (a) we have not told the operator that required information has not been provided;
- (b) we have not rejected the notice of intention; and/or
- (c) the notice of intention has not been withdrawn (see s1213C).

RG 138.25 If a foreign passport fund operator decides to offer interests directly to persons in Australia, the operator must hold an AFS licence. If the operator uses a distributor to offer interests, the operator does not need to hold a licence. This is so long as the offer is covered by the AFS licensee’s licence: see s911A(2)(b).

RG 138.26 A foreign passport fund operator must not offer interests in the foreign passport fund unless it is a notified foreign passport fund: see s1213C.

RG 138.27 A key policy objective of the entry requirements for foreign passport funds to offer interests in Australia is to maintain appropriate protection for Australian investors.

### Registered foreign company

RG 138.28 Only a foreign passport fund operator that is a registered foreign company may submit a notice of intention: see s1213(1). A registered foreign company is a foreign company that is registered with ASIC to carry on business in Australia under Div 2 of Pt 5B.2: see s601CD(1).

RG 138.29 By law, the information and documentation required by ASIC to register a foreign company is fulsome. In considering an application for registration in Australia, we must be satisfied that the foreign passport fund operator is registered in its home jurisdiction and meets all the requirements for registering a foreign company under Australian law.

RG 138.30 Often, foreign company registration applications are delayed or refused due to failure to provide ASIC with the correct documentation. To ensure a timely process for registering a foreign company, foreign passport fund operators must ensure that the supporting documentation provided as part of the application meets the requirements for registration.

RG 138.31 If a required document is in a language other than English, a foreign passport fund operator must ensure that it obtains and submits a reasonable translation of that document into English.

Note: For more information on how to obtain a reasonable translation into English, see [Translation of documents](#) on our website.

RG 138.32 To register a foreign company, the following steps are required:

- (a) ensure the proposed registered foreign company name is available;

Note: For more information on company naming, see [Information Sheet 71 Company name availability](#) (INFO 71).

- (b) complete and sign a [Form 402 Application for registration as a foreign company](#);
- (c) include supporting documents, such as:
- (i) a current certificate of registration, or a document of similar effect, that confirms that the foreign passport fund operator is currently registered in the home economy;
  - (ii) a copy of the foreign passport fund operator's constitution certified as a true copy by the home regulator, a notary public or a duly

witnessed affidavit by a director or secretary of the foreign company;

- (iii) a memorandum of appointment of a local agent, or a power of attorney in favour of a local agent (a completed [Form 418](#) *Memorandum of appointment of local agent* may be used); and
  - (iv) a memorandum outlining the powers of Australian resident directors; and
- (d) submit to ASIC the completed [Form 402](#) with the fee and supporting documents.

Note: For more information on how to register a foreign company, see [Information Sheet 32](#) *Foreign companies* (INFO 32). [Information Sheet 30](#) *Fees for commonly lodged documents* (INFO 30) has details of the fee to register as a foreign company.

RG 138.33 After an application to become a registered foreign company has been processed and approved, we will send the applicant a registration certificate. We will also provide the newly registered foreign company with an Australian Registered Body Number (ARBN).

### Offer in home economy

RG 138.34 A foreign passport fund operator must not offer interests in the fund in Australia unless it also maintains a connection with its home economy through an ‘ongoing offer in the home economy’: see section 17 of the Australian Passport Rules.

RG 138.35 This requirement, which applies at the time an offer is made in Australia, can be met in one of the following ways:

- (a) at least 30% of the value of interests for which the foreign passport fund operator is responsible are held by members with a home economy address, and the operator has provided a disclosure document to the home regulator that meets home economy requirements for disclosure to the general public; or
- (b) there is an ongoing offer of interests (either in the passport fund or a sub-fund) in the home economy that is subject to the home economy requirements for an offer to the general public. This offer must not exclude retail investors resident in the home economy.

### Choosing a notified foreign passport fund name

RG 138.36 A foreign passport fund operator must observe the same restrictions on naming the notified foreign passport fund as it followed when choosing its name as a registered foreign company.

RG 138.37 Before starting the notification process, a foreign passport fund operator should complete a [check name availability](#) search on our website. This will

provide a guide on whether the proposed name for a notified foreign passport fund is used by another entity in Australia. However, it will not state if the proposed name is available under the Corporations Act.

- RG 138.38 A notified foreign passport fund must not have a name that is unavailable in Australia: see s1213B. A name will be unavailable if it is:
- (a) identical to the name that another entity has registered or reserved under the Corporations Act;
  - (b) identical to the name of a new managed investment scheme that has lodged an application with ASIC for registration under s601EA;
  - (c) identical to the name of another proposed notified foreign passport fund in relation to which a notice of intention under s1213 has already been lodged;
  - (d) identical to the business name of another individual or body that is not the operator of the foreign passport fund; or
  - (e) unacceptable in Australia under Sch 6 to the Corporations Regulations because it is offensive, or suggests a misleading connection with the government (see s1213B of the Corporations Act and Sch 6 to the Corporations Regulations).

Note: For information on rules applied to determine if a proposed name is identical to another name, see Sch 6 to the Corporations Regulations and [INFO 71](#).

RG 138.39 If a proposed notified foreign passport fund name is unavailable, the foreign passport fund operator should notify us of an alternative name to use in Australia in the notice of intention.

RG 138.40 A foreign passport fund operator may rely on a different foreign passport fund name in Australia than in the home economy if it notifies us and the home regulator that the fund will be using a different name in Australia: see s1213B(5)(b).

RG 138.41 We will not reject a notice of intention based on a proposed notified foreign passport fund name, which would otherwise be unavailable under s1213B(1)(d), if the operator or fund has obtained written consent for that name from the responsible Minister or their delegate.

RG 138.42 This consent must be attached to the notice of intention submitted for the fund. The Minister or their delegate may make their consent subject to conditions: see s1213B(6)–(7).

Note: For information on the fee that must be paid with an application to the Minister or their delegate for consent to a name, see [INFO 30](#).

## Completing and submitting a notice of intention

RG 138.43 A foreign passport fund operator must use its ARBN to log into the [ASIC Regulatory Portal](#) to notify its intention to offer interests in a foreign passport fund in Australia.

RG 138.44 The foreign passport fund operator must complete a notice of intention and attach a copy of the PDS: see s1213(2)(b).

Note: If a foreign passport fund operator is unable to notify its intention to offer interests in a foreign passport fund in Australia using the portal, [contact us online](#) or call 1300 300 630 (within Australia) or + 61 3 5177 3988 (outside Australia).

RG 138.45 The foreign passport fund operator must also pay the applicable fee when submitting its notice of intention.

Note: For more information on the fee that must be paid to submit a notice of intention, see [INFO 30](#).

RG 138.46 The notice of intention is made up of yes/no, multiple choice and open-ended questions.

RG 138.47 When we ask for specific representations to be given about compliance with the Corporations Act and the ASIC Act, we will usually rely on the answer that is given to form an opinion about the likelihood of compliance.

RG 138.48 Foreign passport fund operators must take care that their representations are correct. If a notified foreign passport fund operator does not take reasonable steps to ensure it avoids a false statement to ASIC, it may be guilty of an offence: see s1308.

RG 138.49 When completing a notice of intention, a foreign passport fund operator will be asked about its processes and procedures that demonstrate capability to comply with applicable Australian law. This includes questions about:

- (a) receiving, considering and responding to complaints by Australian members and potential investors;
- (b) monitoring the compliance of distributors in Australia;
- (c) preparing and reviewing disclosure and reporting to Australian members;
- (d) preparing advertising and marketing in Australia;
- (e) if relevant, lodging communications with an Australian financial market; and
- (f) lodging ongoing notifications with ASIC.

Note: See RG 138.59–RG 138.64 for our approach to assessment of likely compliance.

## Withdrawing a notice of intention

- RG 138.50 A foreign passport fund operator may withdraw its notice of intention by sending ASIC a request at any time during the consideration period: see s1213(3).
- RG 138.51 If a foreign passport fund operator withdraws its notice of intention after it has been submitted, we will not refund the fee for lodging the notice of intention or hold it over for a new notice. Some information from the withdrawn notice of intention will be included on the Asia Region Funds Passport Register.

Note: See RG 138.78–RG 138.79 for a summary of the information that will be included on the register.

## Our assessment of a notice of intention

- RG 138.52 We have 15 business days, or longer period as agreed with the operator, to assess a notice of intention (e.g. the consideration period). The 15 business days begins on the day after the notice of intention is lodged with ASIC and can be extended if agreed in writing between ASIC and the relevant foreign passport fund operator: see s1213D(1). Extensions must be for no more than five business days, but we may agree to more than one extension: see s1213D(2).

Note: Examples of when an extension may be necessary include when the consideration period extends over a holiday period or the notice of intention raises issues that are complex.

## Completeness check

- RG 138.53 After we receive a notice of intention, we will consider whether the required information has been provided. If the information has not been provided, we will ask the foreign passport fund operator to give us more information. If we request more information, the operator must provide the information within the time in our request. We may refuse to accept the notice of intention for lodgement if we do not receive the information in the relevant timeframe.
- RG 138.54 If we notify the foreign passport fund operator that we are refusing to accept the notice of intention for lodgement, the operator must start the notification process again by lodging a new notice of intention.

## Grounds for rejection

- RG 138.55 If we consider the required information for a notice of intention is complete, we will then assess the notice against some or all of the grounds of rejection in the Corporations Act.

- RG 138.56 The fact that we have not rejected a notice of intention does not mean that we have formed an opinion that the foreign passport fund operator is, or is likely to be, compliant with any laws in its home economy or in Australia. Notified foreign passport fund operators remain responsible for ensuring compliance.
- RG 138.57 We must reject a notice of intention if the responsible Minister has made a determination that a foreign passport fund operator or operators, or a class of foreign passport funds from a specified home economy, must not offer interests in Australia: see s1213B(8).
- RG 138.58 We may also reject a notice of intention if:
- (a) we consider that relevant laws in Australia or the home economy have not been, are not being, or are not likely to be, complied with in relation to the foreign passport fund;
  - (b) we consider that it is not in Australia's public interest for the foreign passport fund operator to offer interests in Australia;
  - (c) we have not consented to an exemption or modification made to the home economy Passport Rules that affects the foreign passport fund or entities connected with the fund; or
  - (d) the name of the proposed notified foreign passport fund is not available in Australia, and the foreign passport fund operator has not notified ASIC and the home regulator in writing that it will adopt an alternative available name (see s1213B(1)).

**We consider that compliance with the relevant laws is unlikely**

- RG 138.59 This ground for rejection supports a key objective of the Asia Region Funds Passport. This is:
- ... maintaining the legal and regulatory frameworks which promote investor protection, fair, efficient and transparent markets for financial services, supporting financial stability and providing high standards in the management and distribution of collective investment schemes (see the goals of the [Memorandum of Cooperation](#), p. 1).
- RG 138.60 When completing a notice of intention, a foreign passport fund operator will be asked about its processes and procedures that demonstrate capability to comply with applicable Australian law. In assessing an operator's processes and procedures for complying with Australian law, we do not take a 'one-size-fits-all' approach. We assess compliance processes collectively and in proportion to the nature, scale and complexity of the operator's business activities.
- RG 138.61 In assessing nature, scale and complexity, we will consider factors such as:

- (a) the number of collective investment schemes for which the foreign passport fund operator is responsible and the size of its funds under management;
- (b) the investment strategies and business activities of the foreign passport fund, including the extent to which it will employ leverage;
- (c) whether the foreign passport fund interests are, or are to be, quoted on a financial market;
- (d) the anticipated profile of Australian investors, including whether fund interests will be marketed to retail clients;
- (e) the activities, including investment approach, that the operator engages in;
- (f) the extent to which the operator delegates material operational activities, and the level of oversight over its delegates;
- (g) whether the operator's main business is undertaking funds management; and
- (h) the number of staff that will be involved in the operation of the prospective notified foreign passport fund.

RG 138.62 We may assess specific compliance processes and procedures. In conducting this assessment, we may consider factors such as:

- (a) whether the procedure or process is aligned with the foreign passport fund operator's values, objectives and strategy;
- (b) whether the procedure or process, as written in manuals or guidelines, reflects the actual procedures, processes or practices that are followed by the operator and the fund, and its staff;
- (c) whether the procedure or process is set out with enough clarity and certainty to allow relevant staff to follow the requirement and assess whether it has been complied with;
- (d) whether compliance with the procedure or process is monitored and the mechanisms for monitoring compliance are sufficiently certain to ensure that they will or have been complied with, and any non-compliance is reported to relevant staff and the independent oversight entity as required;
- (e) whether the procedure or process provides for separate people to have responsibility for carrying out a control and for monitoring compliance with that control;
- (f) whether the frequency and quantity of compliance assessments, and their monitoring, are sufficient to effectively manage any related compliance risks; and
- (g) whether the procedure or process is maintained so that it is up to date.



RG 138.63 We may also review the PDS to check whether it has been prepared in accordance with the disclosure requirements in the Corporations Act and any relevant ASIC policy. If we consider a PDS omits information that might reasonably be expected to have a material influence on a retail client's decision whether to invest, or contains a misleading or deceptive statement, we may request amendments be made to address our concerns. A supplementary or replacement PDS must be lodged with us.

Note: For information on supplementary PDSs, see RG 138.133–RG 138.136.

RG 138.64 We must request the home regulator's opinion before rejecting a notice of intention on the basis that the foreign passport fund has not, or is not likely to have, complied with the law of the home economy (including the home economy Passport Rules). If the home regulator provides its opinion within the requested period, we must give effect to that opinion: see s1213B(2). If the home regulator does not provide an opinion within the requested period, we may reject the notice of intention.

#### **We consider that it is not in Australia's public interest**

RG 138.65 The term 'public interest' is not defined in the Corporations Act. Under this ground of rejection, we must weigh the public interest in allowing the foreign passport fund to operate in Australia against any potential detriments or risks for Australian investors.

RG 138.66 Benefits to the public interest of allowing a foreign passport fund to operate in Australia may include greater competition, increased investment opportunities for Australian investors, and the strengthening of Australia's relationship with the home economy.

RG 138.67 Harm to the public interest from allowing a foreign passport fund to operate in Australia may result from concerns that the fund will breach Australian laws or place Australian investors at risk.

RG 138.68 When considering harm to the public interest, we must not consider any negative consequences of greater competition for Australia's funds management industry: see s1213B(3). We are not required to assess the public interest in relation to every notice of intention we receive, but may do so if we consider it appropriate: see s1213B(4).

#### **We do not consent to an exemption or modification to the home economy Passport Rules**

RG 138.69 A passport regulator may exempt a foreign passport fund, foreign passport fund operator or other person responsible for compliance in relation to a foreign passport fund from the home economy Passport Rules. A passport regulator may also modify the application of the home economy Passport Rules to a fund, operator or person: see section 13(1) of Annex 2 to the [Memorandum of Cooperation](#).

RG 138.70 Where we (as a host regulator) have not consented to an exemption or modification to home economy Passport Rules, we may consider it is appropriate not to permit interests in a foreign passport fund from that home economy to be offered in Australia.

RG 138.71 If the exemption or modification relates to conduct that may not comply with the Australian Passport Rules, we recommend that a foreign passport fund operator apply to ASIC for relief from the obligation under the Australian Passport Rules before submitting a notice of intention.

Note: See Section E for more information on our powers and policy for granting exemptions and modifications in this context.

### **The name of the foreign passport fund is unavailable**

RG 138.72 We may reject a notice of intention if the name of the proposed notified foreign passport fund is unavailable: see RG 138.36–RG 138.42. The policy objective of this ground of rejection is to prevent any contravention of Australian legal requirements on the use of names in a commercial context.

### **What we will do if a notice of intention could be rejected**

RG 138.73 Before we reject a notice of intention, we will normally write to the foreign passport fund operator explaining why we are proposing rejection. We will generally give the operator two options. These are to:

- (a) *Make a written submission explaining why the notice of intention should not be rejected*—If, after considering a submission, we decide to reject the notice of intention, we will write to the operator setting out the decision and reasons why. We will explain the operator’s review rights and notify the home regulator of our decision. Some information from the rejected notice of intention will be included on the Asia Region Funds Passport Register.
- (b) *Withdraw the notice of intention*—If an operator withdraws the notice of intention, we will not refund the fee for lodging the notice of intention or hold it over for a new notice of intention. We may notify the home regulator of the withdrawal. Some information from the withdrawn notice of intention will be included on the Asia Region Funds Passport Register.

Note: See RG 138.78–RG 138.79 for a summary of the information that will be included on the register.

RG 138.74 We must inform a foreign passport fund operator of our decision to reject a notice of intention in writing: see s1213B(9).

## When can interests be offered in Australia?

- RG 138.75 A foreign passport fund operator may offer interests in a foreign passport fund to persons in Australia, and the fund will be a notified foreign passport fund, on the first day after the end of the consideration period if:
- (a) we have not told the operator that required information has not been provided;
  - (b) we have not rejected the notice of intention; and/or
  - (c) the notice of intention has not been withdrawn (see s1213C).
- RG 138.76 We will confirm in writing a foreign passport fund's status as a notified foreign passport fund after the consideration period has passed.
- RG 138.77 Anyone may also check the status of a notified foreign passport fund by viewing the Asia Region Funds Passport Register and/or the equivalent register maintained by the home regulator.

## Information on the Asia Region Funds Passport Register

- RG 138.78 Some of the information sent to ASIC as part of the notification process must be included on the Asia Region Funds Passport Register. The register must also include details of funds that have been removed as notified foreign passport funds: see s1214.
- RG 138.79 The information on the register includes:
- (a) the fund's Notified Foreign Passport Fund Registration Number (NFPFRN) and home economy;
  - (b) the fund's Australian Passport Fund Registration Number (APFRN);
  - (c) the fund's name, registration date and review date;
  - (d) any alternative name used by the fund (in Australia or in another participating economy), where the name was used, and the date the fund started and ceased using that name;
  - (e) a statement that the fund is a notified foreign passport fund;
  - (f) the notified foreign passport fund operator's name and ARBN;
  - (g) any previous name and ARBN of an operator of the fund, including the date when that operator started and ceased to have that name and ARBN;
  - (h) the name of the auditor of the fund's financial reports for each financial year;
  - (i) the name of the implementation reviewer for the fund for each review period (if any); and
  - (j) if applicable, the date on which the foreign passport fund was removed as a notified foreign passport fund and the reason for the removal (see s1214(3) of the Corporations Act and reg 8A.5.10(3)–(4) of the [draft Corporations Regulations](#)).

## C Ongoing requirements

### Key points

A notified foreign passport fund operator must comply with ongoing requirements as a registered foreign company and on behalf of the notified foreign passport fund. The ongoing requirements are in addition to requirements under laws of the home economy and in the Passport Rules. They include:

- satisfying obligations of a registered foreign company (see RG 138.80–RG 138.104);
- observing AFS licence exemption requirements, or holding an AFS licence (see RG 138.105–RG 138.109);
- meeting PDS requirements (see RG 138.110–RG 138.137), transaction confirmation requirements (see RG 138.138–RG 138.141) and cooling-off requirements (see RG 138.142–RG 138.143);
- complying with the prohibition on conflicted and other banned remuneration (see RG 138.144–RG 138.149) and with advertising requirements (see RG 138.150–RG 138.156);
- maintaining a register of members (see RG 138.157–RG 138.159);
- providing ongoing disclosures (see RG 138.160–RG 138.169), periodic statements (see RG 138.170–RG 138.172), financial reports and auditors' reports to members (see RG 138.173–RG 138.178);
- providing additional information about the interest on request (see RG 138.179–RG 138.181), certain documents on request (see RG 138.182–RG 138.196), or copies of books on court order (see RG 138.197–RG 138.201);
- making annual lodgements, providing change of event notifications and lodging registers of members (see RG 138.202–RG 138.228);
- reporting breaches to ASIC (see RG 138.229–RG 138.239);
- meeting internal and external requirements for handling Australian member complaints (see RG 138.240–RG 138.244); and
- paying an annual levy for ASIC supervisory costs as a notified foreign passport fund operator (see RG 138.245–RG 138.251).

### Registered foreign company obligations

RG 138.80 A notified foreign passport fund operator has ongoing obligations as a registered foreign company to:

- (a) maintain a registered office and adequate signage on locations in Australia;
- (b) include certain information with all first mentions of its name in public documents;

- (c) have a local agent; and
- (d) lodge relevant documents with ASIC.

### **Registered office**

- RG 138.81 A notified foreign passport fund operator must have a registered office in Australia. This office must be open each business day from at least 10 am to 12 noon and from 2 pm to 4 pm. This is unless the operator notifies ASIC of alternative registered office hours. A representative of the operator must be present at the registered office whenever it is open: see s601CT(1).
- RG 138.82 The requirements for a registered office to be open and for a representative to be present ensure that notified foreign passport fund operators are contactable. They also facilitate receipt of communications and/or service of documents.

### **Name at registered office and place(s) of business**

- RG 138.83 A notified foreign passport fund operator must paint or affix on the outside of every office and place in Australia at which the operator's business is carried on that is open and accessible to the public (including the registered office):
- (a) the operator's name and place of origin;
  - (b) notice of the fact that the liability of company members is limited (if applicable, and if the operator's name does not end with 'Limited' or 'Ltd'); and
  - (c) at the registered office—the expression 'Registered Office' (see s601CW(9)).
- RG 138.84 This ensures that individuals dealing with the notified foreign passport fund operator understand where the operator is located and the site of its registered office.
- RG 138.85 A notified foreign passport fund operator's name must be in a conspicuous position and in letters that are easily legible wherever placed at a business location. The name must be repainted, re-affixed or amended to ensure that it remains conspicuous and easily legible: see s601CW(9).
- RG 138.86 A notified foreign passport fund operator must not carry on business in Australia under a name that is not its registered foreign company name. An operator must also not carry on business in Australia under the name used in its place of origin if that is not the operator's registered name in Australia: see s601DD(1).

## Name on public documents

- RG 138.87 A notified foreign passport fund operator must include certain information with all first mentions of its name on public documents that the operator signs, issues or publishes. A public document includes any document signed by or on behalf of the operator (excluding machine-developed receipts): see s88A, 601DE and 601DF.
- RG 138.88 The information that must be set out with the first use of a notified foreign passport fund operator's name is:
- (a) the operator's name and place of origin;
  - (b) if applicable, notice of members' limited liability; and
- Note: This will not be applicable if this is apparent from the operator's name (e.g. if it ends with 'Limited' or 'Ltd').
- (c) either:
    - (i) the expression 'Australian Registered Body Number' followed by the operator's ARBN; or
    - (ii) if the last nine digits of the operator's Australian Business Number (ABN) are the same, and in the same order, as the last nine digits of its ARBN—the words 'Australian Business Number' followed by the ABN (see s601DE(1)).
- RG 138.89 A notified foreign passport fund operator does not have to disclose its ABN or ARBN on a public document as set out in RG 138.88(c) if:
- (a) the operator is registered on the [Australian Business Register](#);
  - (b) the last nine digits of the operator's ABN are the same, and in the same order, as the last nine digits of the operator's ARBN; and
  - (c) 'Australian Business Number' or 'ABN' is displayed with the operator's name when that name is first mentioned on the public document (see s601DG of the Corporations Act and reg 5B.3.03 and Sch 7 to the Corporations Regulations).

## Local agent

- RG 138.90 A notified foreign passport fund operator must maintain a local agent in Australia. An operator may have more than one local agent at the same time.
- RG 138.91 The local agent is responsible for doing all acts, matters or things that the notified foreign passport fund operator is required to do by or under the Corporations Act and may be personally liable for a penalty imposed on the operator for contravention of the Corporations Act: see s601CJ.
- RG 138.92 A person remains a local agent from the date of their appointment until that person dies or the person or the notified foreign passport fund operator submits a completed [Form 404 Notification of change to agent of a foreign](#)

*company*. If a local agent or operator notifies ASIC about termination of a local agent's appointment, the termination will take effect on the later of:

- (a) the date specified in the termination; or
- (b) 21 days from the date of lodgement (see s601CH).

RG 138.93 If a person ceases to be an agent, the notified foreign passport fund operator must appoint another agent by submitting [Form 404](#) and a memorandum of appointment or power of attorney. This may be completed using [Form 418](#). Lodgement must occur within 21 days from the date the agent ceases: see s601CF.

RG 138.94 If [Form 404](#) and [Form 418](#) are executed on behalf of a notified foreign passport fund operator, a copy of the document authorising the execution and [Form 403](#) *Verification of copy of document authorising, on behalf of a foreign company, execution of a document appointing a local agent* must also be submitted.

### Submitting documents with ASIC

RG 138.95 A notified foreign passport fund operator must submit documents with ASIC as a registered foreign company. If an operator fails to lodge a document as required, or fails to lodge the document within the required time, it may be fined.

RG 138.96 A notified foreign passport fund operator must also include the NFPFRN and APFRN for the fund on any documents submitted to us about the fund. If an operator is lodging a paper form, it must meet certain requirements regarding format, quality and text: see [Lodging paper forms](#) on our website.

RG 138.97 In general, any person may inspect a document lodged with us: see s1274(2).

### Annual lodgements

RG 138.98 A notified foreign passport fund operator must lodge the following documents with ASIC each financial year:

- (a) an annual return ([Form 406](#) *Annual return of a foreign company*);
- (b) the balance sheet, cash flow statement and profit and loss statement for the operator for the last financial year;
- (c) any documents that the operator is required to prepare by law in its place of incorporation; and
- (d) a statement verifying the financial reports ([Form 405](#) *Statement to verify financial statements of a foreign company*) (see s601CK(1)).

Note: For more information on the fees that must be paid with lodged information, see [INFO 30](#).

RG 138.99 However, a notified foreign passport fund operator with a place of incorporation in New Zealand is not required to lodge the documents in RG 138.98(a)–RG 138.98(d) if it has given the document, or a copy, to the New Zealand Companies Office (NZCO): see s601CDA of the Corporations Act and reg 5B.2.05 of the Corporations Regulations.

Note: For more information on lodging documents as a New Zealand company, see [Lodging documents as a New Zealand company](#) and [Regulatory Guide 190 Offering financial products in New Zealand and Australia under mutual recognition](#) (RG 190).

RG 138.100 If we consider that a notified foreign passport fund operator’s financial report does not sufficiently disclose its financial position, we may require the operator to provide an audited copy of its balance sheet, cash flow statement or profit and loss statement. We will set out the form of the substitute financial report and period for lodgement in a written notice.

RG 138.101 We may also require the notified foreign passport fund operator to lodge additional particulars and documents: see s601CK(3). However, this power is limited to what would be required to be provided by a public company under the Corporations Act.

RG 138.102 If a notified foreign passport fund operator is not required to prepare a balance sheet, cash flow statement or profit and loss statement in its place of incorporation, the operator must still lodge a version of those documents with ASIC each year.

### Change of event notifications

RG 138.103 A notified foreign passport fund operator must inform ASIC in writing about the events described in Table 2. The notification must use the relevant form and be submitted within the applicable period set out in Table 2: see s601CG, 601CV(1), 601CT(3)–(4) and 601DH(1).

Note: We may consider the information in a notification to decide whether it is necessary or appropriate to take any further action. We do not take action in response to all events notified to us.

**Table 2: Change of event notification requirements**

Event	Time period(s)	Form
Change in registered office hours or address	Seven days for change of office hours or change of registered office in Australia	<a href="#">Form 489</a>
	One month for change of address in the place of origin	
Change in directors’ details, including appointment	One month from the change	<a href="#">Form 490</a>



Event	Time period(s)	Form
Change in registered company name, constitution, or resident director powers	14 days for change of name One month for change of constitution or change to powers of directors resident in Australia	<a href="#">Form 409</a>
Change in local agent details, including appointment of a director	One month from the change	<a href="#">Form 404</a> <a href="#">Form 403</a> <a href="#">Form 418</a>
Cessation of business in Australia	Seven days from the cessation	<a href="#">Form 407</a>
Winding up or deregistration Note: Two Form 407s must be submitted if a foreign company commences winding up in its place of origin—one on commencement of the winding up and the other on dissolution of the company.	One month from proceedings being commenced to wind up the foreign company in its place of origin, including the appointment of a liquidator One month from the foreign company being dissolved or deregistered in its place of origin	<a href="#">Form 407</a>

RG 138.104 We may extend the one-month period to notify ASIC of changes in a notified foreign passport fund operator's constitution, directors, registered office address or local agent if we receive a request in writing based on special circumstances: see s601CV(2).

Note: Special circumstances include if there is a delay in setting the location of a new registered office address or the replacement of a director for reasons that are beyond the notified foreign passport fund operator's control.

## AFS licensing obligations

RG 138.105 A person generally cannot carry on a financial services business in Australia without an AFS licence: see s911A(1). A financial services business is defined as a business of providing financial services: see s761A. Providing financial services is defined to include:

- (a) providing financial product advice;
- (b) dealing in a financial product;
- (c) making a market for a financial product;
- (d) operating a registered scheme;
- (e) providing a custodial or depository service;
- (f) providing a crowd-funding service; or
- (g) engaging in conduct of a kind prescribed in the Corporations Regulations (see s766A(1)).

Note: For more information on the elements of providing financial services, see Section A of [Regulatory Guide 2 AFS Licensing Kit: Part 2—Preparing your AFS licence or variation application](#) (RG 2).

RG 138.106 An interest in a notified foreign passport fund is a financial product under s764A(1)(bb).

RG 138.107 This means that a person who provides financial services involving an interest in a notified foreign passport fund must generally hold an AFS licence with the specific authorisation(s) to provide that service. As a licensee, they must also comply with the general obligations of licensees under s912A and 912B.

Note 1: For more information on the requirement to hold an AFS licence, and general exemptions from the obligation to hold a licence for foreign financial services providers (FFSPs), see [RG 121](#).

Note 2: [Regulatory Guide 176 Foreign financial services providers](#) (RG 176) contains guidance on our regulatory approach to licensing foreign financial services providers.

### Exemptions from AFS licensing obligations

RG 138.108 There are exemptions from AFS licensing obligations in the Corporations Act for certain activities in relation to a notified foreign passport fund. There are also exemptions from elements of the ‘providing financial services’ definition in s766A(1).

RG 138.109 Exemptions, which are listed in Table 3, are provided so that an AFS licence is not required ‘in the ordinary course of operating a notified foreign passport fund’. They also ensure some consistency between the treatment of notified foreign passport funds and registered schemes.

**Table 3: Exemptions from AFS licensing obligations**

Exemption	Corporations Act and Corporations Regulations references
A notified foreign passport fund operator does not need to hold an AFS licence to enter an arrangement authorising its distributor to offer, vary or sell interests in the fund.	s911A(2)(ba)
A notified foreign passport fund operator does not need to hold an AFS licence if it offers, varies or sells interests in a notified foreign passport fund through a distributor that is authorised to offer, vary or sell the fund’s interests.	s911A(2)(b)
A notified foreign passport fund operator or person acting on its direction or its agent does not need to hold an AFS licence to: <ul style="list-style-type: none"> <li>• acquire or dispose of assets in a notified foreign passport fund as an investment; or</li> <li>• issue, acquire or dispose of a derivative or a foreign exchange contract for the purposes of managing the financial consequences for the fund of particular events, or avoiding or limiting the financial consequences of fluctuations in, or in the value of, costs receipts (including prices or interest rates) (e.g. managing financial risk).</li> </ul>	s911A(2)(eh)–(ej)

Exemption	Corporations Act and Corporations Regulations references
A person does not provide a custodial or depository service, and so does not need to hold an AFS licence for that purpose, if they hold the assets of a notified foreign passport fund, regardless of location.	s766E(3)(bb)
A notified foreign passport fund operator does not provide a custodial or depository service, and so does not need to hold an AFS licence for that purpose, to operate a notified foreign passport fund.	s766A(3)(ba)
A notified foreign passport fund operator does not make a market for interests in its fund, including options or rights to acquire interests, and so does not need to hold an AFS licence for that purpose, if the operator states prices at which it proposes to acquire or dispose of the interest, option or right.	s766D(2)(b)(iv)
A person does not need to hold an AFS licence if they provide a recommendation or statement of opinion on how a client should distribute their available funds among different categories of investments, including notified foreign passport fund interests.	s766A(2)(b), reg 7.1.33A
A person does not need to hold an AFS licence if they provide advice about a custodial or depository service and that advice does not relate to financial products that may be held by the service and the advice is not intended to influence a decision about an equitable right or interest in a notified foreign passport fund interest.	s766A(2)(b), reg 7.1.33E
A person located outside Australia does not need to hold an AFS licence to provide a financial service to one of the following that is not acting as trustee, a responsible entity of a registered scheme or on someone else's behalf in relation to the service: <ul style="list-style-type: none"> <li>• an AFS licensee; or</li> <li>• a person exempt from the need to hold an AFS licence because they are regulated by an overseas regulatory authority, the service is covered by a written exemption from ASIC and the service is provided only to wholesale clients (see s911A(2)(h)).</li> </ul>	s911A(2C), inserted by reg 7.6.02AG
A person located outside Australia does not need to hold an AFS licence to deal in, provide advice on or make a market in derivatives or foreign exchange contracts for a 'professional investor'. <p>Note: 'Professional investor' is defined in s9 and includes an AFS licensee and any person that controls more than \$10 million (including an amount held by an associate or under a trust that the person manages).</p>	s911A(2E), inserted by reg 7.6.02AG

Note: This table does not include all exemptions that may apply.

## Product Disclosure Statement (PDS) disclosure requirements

RG 138.110 A PDS is a disclosure document that must be prepared by a notified foreign passport fund operator. It must generally be provided to a retail client, or their agent, at or before the client is offered or issued an interest in a notified foreign passport fund in Australia: see s1011A and 1012A–1012C.

RG 138.111 The PDS must be given to a retail client or their agent personally, or sent to an address nominated by the client or their agent. The PDS may be given to a retail client electronically: see s1015C.

Note 1: For information on the limited circumstances when a PDS does not have to be provided to a retail client, see s1012D.

Note 2: For information on how a notified foreign passport fund operator may provide PDS disclosure to a retail client electronically, see [Regulatory Guide 221 Facilitating digital financial services disclosures](#) (RG 221).

RG 138.112 The PDS must be kept up to date: see s1012J. If a PDS is not up to date or it contains an error, a supplementary PDS or new PDS must generally be issued: see RG 138.133–RG 138.136 for more information on supplementary PDSs.

RG 138.113 However, a PDS that is not up to date may be given to a person so long as:

- (a) the PDS was up to date at the time it was prepared;
- (b) the updated information includes no materially adverse information from the point of view of an investor; and
- (c) the PDS includes a clear and prominent statement that explains non-materially adverse information may change from time to time and outlines a simple and convenient means for the information to be obtained free of charge on request (see [ASIC Corporations \(Updated Product Disclosure Statements\) Instrument 2016/1055](#)).

RG 138.114 A copy of updated information must be provided as soon as practicable on request and kept for seven years after the information was created: see [ASIC Corporations \(Updated Product Disclosure Statements\) Instrument 2016/1055](#).

RG 138.115 Broadly, the objectives of PDS disclosure are to:

- (a) promote confident and informed decision making by Australian investors by ensuring that they are given all the information they reasonably need to make a decision about whether to buy, sell or hold an interest in a notified foreign passport fund and the suitability of an interest in that fund; and
- (b) create accountability to ensure potential investors are protected from misconduct in relation to offers of interests in notified foreign passport funds.

Note 1: For more guidance on disclosure in PDSs, including good disclosure principles, see [Regulatory Guide 168 Disclosure: Product Disclosure Statements \(and other disclosure obligations\)](#) (RG 168) and [Regulatory Guide 240 Hedge funds: Improving disclosure](#) (RG 240).

Note 2: See Section E for information on our powers to make an interim and/or final stop order in certain circumstances when we become aware of disclosure concerns with a PDS.

## Minimum content for a PDS

- RG 138.116 A PDS must be titled ‘Product Disclosure Statement’, and worded and presented in a clear, concise and effective manner: see s1013A(3) and 1013B. It must contain a statement that a copy of the PDS has been lodged with ASIC and ASIC takes no responsibility for the content of the PDS: see s1013J.
- RG 138.117 The PDS must include the information outlined in Table 4. Information required by s1013D and 1013E in Table 4 need only be included to the extent that it is actually known: see s1013C(2).

**Table 4: Minimum content for a PDS**

Minimum content	Description
<b>Title</b>	The PDS must be titled ‘Product Disclosure Statement’ on the cover or at, or near, its front. In any other part of the PDS, ‘Product Disclosure Statement’ may be abbreviated to ‘PDS’
<b>Contact details</b>	The PDS must include the name and contact details of the notified foreign passport fund operator and distributor of the notified foreign passport fund interest (if applicable).
<b>Home economy</b>	The PDS must include the notified foreign passport fund’s home economy.
<b>Necessary statements</b>	The PDS must include statements that: <ul style="list-style-type: none"> <li>• fund operations, and the notified foreign passport fund operator and custodian of assets, are regulated by the law of the home economy;</li> <li>• the rights and remedies available to a person who acquires an interest in the notified foreign passport fund may differ from the rights and remedies available in relation to a registered scheme;</li> <li>• information available to members in the home economy will, from time to time, be made available to Australian members by posting on the notified foreign passport fund website; and</li> <li>• rights of a member in the event of the notified foreign passport fund being wound up are mainly determined under the constitution and the law of the home economy.</li> </ul>
<b>Home economy rights and remedies</b>	The PDS must include an outline of the main rights and remedies available under the home economy laws for persons who acquire an interest in the notified foreign passport fund in Australia.
<b>Significant benefits and risks</b>	The PDS must include information about any significant benefits and significant risks for an investor associated with holding the notified foreign passport fund interest, including the circumstances in which and times at which any benefits will or may be provided, and the way in which those benefits will or may be provided.
<b>Costs</b>	The PDS must contain information about the amounts that may be deducted from the notified foreign passport fund and any commission (or similar) that may affect the amount of member returns. <p>Note: For more information on the requirements under Sch 10 to the Corporations Regulations to disclose fees and costs, see <a href="#">Regulatory Guide 97</a> <i>Disclosing fees and costs in PDSs and periodic statements</i> (RG 97) and <a href="#">Class Order [CO 14/1252]</a> <i>Technical modifications to Schedule 10 of the Corporations Regulations</i>.</p>

Minimum content	Description
<b>Other significant characteristics or features</b>	The PDS must include information about any other significant characteristics or features of the notified foreign passport fund interest or of the rights, terms, conditions and obligations attaching to the interest not listed above.
<b>Accessing further information</b>	The PDS must include an outline of how information made available on the notified foreign passport fund website may be accessed by members located in Australia.  If the notified foreign passport fund operator or distributor makes other information about the interests available, the PDS must include a statement on how that information can be accessed.
<b>Dispute resolution</b>	The PDS must include information about the dispute resolution system that covers member complaints and how that system may be accessed.
<b>Taxation</b>	The PDS must include general information about any significant taxation implications of holding notified foreign passport fund interests of the relevant kind.
<b>Cooling off</b>	The PDS must include information about any cooling-off regime that applies in respect of acquisitions of interests in the notified foreign passport fund.  Note: For information on cooling-off rights under the Corporations Act, see RG 138.142–RG 138.143.
<b>Labour standards or environmental, social or ethical, considerations</b>	The PDS must include information about the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection of investments. The following information is required: <ul style="list-style-type: none"> <li>• statements on whether the operator does, or does not, take into account labour standards or environmental, social or ethical considerations in selecting, retaining or realising investments;</li> <li>• if the PDS discloses that labour standards are taken into account, a statement outlining: <ul style="list-style-type: none"> <li>– the standards that the operator considers to be labour standards for that purpose; and</li> <li>– the extent to which the operator takes those standards into account in the selection, retention or realisation of the investment; and</li> </ul> </li> <li>• if the PDS discloses that environmental, social or ethical considerations are taken into account, a statement outlining: <ul style="list-style-type: none"> <li>– the considerations that the operator regards as environmental, social or ethical considerations for that purpose; and</li> <li>– the extent to which the operator takes those considerations into account in the selection, retention or realisation of the investment (see reg 7.9.14C of the Corporations Regulations).</li> </ul> </li> </ul>
<b>Other information</b>	The PDS must contain any further information that might reasonably influence the decision of a reasonable person, as a retail client, whether to acquire an interest in the notified foreign passport fund.
<b>Lodgement statement</b>	The PDS must contain a statement that a copy of the PDS has been lodged with ASIC and ASIC takes no responsibility for the content of the PDS.

Minimum content	Description
<b>Additional information for quoted interests</b>	<p>If the interests in the notified foreign passport fund will be quoted on a financial market in Australia or elsewhere, the PDS must state that:</p> <ul style="list-style-type: none"> <li>• the interests will be able to be traded on that market;</li> <li>• an application has been made to the market operator to enable the interests to be traded on that market; or</li> <li>• an application will be made to the operator within seven days after the date of the PDS.</li> </ul>

RG 138.118 If the PDS includes statements by a person, or statements based on a statement by a person, the person must have consented to their statement being included or referenced in the PDS. The PDS must also acknowledge this consent and the person must not have withdrawn their consent before the date of the PDS: see s1013K.

Note: For examples of personal statements that may be included in a PDS where consent is not required, such as copies of official published statements and trading data accompanied by an approved qualification, see [ASIC Corporations \(Consents to Statements\) Instrument 2016/72](#).

RG 138.119 A PDS may include references to information in another document: see s1013C(1)(b)(ii). A PDS must also contain any other information that might reasonably influence the decision of a reasonable person, as a retail client, whether to acquire an interest in the notified foreign passport fund: see s1013E.

### Excluded content

RG 138.120 A PDS does not have to contain information that would not be reasonable to include in the PDS for a retail client considering whether to acquire an interest in the notified foreign passport fund: see s1013F(1). In considering what might reasonably be included in a PDS, the notified foreign passport fund operator should take into account:

- the nature of the interest (including its risk profile);
- the extent to which the interest is understood by the kinds of persons who commonly acquire products of its kind as retail clients, and the kinds of things such persons may reasonably be expected to know;
- the way in which the interest is promoted or distributed; and
- if the interest is subject to enhanced disclosure obligations because it satisfies the definition of an enhanced disclosure (ED) security but is not a ‘continuously quoted security’—the effect of financial reporting and continuous disclosure obligations in the Corporations Act (see s1013F(2)).

Note: For a definition of ‘ED security’ see RG 138.124. Interests are generally ‘continuously quoted securities’ if they are quoted ED securities that have been traded on a financial market in Australia for at least three months before the date of the PDS: see the definition in s9.

### Interests that are continuously quoted securities

- RG 138.121 A PDS does not need to include information required by s1013D and 1013E in Table 4 if:
- (a) interests in the notified foreign passport fund satisfy the definition of ‘continuously quoted securities’; and
  - (b) the information was included in:
    - (i) the most recent financial report for the fund prepared in accordance with the home economy reporting requirements;
    - (ii) the accompanying auditor’s report; or
    - (iii) a continuous disclosure notice given after lodgement of the financial statements with the home economy regulator but before the date of the PDS (see s1013FA(2)(aa)).
- RG 138.122 The PDS must state that regular reporting and disclosure requirements apply to the notified foreign passport fund and inform people of their right to request a copy of the documents free of charge: see s1013FA(2).
- RG 138.123 This provision applies because continuously quoted securities are considered to have been on the market for a sufficient period so that the full PDS requirements are not needed to ensure that the market is appropriately informed about their characteristics.

### Additional content

#### Interests that are ED securities

- RG 138.124 Additional disclosures must be included in a PDS for interests in a notified foreign passport fund that are ED securities. An interest is an ED security if one of the following applies:
- (a) the fund is listed on a prescribed financial market (see s111AE);
  - (b) the interest is part of a class of interests that were issued by the fund to 100 or more people resident in Australia and those people still hold the interest (see s111AF); or
  - (c) the interest was issued to 100 or more people resident in Australia as part of an off-market takeover bid and those people still hold the interest (see s111AG).
- RG 138.125 If interests in a notified foreign passport fund are ED securities, the PDS must meet the requirements of s1013IA. These requirements mean the PDS must contain statements that:
- (a) the notified foreign passport fund, as a disclosing entity, is subject to regular reporting and disclosure obligations; and
  - (b) copies of documents lodged with ASIC may be obtained from, or inspected at, ASIC offices (see s1013IA(2)).



- RG 138.126 The PDS must also include the following documents as an attachment or inform people of their right to obtain them:
- (a) a copy of the financial report prepared for the notified foreign passport fund for the most recent financial year; and
  - (b) a copy of each auditor's report that relates to the financial report (see s1013IA(3)).

### Trading condition

- RG 138.127 If a PDS states or implies that an interest in the notified foreign passport fund is able to be traded on a financial market (in Australia or elsewhere), the PDS must include a statement that:
- (a) the interest is able to be traded on the market; or
  - (b) an application has been made, or will be made within seven days of the PDS, to the relevant market operator to enable trading of the interest on that operator's market (see s1013H).
- RG 138.128 Under s1016D, a notified foreign passport fund operator or distributor must only issue or sell an interest in a notified foreign passport fund with a PDS that states or implies that the interests will be tradable on a financial market (in Australia or elsewhere) if, in fact:
- (a) the interest is able to be traded on that market; or
  - (b) an application has been made within seven days following the date of the PDS (or supplementary or replacement PDS) to the market operator to enable trading.

Note: For information on supplementary PDSs, see RG 138.133–RG 138.136.

- RG 138.129 If an application to the market operator is not made within seven days after the relevant date of the PDS, or trading on the market does not commence within three months, then any issue or transfer of interests in the notified foreign passport fund is void and any money paid must be returned: see s1016D(2).

### Application form

- RG 138.130 An application form for interests in the notified foreign passport fund must be attached to, accompany or be derived from the PDS: see s1016A. The application form must contain the person's:
- (a) name;
  - (b) date of birth; and
  - (c) address (see reg 7.9.74(1) of the Corporations Regulations).

Note: ASIC intends to amend [ASIC Corporations \(Application Form Requirements\) Instrument 2017/241](#) so that a notified foreign passport fund application can merely state that the applicant is at least 18 years of age rather than provide their date of birth.

### Minimum subscription condition

- RG 138.131 If a PDS contains a minimum subscription condition, the minimum subscription must be achieved before interests in the notified foreign passport fund are issued or sold: see s1016C.
- RG 138.132 If the minimum subscription condition is not met within four months, any money paid must be:
- (a) returned to the person; or
  - (b) the operator or distributor must give the person additional disclosure and one month to withdraw their application and be repaid (see s1016E(2)).

### Supplementary PDS

- RG 138.133 A supplementary PDS may be prepared and used to:
- (a) correct a misleading or deceptive statement in a PDS;
  - (b) correct an omission from a PDS of information that it was required to contain;
  - (c) update or add to the information in a PDS; or
  - (d) change a minimum fundraising amount, minimum application amount or statement regarding quotation of interests (see s1014A).
- RG 138.134 The title ‘Supplementary Product Disclosure Statement’ must be used on the cover, or at or near the front, of a supplementary PDS. This may be shortened to ‘SPDS’ elsewhere in the document: see s1014B.
- RG 138.135 At the beginning of a supplementary PDS, there must be:
- (a) a statement that it is a supplementary PDS;
  - (b) identification of the PDS that it supplements; and
  - (c) a statement that it is to be read together with the original PDS and any other specified supplementary PDS (see s1014C).
- RG 138.136 If a person is given a PDS and, at the same time or later, they are given a supplementary PDS, the original PDS is taken to include information and statements contained in the supplementary PDS: see s1014D.

### Lodgement with ASIC

- RG 138.137 Before a notified foreign passport fund operator gives a PDS to a person or their agent, the PDS must be lodged with ASIC: see s1015B(1). A PDS will be submitted with the notice of intention to offer interests in a foreign passport fund and this satisfies the lodgement obligation for that PDS. However, any supplementary PDS, replacement PDS or new PDS must also be lodged with ASIC.

## Confirmation of transactions

- RG 138.138 A notified foreign passport fund operator will generally need to confirm certain transactions with retail clients in Australia. This includes a transaction:
- (a) by which the retail client acquires an interest in a notified foreign passport fund; or
  - (b) that occurs while a client holds an interest in a notified foreign passport fund, including a transaction disposing of all or part of an interest in a notified foreign passport fund (see s1017F).
- RG 138.139 Having regard to information that they have received before, the transaction confirmation must provide the client with information that the notified foreign passport fund operator reasonably believes the person needs to understand the nature of the transaction. As a minimum, this includes:
- (a) details of the parties to the transaction;
  - (b) the transaction date;
  - (c) a description of the transaction;
  - (d) any amount paid or payable by the retail client in relation to the transaction; and
  - (e) any taxes and stamp duties payable in relation to the transaction (see s1017F(7)–(8) of the Corporations Act and Div 6 of Pt 7.9 of the Corporations Regulations).
- RG 138.140 A transaction confirmation may be given in electronic form so long as, as far as practicable, the confirmation is presented in a way that allows the person to whom it is given to keep a copy of it and clearly identifies the information that is part of the confirmation: see reg 7.9.63I of the Corporations Regulations.
- RG 138.141 A transaction confirmation may be made available through a facility that a person can check for themselves if the person has consented to use the facility and not revoked their consent: see s1017F(5)–(5A).

## Cooling-off rights

- RG 138.142 A retail client may return an interest in a notified foreign passport fund to the person who issued or sold the interest to them within a cooling-off period and be repaid the money they paid to acquire the interest: see s1019B(1). The money repaid may be adjusted for any change in the price of interests in the period: see reg 7.9.67 of the Corporations Regulations.

Note 1: A cooling-off period does not apply if an interest in a notified foreign passport fund has been offered under a PDS that states or implies that quotation of the interest on

a financial market (whether in Australia or elsewhere) will be sought: see reg 7.9.64(1)(ha) of the [draft Corporations Regulations](#).

Note 2: If a retail client acquired more than one interest in a notified foreign passport fund as part of a transaction, they must return every interest that they acquired if they decide to exercise their cooling-off rights: see reg 7.9.65(1A)(b) of the [draft Corporations Regulations](#).

RG 138.143 The cooling-off period is 14 days starting on the earlier of when the client received confirmation of the transaction or the end of the fifth day after the issue or sale: see s1019B(3).

## Prohibition of conflicted and other banned remuneration

RG 138.144 The Corporations Act prohibits:

- (a) AFS licensees and their representatives from accepting conflicted remuneration (see s963E, 963G and 963H);
- (b) product issuers, such as notified foreign passport fund operators, and distributors, from giving conflicted remuneration to AFS licensees and their representatives (see s963K); and
- (c) employers of an AFS licensee or representative of an AFS licensee giving that licensee or representative conflicted remuneration for work that they carry out as an employee (see s963J).

RG 138.145 The Corporations Act also prohibits other forms of remuneration that have the potential to influence the advice received by retail clients: see Div 5 of Pt 7.7A.

RG 138.146 Conflicted remuneration is generally any monetary or non-monetary benefit given to an AFS licensee or its representative who provides advice to retail clients that, because of the nature of the benefit or the circumstances in which it is given, could reasonably be expected to influence:

- (a) the choice of financial product recommended to clients by the AFS licensee or its representative; or
- (b) the advice given to clients by the AFS licensee or its representative (see s963A).

Note: For examples of benefits excluded from the definition of conflicted remuneration, see [Regulatory Guide 246](#) *Conflicted and other banned remuneration* (RG 246).

RG 138.147 A condition of a contract, or other arrangement, is void if it seeks to waive any of the obligations under the conflicted remuneration provisions: see s960A. Disclosure, including notices and disclaimers, cannot be used by an AFS licensee or its representative to avoid their obligations under the conflicted remuneration provisions.

### Volume-based shelf-space fees

- RG 138.148 A notified foreign passport fund operator must not contract with a custodian or proposed custodian of fund assets to pay volume-based shelf-space fees. This would generally include a fee that is wholly or partly dependent upon the total number or value of notified foreign passport fund interests to which the custodial arrangement relates: see s964(1)(b).
- RG 138.149 A fee will not be considered a volume-based shelf-space fee if it is:
- (a) a reasonable fee for a service that the custodian or another person provides to the notified foreign passport fund operator; or
  - (b) a rebate or discount of an amount payable to the operator by a custodian that does not exceed an amount that may reasonably be attributed to efficiencies that the operator gains because of financial product related services that they provide to the custodian or another person (see s964A(3)).

Note: For more information on complying with the provisions on conflicted and other banned remuneration in Divs 4 and 5 of Pt 7.7A, see [RG 246](#).

### Advertising of notified foreign passport fund interests

- RG 138.150 A notified foreign passport fund operator must satisfy requirements in the Corporations Act that govern advertising of interests in a notified foreign passport fund. Advertising for this purpose includes publishing a statement that is reasonably likely to induce a person to acquire an interest in the notified foreign passport fund: see s1018A.
- RG 138.151 If the advertising relates to an interest in a notified foreign passport fund that is available for acquisition by persons in Australia as retail clients (whether or not the interest is also available for acquisition by persons as wholesale clients), the advertising must:
- (a) identify the notified foreign passport fund operator (if it is the only one making available the interest);
  - (b) identify both the operator and the distributor if the interest is being offered in a sale situation and a PDS is required;
  - (c) indicate that the PDS is available for the interest and where the PDS can be obtained; and
  - (d) indicate that the person should consider the PDS in deciding whether to acquire, or continue to hold, an interest in the notified foreign passport fund.
- RG 138.152 If the advertising relates to an interest in a notified foreign passport fund that is not yet available (but is reasonably likely to become available) for acquisition by persons as retail clients (again, whether or not it is also

available for acquisition by persons as wholesale clients), the advertising must also disclose similar information to that in RG 138.151 and when the PDS is expected to be available. There are a number of exceptions to the above requirements: see s1018A(4).

Note: For more information on advertising financial products and services, see [Regulatory Guide 234](#) *Advertising financial products and services (including credit): Good practice guidance* (RG 234).

RG 138.153 If an interest in a notified foreign passport fund is admitted to trading status on a licensed financial market in Australia, the notified foreign passport fund operator must comply with any applicable labelling requirements imposed by the relevant market operator.

Note: For more information on admission considerations for financial market operators, see [Information Sheet 230](#) *Exchange traded products: Admission guidelines* (INFO 230).

## Hawking

RG 138.154 A person must not offer or sell interests in a notified foreign passport fund in the course of, or because of, an unsolicited meeting or telephone call: see s992AA. An offer for this purpose includes inviting an application from a person for the issue or sale of fund interests: see s992AA(3).

RG 138.155 This hawking prohibition aims to prevent the pressure selling of interests in notified foreign passport funds to retail clients.

RG 138.156 This prohibition does not apply if the offer is made:

- (a) to clients who are not retail clients;
- (b) via telephone by an AFS licensee and is of interests in a listed notified foreign passport fund; or
- (c) by an AFS licensee through whom the client has bought or sold fund interests in the previous 12 months (see s992AA(2)).

Note: For more information and guidance on the hawking prohibition, see [Regulatory Guide 38](#) *The hawking provisions* (RG 38).

## Register of members

RG 138.157 A notified foreign passport fund must maintain a register of members. If a notified foreign passport fund is listed on a financial market, the notified foreign passport fund operator must maintain a register containing details of any 'relevant interest' in the fund that a person holds: see s672DA(1).

RG 138.158 The register of members must be kept up to date. A notified foreign passport fund operator must ensure that, at any time, the register is not more than

20 business days out of date: see reg 9.4A.02(1) of the [draft Corporations Regulations](#).

- RG 138.159 If a person requests to inspect the register of members, the notified foreign passport fund operator must ensure that beginning on the business day after the date of request, the register is not more than five business days out of date: see reg 9.4A.02(2) of the [draft Corporations Regulations](#).

## Ongoing disclosure of material changes and significant events

- RG 138.160 There are ongoing obligations for notified foreign passport fund operators to disclose information about material changes and significant events to retail clients. These obligations are in addition to PDS disclosure requirements.
- RG 138.161 The level of ongoing disclosure varies depending on whether interests in the notified foreign passport fund are ED securities or not. The disclosure must be given by hard copy or electronically.

Note: For more information on when a notified foreign passport fund operator may provide electronic disclosure of material changes and significant events, including exemptions from legal requirements, see [RG 221](#).

### Interests that are not ED securities

- RG 138.162 If interests in a notified foreign passport fund are not ED securities, s1017B requires ongoing disclosure to retail clients of:
- (a) any material change to a matter or matters specified, or required to have been specified, in the PDS; and
  - (b) any significant event that affects a matter specified, or required to have been specified, in the PDS.
- RG 138.163 The disclosure must give the retail client information that is reasonably necessary for them to understand the nature and effect of the change or event: see s1017B(4). The time to provide the notice is:
- (a) *for an increase in fees or charges*—30 days before the change takes effect; or
  - (b) *otherwise*—before or as soon as practicable after the change occurs up to three months from the date of the change or event (see s1017B(5)).
- RG 138.164 If a notified foreign passport fund operator reasonably believes that a change or event is not adverse to the client's interests, notice may be given up to, but no later than, 12 months after it occurs: see s1017B(6).

### Interests that are ED securities

- RG 138.165 If interests in a notified foreign passport fund are ED securities, Ch 6CA imposes 'continuous disclosure' requirements on the notified foreign

passport fund operator. Ch 6CA imposes different requirements depending on whether the disclosing entity is listed or unlisted. In most cases, a notified foreign passport fund will be an unlisted disclosing entity rather than a listed disclosing entity.

RG 138.166 A notified foreign passport fund operator will need to disclose information after they become aware that the information:

- (a) is not generally available and a reasonable person would expect, if that information were generally available, it could have a material effect on the price or value of the interests; and
- (b) has not been lodged with ASIC in a PDS, supplementary PDS or replacement PDS (see s675(2)).

Note: For more on when information may be considered 'generally available', see s676.

RG 138.167 The test whether a reasonable person would expect information to have a material effect on the price or value of interests in a notified foreign passport fund is determined by whether the information would, or would be likely to, influence persons who commonly invest in interests in deciding whether to acquire or dispose of them: see s677.

RG 138.168 In addition to having no obligation to disclose information that is generally available, a notified foreign passport fund operator does not have to disclose information to ASIC if:

- (a) a reasonable person would not expect the information to be disclosed;
- (b) the information is confidential; and
- (c) at least one of the following applies:
  - (i) the disclosure of the information would contravene a law;
  - (ii) the information is about a matter that is assumed or believed without knowledge or proof;
  - (iii) the information is not definite enough to make disclosure appropriate;
  - (iv) the information relates to an incomplete proposal or a matter that is in the course of being negotiated;
  - (v) the information was prepared or created for the internal management purposes of the fund; or
  - (vi) the information is a trade secret (see reg 6CA.1.01 of the Corporations Regulations).

RG 138.169 A notified foreign passport fund operator can choose to disclose information to meet s675 in two ways:

- (a) the operator can publish the information on its website if it meets the good practice guidance in [Regulatory Guide 198 Unlisted disclosing entities: Continuous disclosure obligations](#) (RG 198); or



- (b) the operator can lodge [Form 1003 Disclosure notice for unlisted disclosing entity](#).

Note: For more information on good practice, see [RG 198](#).

## Periodic statements

RG 138.170 A notified foreign passport fund operator must prepare periodic statements for any retail clients in Australia: see s1017D. The policy objective is to give retail clients an ongoing report on the performance of their investments.

RG 138.171 The periodic statement must give retail clients the information they need to understand their interest in the notified foreign passport fund: see s1017D(4). This includes:

- (a) opening and closing balances of their interest for the reporting period;
- (b) the termination value of their interest at the end of the reporting period (to the extent to which it is reasonably practicable to calculate that value for the interest or a component of the interest);
- (c) details of transactions in relation to the interest during the reporting period;
- (d) any increases in contributions in relation to the interest by the member or another person during the reporting period;
- (e) the return on investment during the reporting period (on an individual basis if reasonably practicable to do so and otherwise on a fund basis);
- (f) details of any change in circumstances affecting the interest that have not been notified since the previous periodic statement;
- (g) details of the amounts paid by the member in respect of the investment during the period;
- (h) details of fees and costs associated with holding the interest as required under Sch 10 to the Corporations Regulations as modified by [\[CO 14/1252\]](#);
- (i) a statement that there is a dispute resolution mechanism that covers member complaints and the means by which a member may gain access to that mechanism; and
- (j) a statement that further information in relation to the interest is available on request, and the means by which a member may gain access to that information (see s1017D(5) of the Corporations Act and reg 7.9.75 of the Corporations Regulations).

RG 138.172 The periodic statement must be given in writing, electronically or in a way specified by the Corporations Regulations: see s1017D(6).

Note: For information on how a notified foreign passport fund operator may provide electronic periodic statement disclosure, see [RG 221](#).

## Financial reports and auditors' reports

RG 138.173 As well as lodging them with ASIC, a notified foreign passport fund operator must give to Australian members within three months of the end of the financial year:

- (a) a copy of the financial report for the notified foreign passport fund for that year prepared in accordance with the home economy financial reporting requirements; and
- (b) a copy of each auditor's report that relates to the financial report (see s314A(1) and 315(3)).

Note: A member may request that the notified foreign passport fund not send to them one or more of these reports as a standing request for all years or for a particular financial year. No legal requirement governs the format for this request, so a notified foreign passport fund operator may require it to be in writing or accept an oral request: see s316AA.

RG 138.174 The notified foreign passport fund operator must give the financial report and the auditor's report to Australian members by sending a hard copy or electronic copy to those who made an election, and otherwise making copies available on the fund website and circulating details of the website address: see s314(2).

RG 138.175 A notified foreign passport fund operator must, on at least one occasion, notify each Australian member in writing that they may elect to receive, free of charge, a copy of the financial report and auditor's report for each financial year and that the reports will be available on the fund website. The member must also be given the opportunity to receive the reports in English or the official language of the home economy: see s314A(3).

RG 138.176 If an Australian member elects to receive a copy of the financial report and auditor's report in English, this is a standing election for each later financial year until the member changes their election: see s314A(3).

Note: For more information on how to obtain a reasonable translation into English, see [Translation of documents](#) on our website.

RG 138.177 In certain cases, an Australian member may request a copy of the financial report and/or an auditor's report. If interests in the fund are ED securities and a member makes this request, the notified foreign passport fund operator must provide the member with the requested document free of charge.

RG 138.178 The document must be provided as soon as practicable or at most within five days of receiving the request, and it must be in English if the person asks for a copy in English: see s1013IA(5).

## Providing additional information about the interest on request

RG 138.179 On request, the notified foreign passport fund operator or a distributor must provide further information about the notified foreign passport fund interest.

This information must be provided within one month after receipt of a request for the information. The notified foreign passport fund operator or distributor may:

- (a) make the information available for inspection and photocopying during normal business hours at a suitable place in Australia; or
- (b) agree an alternate means to provide the additional information with the person that is making the request (see s1017A(4)).

Note: For information on when a notified foreign passport fund operator or distributor may provide electronic disclosure of requested additional information, see [RG 221](#).

RG 138.180 Additional information only needs to be provided if all the following requirements under s1017A(2) are met:

- (a) the notified foreign passport fund operator or the distributor has previously made the information generally available to the public;
- (b) the information might reasonably influence a person's decision, as a retail client, whether to acquire the interest in the notified foreign passport fund to which the PDS relates;
- (c) it is reasonably practicable for the operator or the distributor to give the information; and
- (d) the person pays for any reasonable costs related to giving the information.

### Who may request additional information?

RG 138.181 Additional information may be requested by:

- (a) a person who has been, or should have been, given a PDS but not yet become a member; or
- (b) an AFS licensee or a person that is exempt from being an AFS licensee under the Corporations Act (see s1017A(1)).

### Providing certain documents

RG 138.182 On request, a notified foreign passport fund operator must give certain persons a copy of the notified foreign passport fund's:

- (a) constitution (see s1213J);
- (b) register of members (see s1213K); and
- (c) for a listed notified foreign passport fund—the register of relevant interests (see s672DA(8)).

Note: A notified foreign passport fund operator cannot delegate its obligation to provide copies of the constitution, register of members or, if applicable, register of relevant interests to another entity. If a person other than the operator holds the constitution or registers, the operator must obtain the requested document from that entity.

RG 138.183 A notified foreign passport fund operator must also make available on the fund website copies of any reports that the operator provides free of charge

to members in the home economy. The reports must be available free of charge and published on the website within seven days after the first day on which the relevant report is made available to a member in the home economy: see s1213M.

- RG 138.184 If members in the home economy are notified that the report is available on the fund website or notified how to access the report from the fund website, equivalent notice must be given to Australian members. If the report or part of the report is not in English, the notified foreign passport fund operator must make a summary of the report or relevant part available in English on the fund website free of charge and notify members in Australia of its availability and how to access it: see s1213M.

Note: For more information on how to obtain a reasonable translation into English, see [Translation of documents](#) on our website.

### Who may request a copy

- RG 138.185 Only a member or former member who acquired an interest in the notified foreign passport fund in Australia, or who is ordinarily resident in Australia, may request a copy of the constitution: see s1213J(1)(b).
- RG 138.186 Any person in Australia, or any Australian member or former member who acquired an interest in the notified foreign passport fund in Australia or who is ordinarily resident in Australia, may request a copy of the register of members: see s1213K(1)(b).

### How a request can be made

- RG 138.187 A request for a constitution or register of members must be made in writing to the notified foreign passport fund operator: see s1213J(2) and 1213K(2).
- RG 138.188 The person making the request must pay any costs the notified foreign passport fund operator incurs to provide a copy of the requested document. The amount an operator charges must be reasonable and cannot exceed amounts to be prescribed in the Corporations Regulations: see s1213J(1)(c) and 1213K(1)(c). For comparison, prescribed amounts for registered schemes are:
- (a) \$10 for a constitution; and
  - (b) \$250 for a copy of the register of members and additional amounts if there are 5,000 members or more.

Note: An amount is reasonable if it reflects the notified foreign passport fund operator's reasonable costs—for example, the cost of processing the request (making a copy and postage), but not of translating the document into English.

RG 138.189 A request for a copy of the register of members must also state the intended use of the information, which must not be a prohibited purpose: see s1213K(2).

### **Prohibited uses of information obtained from a register of members**

RG 138.190 A person who obtains a copy of a register of members must generally not use or disclose information from that register:

- (a) to contact or send material to a member; or
- (b) knowing that the information is likely to be used to contact or send material to a member (see s1213L(1)).

RG 138.191 A notified foreign passport fund operator may permit a person to use or disclose information from a register of members in a way that would otherwise be prohibited. Use or disclosure of information will also be permitted if this is relevant to the holding of the interests recorded in the register or the exercise of rights attaching to those interests: see s1213L(2).

Note: An example may be the mailing out of invitations to support the convening of a meeting of members or to canvass views about a resolution to be put before members or participation in legal action against a notified foreign passport fund operator for failure to meet its duties to members.

RG 138.192 The restrictions on the use of information in the register of members are designed to protect members' privacy and prevent their details being used for soliciting donations, advertising or other improper purposes.

RG 138.193 A person who breaches a prohibition on using information in a register of members may have to pay compensation for any loss or damage suffered because of the breach. Any profits made by the person committing the breach may be recovered by a notified foreign passport fund operator as a debt owed to the fund, with the debt equal to the amount of profit. Any amount paid or recovered in respect of the debt will form part of the property of the fund: see s1213L(6)–(8).

### **Processing the request**

RG 138.194 A notified foreign passport fund operator must provide requested documents in English, unless the person requests that the constitution or register of members be provided in an official language of the home economy: see s1213J(6) and (7) and 1213K(6) and (7).

Note: For more information on how to obtain a reasonable translation into English, see [Translation of documents](#) on our website.

RG 138.195 The copy of the constitution or the register of members should be provided electronically, unless the person requests a paper copy: see s1213J(3) and (4) and 1213K(3) and (4). Regardless of whether the copy is to be provided electronically or in paper, a notified foreign passport fund operator must

send or post it within seven days after the application is made: see s1213J(3) and (4) and s1213K(3) and (4).

- RG 138.196 We may allow a longer period to send or post a copy of requested documents if a notified foreign passport fund operator applies for relief: see s1213J(5) and 1213K(5).

Note: See Section E for more information on applications for relief.

## Providing copies of books on court order

- RG 138.197 An Australian court may make an order directing a notified foreign passport fund operator to provide certain persons with an electronic copy of specified books and records relating to the notified foreign passport fund that have been prepared by the fund or the operator: see s1213N.
- RG 138.198 A court may only make an order if it is satisfied that the member or former member is acting in good faith, and that the materials are to be obtained for a proper purpose. The meaning of proper purpose is not provided in the Corporations Act: see s1213N(3).
- RG 138.199 The court may direct that an English translation of all or a specified part of the books and records be provided, or order provision of the specified materials in their original condition (including if in a foreign language): see s1213N(2)(c)–(d).

### Who may request a court order

- RG 138.200 An Australian member or former member who acquired an interest in a notified foreign passport fund while in Australia, or who is ordinarily resident in Australia, may apply to an Australian court for an order.
- RG 138.201 The member or former member may make copies of the specified books or records, or specified parts of the books or records, unless the court order precludes this: see s1213N(4).

## Lodgement of documents with ASIC

- RG 138.202 A notified foreign passport fund operator must lodge a number of documents with ASIC on behalf of the notified foreign passport fund. If an operator fails to lodge a document, or fails to lodge it within a required time period, it may be fined.
- RG 138.203 Any document that is submitted to ASIC must be signed by:
- (a) a director or the secretary of the notified foreign passport fund operator;
  - (b) a local agent; or

- (c) if the local agent is a company—a director or secretary of that company (see s351(1A)).

RG 138.204 The document must also include:

- (a) the notified foreign passport fund’s NFPFRN and APFRN and its name;
- (b) the notified foreign passport fund operator’s name; and
  - (i) the expression ‘Australian Registered Body Number’ followed by the operator’s ARBN, which would have been obtained when it registered as a foreign company; or
  - (ii) the expression ‘Australian Business Number’ followed by the last nine digits of the operator’s ABN—if the operator has an ABN and its last nine digits are the same, and in the same order, as the last nine digits of their ARBN (see s601DE).

RG 138.205 A notified foreign passport fund operator must permit any person to inspect a document lodged with ASIC and the document must be available for inspection at the operator’s registered office in Australia whenever that office is open to the public: see s1300(6).

RG 138.206 The policy objectives underlying the document lodgement requirements are:

- (a) maintaining investor confidence, enhancing market efficiency and ensuring the accountability of management through the provision of timely and reliable financial and other relevant information; and
- (b) making information available to a wide range of investors in Australia to help them make economic decisions.

### **Annual lodgements**

RG 138.207 A notified foreign passport fund operator must lodge the following documents with ASIC annually:

- (a) financial reports for the notified foreign passport fund;
- (b) an auditor’s report in relation to the financial reports;
- (c) an annual implementation review assurance report; and
- (d) an annual return.

### **Financial reports and auditors’ reports**

RG 138.208 The financial reports and auditors’ reports that a notified foreign passport fund operator must lodge are copies of:

- (a) the financial reports for the financial year that have been prepared for the notified foreign passport fund in accordance with financial reporting requirements that apply under home economy laws and regulations; and

- (b) the auditor's report in relation to the financial reports for the notified foreign passport fund that have been prepared for that financial year (see s319(1AA) and 319(3)(a)).

Note: A notified foreign passport fund must submit financial reports and an auditor's report accompanied by a [Form 405 Statement to verify financial statements of a foreign company](#).

RG 138.209 A notified foreign passport fund operator must lodge these reports within three months after the end of the period covered by the reports. The financial reports must be signed by one of the directors or the secretary of the operator, the local agent or a director or secretary of the local agent if it is a company: see s351(1A).

RG 138.210 A notified foreign passport fund operator must accompany any financial report and/or auditor's report that it submits to ASIC with a form that sets out:

- (a) the notified foreign passport fund's NFPFRN and APFRN and its name;
- (b) the notified foreign passport fund operator's name;
- (c) the dates on which the financial year to which the document relates begins and ends; and
- (d) a statement certifying the form that has been signed by a director or secretary of the operator, the local agent or a director or secretary of the local agent if it is a company (see regs 1.0.08(2) and 1.0.16(3) of the [draft Corporations Regulations](#)).

RG 138.211 We may also direct a notified foreign passport fund operator to lodge a copy of the financial reports for the notified foreign passport fund for a financial year, and a copy of each auditor's report that relates to those reports: see s321(1AA).

RG 138.212 If a notified foreign passport fund operator amends a financial report lodged with us, they must lodge the amended report with ASIC within 14 days and provide a copy of the amended report to any Australian member that asks for it free of charge: see s322(1A).

### **Annual implementation review assurance reports**

RG 138.213 A notified foreign passport fund operator must lodge any annual implementation review assurance reports prepared for its notified foreign passport fund. This is unless we have received notification from the home regulator that the requirement does not apply: see section 15(2) of the Australian Passport Rules.

Note: A notified foreign passport fund must accompany any annual implementation review assurance report that it submits with a [Form 5111 Compliance plan audit report of a registered scheme](#).

RG 138.214 A notified foreign passport fund operator must lodge the annual implementation review assurance report within three months after the end of



the period it covers. A copy of the report must also be lodged within three months with each other regulator (as applicable) and the independent oversight entity: see section 15(10) of the Australian Passport Rules.

### Annual statements

RG 138.215 We will send a notified foreign passport fund operator an annual statement within two weeks of the review date each year. The review date is typically the anniversary of the day on which the foreign passport fund became a notified foreign passport fund unless an alternative date has been agreed with us: see s345A(3) and 345B(2A).

Note: A notified foreign passport fund operator may change the review date using [Form 488 Application to change the review date of a company or registered scheme](#). The date will change if we provide approval in writing.

RG 138.216 The annual statement will set out details about the notified foreign passport fund that are recorded in ASIC's registers and encloses an invoice for the fund's annual review fee. We may also ask the operator to provide us with information: see s346B of the Corporations Act and reg 2N.2.01(4) of the [draft Corporations Regulations](#).

RG 138.217 The annual statement will be sent to the notified foreign passport fund operator's nominated mailing address or its electronic inbox if it has registered to use our online services. If neither of these options are available, the statement will be sent to the operator's registered office address.

Note: See our website to register for, and obtain more information on, our [online services](#).

RG 138.218 If details in the annual statement are correct, we have asked no questions and no other changes have happened where notice must be given to ASIC, the notified foreign passport fund operator does not need to respond to the statement. However, the operator must pay the annual review fee by the date stated in the invoice.

RG 138.219 If details in the annual statement are incorrect or we have asked questions, the notified foreign passport fund operator must respond within 28 days and provide information to correct any incorrect information and address our questions: see s346C. Information on how to respond will be contained in the annual statement. The operator must also pay the annual review fee.

Note: For more information on the annual review fee for a notified foreign passport fund, see [INFO 30](#).

### Other financial statements and auditors' reports lodged with home regulator

RG 138.220 A notified foreign passport fund operator must lodge any financial statements and auditors' reports of financial statements of the notified foreign passport fund provided to the home regulator with ASIC.

## Change of event notifications

- RG 138.221 A notified foreign passport fund operator must notify ASIC of certain events that take place affecting the fund and decisions that are made about its operations as described in Table 5. The notification must use the relevant form (where applicable) and be submitted within the applicable period set out in Table 5.
- RG 138.222 For some events, our approval will be necessary before the notified foreign passport fund may take a chosen course of action. Some events also require notification to the home regulator and any other host regulator as well as ASIC: see section 12(5) of the Australian Passport Rules. These events are the first eight listed in Table 5.
- RG 138.223 These change of event notification requirements play an important role in facilitating our oversight of notified foreign passport funds, and give us valuable information to help identify any emerging trends.

Note 1: See [INFO 30](#) for the fees that must be paid.

Note 2: We may consider the information in a change of event notification to decide whether it is necessary or appropriate to take any further action. We do not take action in response to all change of event matters reported to us.

**Table 5: Change of event notification requirements**

Event	Time period(s)
Approval for interests in the foreign passport fund to be offered in a host economy other than Australia	As soon as practicable and no later than seven days from the approval date
<p>Notified foreign passport fund operator first discloses to any person that it intends to propose:</p> <ul style="list-style-type: none"> <li>a change in the operator;</li> <li>winding up or deregistration of the foreign passport fund; or</li> <li>deregistration of the foreign passport fund as a regulated collective investment scheme</li> </ul> <p>Note: Notification is not necessary if the person is an associate of the notified foreign passport fund operator or fund, within the meaning of section 12(6) of the Australian Passport Rules, or the disclosure is lawful and on a confidential basis in relation to negotiations that relate to a transaction.</p>	As soon as practicable and no later than seven days from the date of disclosure
Change of foreign passport fund operator under home economy laws and regulations	As soon as practicable and no later than seven days from the change date
Commencement or completion of the foreign passport fund being wound up in accordance with home economy laws and regulations	As soon as practicable and no later than seven days from the commencement or completion

Event	Time period(s)
Application for a foreign passport fund to be deregistered as a foreign passport fund or regulated collective investment scheme in the home economy (if the intention has not already notified)	As soon as practicable and no later than seven days from the date of application
Deregistration of a regulated collective investment scheme or a sub-fund of a regulated collective investment scheme as a foreign passport fund	As soon as practicable and no later than seven days from the date of deregistration
Suspension or cessation of redemption of interests in the foreign passport fund in accordance with the Australian Passport Rules	As soon as practicable and no later than seven days from the date of suspension or cessation
Deregistration of the regulated collective investment scheme for the purposes of Part 8 of the Australian Passport Rules	As soon as practicable and no later than seven days from the date of deregistration
Decision to remove a foreign passport fund as a notified foreign passport fund ( <a href="#">ASIC Regulatory Portal</a> )	As required
Decision of a foreign court to disqualify a person from being a director of a notified foreign passport fund operator or concerned in its management ( <a href="#">Form 906 Notification of disqualification from managing corporations under Part 2D.6</a> )	No later than three days after becoming disqualified
Decision of a foreign court to disqualify a person from being a director of a foreign passport fund or concerned in its management ( <a href="#">Form 906</a> )	No later than three days after becoming disqualified
For a listed notified foreign passport fund that has a register of relevant interests—notification of the address where that register is kept and any change in the location where that register is kept ( <a href="#">Form 5130 Notification of office at which register of interests is kept</a> )	No later than seven days after establishment or change of location

### When does a notified foreign passport fund operator ‘become aware’?

RG 138.224 We consider that a notified foreign passport fund operator becomes aware of an event when a person employed by that operator that is responsible for compliance becomes aware of the event. We expect an operator’s internal systems to ensure that the relevant people are aware of these events in a timely and efficient manner.

### Register of members

RG 138.225 We may also, by written notice, require a notified foreign passport fund operator to lodge a copy of the whole or a specified part of the register of members for the notified foreign passport fund within seven days of being given our notice or such longer period as we allow.

RG 138.226 We may require the whole or a specified part of the register of members to be lodged in English: see s1213P(3) and (6).

Note: For more information on how to obtain a reasonable translation into English, see [Translation of documents](#) on our website.

### Compliance notice: Incorrect register of members details

RG 138.227 If we suspect or believe that details recorded in a register of members for the notified foreign passport fund are incorrect, we may provide the notified foreign passport fund operator with a compliance notice: see s348A(1A). We may also ask that the operator respond to questions that we ask in the notice: see s348B of the Corporations Act and reg 2N.4.01(3) of the [draft Corporations Regulations](#).

Note: We may provide this notice electronically if we have reached an agreement with a notified foreign passport fund operator to lodge documents electronically: see s348A(2A).

RG 138.228 A notified foreign passport fund operator issued with a compliance notice must lodge a response with ASIC within two months of the date of issue. The response must correct any incorrect information and answer our questions: see s348D.

## Breach reporting to ASIC

RG 138.229 A notified foreign passport fund operator must report certain breaches of Australian law to ASIC as soon as practicable and in any event within seven days after the operator becomes aware of the breach: see section 12(4) of the Australian Passport Rules.

Note: For more information on when an operator 'becomes aware', see RG 138.224.

RG 138.230 A delay in reporting a breach may defeat the intention for ASIC to be informed of reportable breaches as soon as practicable. A notified foreign passport fund operator should not wait until after the following events to send us a breach report:

- (a) the operator has completed all possible avenues of investigation to be satisfied whether or not the breach is a reportable breach;
- (b) the breach has been considered by the operator's board of directors;
- (c) the operator has reported the breach to the home regulator or been required to do so;
- (d) the breach has been considered by the operator's internal or external legal advisers; or
- (e) the operator has rectified (when appropriate), or has taken steps to rectify, the breach.

## What breaches are reportable?

RG 138.231 A notified foreign passport fund operator does not have to report all breaches of Australian law to ASIC. An operator must only report breaches of laws we administer that are ‘significant’ or that have an adverse effect on the value of notified foreign passport fund assets attributable to Australian members by more than 1%: see section 12(4) of the Australian Passport Rules.

Note: For more information on the laws we administer, see [Laws we administer](#) on our website.

RG 138.232 We expect a notified foreign passport fund operator to rectify all breaches of Australian law even if the breach does not have to be reported to ASIC.

## What is a significant breach?

RG 138.233 The term ‘significant’ is not defined in the Australian Passport Rules. Whether a breach is significant will depend on the individual circumstances. A notified foreign passport fund operator should decide whether a breach would objectively be considered significant and reportable. We encourage operators to report a breach if they are unsure whether it is significant.

RG 138.234 We expect that, when a notified foreign passport fund operator becomes aware of any breach, it will:

- (a) consider the circumstances and impact of the breach in light of each of the factors in Table 6; and
- (b) decide if the breach is significant.

Note: For more information on the factors summarised in Table 6, see [Regulatory Guide 78 Breach reporting by AFS licensees](#) (RG 78).

**Table 6: Factors that may determine whether a breach is ‘significant’**

Factor	Explanation
<b>Number or frequency of similar previous breaches</b>	The greater the number or frequency of similar breaches, including in other economies, the more likely the new breach will be significant.
<b>Impact of the breach on the operator’s ability to operate the notified foreign passport fund</b>	If a breach reduces the notified foreign passport fund operator’s ability to compliantly operate the notified foreign passport fund, it may be significant.
<b>Extent to which the breach indicates inadequate arrangements to ensure compliance with the obligations</b>	If the breach indicates that the notified foreign passport fund operator’s arrangements to ensure compliance are inadequate only in an isolated instance, it may not be significant. However, if the breach indicates broader inadequacies, it is more likely to be significant and, if so, the operator should report the breach to ASIC.

Factor	Explanation
<b>Actual or potential financial loss to the operator or its clients arising from the breach</b>	<p><b>Loss to Australian members</b></p> <p>We consider that any breach of a notified foreign passport fund operator's obligations that causes actual or potential financial loss to Australian members is likely to be significant. However, if the breach is an isolated or occasional breach, the amount of the loss involved is minimal, and the breach affects a very small number of clients, the breach is less likely to be significant.</p> <p><b>Loss to the notified foreign passport fund operator</b></p> <p>If the notified foreign passport fund operator's actual or potential financial loss resulting from the breach means it no longer has the resources to comply with its obligations as an operator, it would be significant.</p>

## How to report a breach

RG 138.235 A breach must be reported to ASIC in writing by addressing the report to: 'Misconduct and Breach Reporting, Australian Securities and Investments Commission', and emailing it to [fsr.breach.reporting@asic.gov.au](mailto:fsr.breach.reporting@asic.gov.au).

Note: There is no specific ASIC form to be used to report the breach.

RG 138.236 A written report about the breach should be prepared. Breach reports should include the information in Table 7. If a notified foreign passport fund operator does not have information about any of the matters in Table 7 at the date of reporting, it should:

- (a) include the information it has; and
- (b) supplement the information by giving us more information as it becomes available.

**Table 7: Content of a written breach report**

Item	Explanation
<b>Date of the breach</b>	<p>Include both:</p> <ul style="list-style-type: none"> <li>• the date that the breach occurred; and</li> <li>• the date the notified foreign passport fund operator became aware of the breach.</li> </ul>
<b>Description of the breach</b>	<p>Describe the obligation that has been breached, including references to the section of the Corporations Act or ASIC Act or other provision that sets out that obligation. Include details of how long the breach lasted.</p>
<b>Why the breach is significant</b>	<p>Describe the factors that have been considered in determining whether the breach is significant (including if the value of fund assets attributable to Australian members has been adversely affected by more than 1%).</p>

Item	Explanation
<b>Reported to any other passport regulator</b>	If the breach is or relates to a matter that a notified foreign passport fund operator has reported or is reporting or is required to report to another passport regulator, give details of what has or will be reported and when.
<b>How the breach was identified</b>	For example, the breach may have been identified by a notified foreign passport fund operator's compliance arrangements or because of a client complaint.
<b>Information about an AFS licensee</b>	If an AFS licensee is involved, include: <ul style="list-style-type: none"> <li>• the AFS licensee's name and number; and</li> <li>• if the AFS licensee's authorisation has been revoked, all last known contact details.</li> </ul>
<b>How the breach has been rectified</b>	Describe the process and responsibilities for handling the breach, including any steps that have been taken to remedy it (e.g. any compensation paid to clients).  If ongoing steps are being taken to rectify the breach, indicate when a report on progress in rectifying the breach is expected to be given to ASIC.
<b>Future compliance</b>	Describe any steps that have been, or will be, taken to ensure future compliance with the obligation.

### What we do with the information in a breach report

- RG 138.237 We will consider the information in a breach report to decide whether we should take any further action. We do not take action in response to all matters reported to us.
- RG 138.238 Breach notifications play an important role in our oversight of notified foreign passport funds. As well as alerting us to significant breaches of the law, they give us valuable information to help identify emerging trends of non-compliance.
- RG 138.239 We follow a standard procedure when we receive a breach report: see Table 8.

**Table 8: What we do with a breach report**

Step	Explanation
<b>Acknowledgement</b>	On receipt of the breach report, we acknowledge it.
<b>Request for more information (if needed)</b>	If we have insufficient information to form a view, we will ask for more information.
<b>Decision by ASIC</b>	When we have all the information we need (including possibly consulting other sources of information, such as complaints received by us), we will decide whether to take any further action.

Step	Explanation
<b>Further action by ASIC</b>	<p>If the following factors are satisfied and there has not been undue delay in notifying us, we may tell the notified foreign passport fund operator that we do not intend to make further inquiries about the matter:</p> <ul style="list-style-type: none"> <li>• the operator has made a genuine attempt to comply with the law and its breach reporting obligations;</li> <li>• either: <ul style="list-style-type: none"> <li>– the cause(s) of the breach have been identified and, if readily rectified, addressed so that it is unlikely to recur; or</li> <li>– in other cases, a plan for rectifying the compliance failure has been developed and given to us;</li> </ul> </li> <li>• the consequences (particularly to retail clients) are able to be dealt with comprehensively (e.g. by compensation and communication); and</li> <li>• if the circumstances suggest there are more significant compliance issues within the operator’s business, they are identified.</li> </ul> <p>If these factors are not satisfied, we will consider whether to take enforcement action.</p>
<b>Addressing compliance issues (if appropriate)</b>	<p>We may contact a notified foreign passport fund operator to discuss how to improve its compliance procedures. This may involve working with the operator to address continuing compliance issues and determining how to reverse or minimise any damage resulting from the breach.</p>
<b>Consultation with other passport regulators</b>	<p>We may consult with other passport regulators about the breach, what information they may have relevant to assessing it and what action they may take and we may take relating to it.</p>
<b>Formal surveillance</b>	<p>In appropriate circumstances, we may resolve outstanding compliance concerns by conducting a formal surveillance to test a notified foreign passport fund operator’s compliance procedures or check whether there is a systemic compliance problem.</p>
<b>Enforcement action</b>	<p>In more serious cases, or in cases involving unusual complexity to resolve the causes and consequences of the breach, we will consider taking enforcement action. We can commence an investigation if we have reason to suspect there has been a contravention of the law: see s13(1) of the ASIC Act. We may take into account any action taken or that will be taken by other passport regulators as part of that consideration.</p>

Note: See Section E for more information on the range of powers we hold to respond to breach notifications.

## Complaints by Australian retail clients

- RG 138.240 A notified foreign passport fund operator must have a dispute resolution system that satisfies ASIC requirements. This system must consist of:
- (a) an internal dispute resolution (IDR) procedure that:
    - (i) complies with standards and requirements that ASIC has made or approved; and



- (ii) covers complaints made by retail clients in Australia against the operator about financial services provided in relation to interests in the notified foreign passport fund; and

Note: For more information on ASIC guidelines for IDR procedures, see Section B of [Regulatory Guide 165 Licensing: Internal and external dispute resolution](#) (RG 165). There are standards set out in [Class Order \[CO 09/339\] Internal dispute resolution procedures](#).

- (b) membership of an ASIC-approved or otherwise authorised external dispute resolution (EDR) scheme (see s1017G(2) or 912A(1)(g) (for AFS licensees)).

RG 138.241 Recent reforms establish a new single EDR scheme for consumers and small business complaints—the Australian Financial Complaints Authority (AFCA). Financial firms, including notified foreign passport fund operators, must be members of AFCA by 21 September 2018 and AFCA will commence receiving complaints on 1 November 2018.

Note: The new operating entity for the AFCA scheme (AFCA Ltd) is now managing and operating the Financial Ombudsman Service (FOS). If a notified foreign passport fund operator is an existing member of FOS or the Credit and Investments Ombudsman (CIO), complaints made to FOS and CIO until 30 October 2018 will continue to be dealt with under relevant terms of reference or rules that applied when the complaint was made: see [Regulatory Guide 267 Oversight of the Australian Financial Complaints Authority](#) (RG 267).

RG 138.242 An IDR procedure is an important element of a notified foreign passport fund's dispute resolution system. It gives notified foreign passport fund operators the first opportunity to resolve client complaints genuinely, efficiently and effectively.

RG 138.243 An EDR scheme provides an independent forum to resolve consumer complaints that a firm has not been able to resolve through its IDR procedure that is quicker and cheaper than the formal legal system. An EDR scheme also plays an important role identifying broader systemic issues that may arise from an individual complaint and in industry standards of conduct.

RG 138.244 A notified foreign passport fund operator must maintain a dispute resolution system that meets ASIC requirements for as long as its records show that a retail client holds an interest in the notified foreign passport fund. It is important that complaints can be made by all retail clients about financial services provided in relation to their interests in a notified foreign passport fund.

Note: For more information on ASIC's dispute resolution requirements, see [RG 165](#).

## Levies for notified foreign passport fund operators

### About the levy

RG 138.245 On 20 April 2016, the Australian Government announced it would introduce an industry funding model for ASIC. Each financial year, ASIC's regulatory

costs are allocated among industry subsectors, including notified foreign passport fund operators, through either a flat levy or a graduated levy.

- RG 138.246 Under current proposals, a notified foreign passport fund operator must pay a minimum levy component of \$1,000 each financial year. The graduated levy component will depend on the operator's share of the total value of Australian assets in all funds operated by the operator at the end of the financial year, disregarding any assets that are an interest in another fund operated by the operator: see reg 35A of the [draft ASIC Supervisory Cost Regulations](#).
- RG 138.247 To calculate the total value of Australian assets in a notified foreign passport fund at a particular time, the operator must determine an amount equal to the sum of what would be the redemption prices of all interests in the fund held by Australian members of the fund at that time if those interests were redeemed. The redemption price of an interest is calculated under section 50 of the Australian Passport Rules assuming:
- (a) the member who holds the interest makes a request, immediately before that time, for a redemption of the interest;
  - (b) the amount is calculated using a valuation of the assets of the fund at that time; and
  - (c) fees and transaction costs associated with redemption are ignored (see reg 35A(4)(b) of the [draft ASIC Supervisory Cost Regulations](#)).
- RG 138.248 The cost of ASIC's work in each subsector is forecast in ASIC's annual Cost Recovery Implementation Statement (CRIS). The CRIS is a document that we publish each year that sets out the expected expenditure on our regulatory activities. The CRIS is a key part of ASIC's accountability to Government and industry around the transparency of our costs.

Note: For more information on the CRIS, see [Cost recovery implementation statement](#) on our website.

## Paying the levy

- RG 138.249 Between July and September each year, a notified foreign passport fund operator must provide ASIC with its business activity metrics for the previous financial year. This will be done via the [ASIC Regulatory Portal](#). The operator must provide information that will confirm its 'share' of the leviable activities in the operator's subsector and will determine the final invoice amount for the operator. It is important that the operator has the systems in place to capture the necessary information.
- RG 138.250 Each year in January, notified foreign passport fund operators will receive an invoice via the portal.

RG 138.251 The industry funding model will recover the actual amount spent during the previous financial year. This means the levies can only be calculated and issued in the following financial year.

Note: For more information on the levy that notified foreign passport fund operators must pay each financial year towards ASIC regulatory costs, see [ASIC industry funding](#) on our website.

## D Denotification requirements

### Key points

A notified foreign passport fund may be removed from the Asia Region Funds Passport Register either voluntarily or by ASIC: see RG 138.252–RG 138.256.

If we are to remove a notified foreign passport fund, we must give written notice to the fund, its operator and the home regulator five business days before and after the date of removal: see RG 138.257–RG 138.259.

We may declare that provisions of the Corporations Act, ASIC Act and any court rules made under the Corporations Act continue to apply to a foreign passport fund that has been removed as a notified foreign passport fund. This may also be provided for in the Corporations Regulations: see RG 138.260–RG 138.263.

### Types of denotification

- RG 138.252 A notified foreign passport fund may be removed from the Asia Region Funds Passport Register either voluntarily or by ASIC. If a notified foreign passport fund operator applies for the notified foreign passport fund to be removed, it is applying for ‘denotification’. After a fund is removed as a notified foreign passport fund, it is said to have been ‘denotified’.
- RG 138.253 A notified foreign passport fund operator may submit an application for denotification with us on the [ASIC Regulatory Portal](#).
- RG 138.254 We will remove a fund as a notified foreign passport fund if we are satisfied that there are no longer any members of the fund that:
- (a) became Australian members after the fund became a notified foreign passport fund; or
  - (b) became Australian members in the expectation that the fund would become a notified foreign passport fund (see s1216F(1)).
- Note: Member for this purpose excludes the current or any former operator of the notified foreign passport fund or its related entities: see s1216F(2).
- RG 138.255 If a home regulator notifies ASIC that a notified foreign passport fund has been deregistered as a passport fund in its home economy, we must remove that fund as a notified foreign passport fund: see s1216H.
- RG 138.256 If we become aware that a notified foreign passport fund has been deregistered in its home economy, but we have not received notification from the home regulator, we may contact that regulator to understand the status of the fund.

## Process of denotification

- RG 138.257 At least five business days before a notified foreign passport fund is removed, we must provide the notified foreign passport fund operator, the home regulator and each host regulator with a notice in writing that sets out the date on which we propose to remove the fund: see s1216J(1)–(2).
- RG 138.258 Removal of a fund as a notified foreign passport fund takes effect on the day an annotation on the Asia Region Funds Passport Register is made to that effect: see s1216J(3).
- RG 138.259 Within five business days after a notified foreign passport fund is removed, we must provide its operator, the home regulator and any host regulator with a written notice that the fund has been removed: see s1216J(4)–(5).

## Effect of denotification

- RG 138.260 We may declare that the Corporations Act, ASIC Act and any court rules made under the Corporations Act continue to apply in relation to a notified foreign passport fund that has been removed: see s1216K(1).
- RG 138.261 This continued application may be on the basis that specified provisions are omitted, modified or varied. We will provide details of these specified provisions and our declaration may apply to:
- (a) all entities in relation to a current or former notified foreign passport fund, a class of such entities or a specified entity; or
  - (b) all former notified foreign passport funds, a class of former notified foreign passport funds, or a specified former notified foreign passport fund (see s1216K(2)–(4)).
- RG 138.262 As soon as reasonably practicable after making a declaration in respect of a specific entity or former notified foreign passport fund, we must provide a copy of the declaration to that entity or the most recent operator of the fund: see s1216K(5).
- RG 138.263 Regulations may also provide that the Corporations Act, ASIC Act and court rules made under the Corporations Act continue to apply in relation to a fund, entity, funds or entities of a specified class, or a fund that has been removed as a notified foreign passport fund as if specified provisions were omitted, modified or varied as specified in the declaration: see s1216L.

## E ASIC's powers and responsibilities

### Key points

ASIC has certain powers and responsibilities in relation to notified foreign passport funds and notified foreign passport fund operators to administer the Asia Region Funds Passport, including to:

- grant exemptions and modifications to the Australian Passport Rules and some other applicable laws that we administer (see RG 138.264–RG 138.276);
- recognise exemptions and modifications granted by other passport regulators (see RG 138.277–RG 138.279);
- disclose and use confidential information (see RG 138.280–RG 138.293);
- check compliance and conduct investigations (see RG 138.294–RG 138.298);
- make a stop order (see RG 138.299–RG 138.308);
- take civil action (see RG 138.309–RG 138.311);
- issue an infringement notice (see RG 138.312–RG 138.315);
- accept a court enforceable undertaking (see RG 138.316–RG 138.317); and
- take criminal prosecution action (see RG 138.318–RG 138.321).

ASIC decisions, and decisions of the responsible Minister, are subject to administrative review, although some exclusions apply: see RG 138.322–RG 138.324.

As a host regulator, we will generally rely on the relevant home regulator to assess and monitor compliance with the home economy laws and regulations and home economy Passport Rules, and take necessary action.

### Our discretionary powers to grant exemptions and modifications

RG 138.264 We have discretionary powers to grant exemptions from and declare modifications to Ch 8A of the Corporations Act and the Australian Passport Rules: see Pt 8A.8. We also have discretionary powers to grant exemptions from other parts of the Corporations Act that apply to notified foreign passport funds or notified foreign passport fund operators.

Note: The Australian Government may also make regulations providing exemptions from or modifications to Ch 8A, the Australian Passport Rules or a provision of any other chapter of the Corporations Act or the ASIC Act: see s1217B.

RG 138.265 We may provide exemptions or modifications on our own initiative or when an application is made. We refer to our exercise of these discretionary powers as 'granting relief'.

- RG 138.266 An important purpose of our discretionary powers is to allow ASIC to provide relief in circumstances where the strict operation of the Corporations Act or the Australian Passport Rules would produce unintended or unforeseen consequences. This is important because:
- (a) unintended or unforeseen consequences from the operation of the Corporations Act or the Australian Passport Rules may arise after implementation of the Asia Region Funds Passport because it is a new regime; and
  - (b) the funds management industry is undergoing rapid innovation and many foreign passport funds are structured differently from registered schemes or use structures that are not available in Australia.

### **Home regulator must have granted equivalent exemption or modification**

- RG 138.267 We may only grant relief from the Australian Passport Rules for a notified foreign passport fund if the home regulator has granted equivalent relief in relation to the home economy Passport Rules: see s1217A(3). This requirement is aimed at promoting consistent application of the Passport Rules across all participating economies.
- RG 138.268 An application for relief from the Australian Passport Rules should not be submitted to ASIC until the home regulator has given, or has said it is likely to give, equivalent relief. The application for relief should also explain the relief, and attach any supporting documents.
- RG 138.269 We may ask the home regulator for any relevant information to help us decide whether to grant the relief. We may also share the application with other passport regulators and seek their views.

### **Applying for relief**

- RG 138.270 There is no set format for an application for relief. However, [Form FS10 Application for exemption from or modification of FSR provisions](#) may be used as a cover sheet for a relief application.
- RG 138.271 All applications should clearly give certain information, be in writing, include the required fee and be submitted as early as possible. This is because relief applications often raise issues that may take some time to resolve.

Note: For information on the fees for relief applications, see [Regulatory Guide 21 How ASIC charges fees for relief applications](#) (RG 21).

- RG 138.272 The application should also include:
- (a) the type of relief being sought (e.g. ‘standard’, ‘minor’, ‘technical’ or novel’) and whether the application is urgent and why;

- (b) the specific legal provisions from which relief is sought and the power that ASIC should rely on to grant the relief;
- (c) an explanation of the issue or problem that relief would address, including why a change in commercial arrangements within the entity would not assist;
- (d) details of how the relief would extend, relax or vary the Corporations Act, precedent relief or ASIC policy decisions;
- (e) information on the estimated costs and benefits of the requested relief, including details of any third parties that may be affected and whether they have been consulted; and
- (f) advice on whether the entity has consulted with ASIC or other relevant regulatory organisations.

RG 138.273 We will consider and determine all applications for relief on the basis of the facts, circumstances and merits of each application.

RG 138.274 Our policy on the application types, how to lodge applications, our general approach to applications for relief and the types of relief available is set out in [Regulatory Guide 51 Applications for relief \(RG 51\)](#). Other published ASIC guidance may include details about particular kinds of relief. It is important to read all the relevant published policy before submitting an application for relief.

Note: For more information, see [Relief from financial services provisions](#) and the [Sample application](#) on our website.

RG 138.275 The kind of relief that we give (if any), the extent of the relief and the situations in which the relief applies will depend on what is appropriate in the circumstances.

### **Exemptions and modifications to be made publicly available**

RG 138.276 If we grant an exemption from or declare a modification to the Corporations Act or Australian Passport Rules, we may need to make the details of the exemption or modification publicly available on the Asia Regions Funds Passport Register. This requirement promotes transparency of our approach to administration and is a requirement under the Passport Rules: see section 13(4) of Annex 2 to the [Memorandum of Cooperation](#).

## **Our approach to recognising exemptions and modifications granted by other passport regulators**

RG 138.277 The home regulator of a notified foreign passport fund may exercise its powers to grant relief. However, the home regulator must obtain written



consent from all host regulators of the foreign passport fund for any relief it grants from the home economy Passport Rules.

RG 138.278 Where a home regulator grants relief from the home economy Passport Rules, we will normally provide corresponding relief from the Australian Passport Rules for an affected notified foreign passport fund. This is unless we believe there are specific reasons why the relief should not be provided.

RG 138.279 In deciding whether to grant or refuse consent to a home regulator for relief they propose, we may take into account the following considerations:

- (a) the home regulator's explanation for the relief, recognising that they will be more familiar with the notified foreign passport fund's operations;
- (b) whether the home economy's laws and regulations (including the home economy Passport Rules) are less stringent than Australian laws and regulations (including the Australian Passport Rules), in relation to Australian investor protection, market integrity and the reduction of systemic risk;
- (c) whether we have effective cooperation arrangements with the home regulator;
- (d) whether we are able to enforce our laws and regulations (including the Australian Passport Rules) that apply in relation to the notified foreign passport fund;
- (e) whether adequate rights and remedies are practically available to Australian investors who have acquired or will acquire an interest in the notified foreign passport fund;
- (f) whether there is adequate disclosure of information that Australian investors may reasonably require to make an informed assessment of any significant differences between regulation of the affected notified foreign passport fund and comparable notified foreign passport funds;
- (g) whether the exemption or modification adversely or unfairly impacts on one group of investors, foreign passport fund operators, funds or other persons;
- (h) whether the exemption or modification would impair or nullify the policy rationale underlying the affected Passport Rule requirement(s) or be inconsistent with our existing policy; and
- (i) whether the exemption or modification would conflict with Australian law and/or otherwise cause difficulties for the offering of interests in the relevant notified foreign passport fund in Australia.

## Our obligations with personal or confidential information

### Personal information

- RG 138.280 Under the *Privacy Act 1988* (Privacy Act), we are bound by the Australian Privacy Principles (APPs) with respect to the collection, use and disclosure of personal information that we receive: see s15 of the Privacy Act. We must not collect personal information about a person unless it is reasonably necessary for, or directly related to, our functions: see APP 3.
- RG 138.281 The APPs require Australian Government agencies such as ASIC to allow persons the option of not identifying themselves, or using a pseudonym, when dealing with the relevant agency: see APP 2.
- RG 138.282 We will generally provide persons with the option of not identifying themselves or using a pseudonym. However, on many occasions, this will not be lawful or practicable. For example, a notified foreign passport fund operator will need to include name and address information in an application to register as a foreign company or in a notice of intention.
- RG 138.283 We may only use and disclose personal information that we collect for the purpose for which it was collected unless:
- (a) the relevant person consents to us using, or would reasonably expect us to use, the information for a different purpose;
  - (b) we are required or authorised by law to use the information; or
  - (c) we reasonably believe that the use or disclosure is necessary for our enforcement activities.

Note: For information on our personal information handling practices, see ASIC's [Privacy policy](#).

### Confidential information

- RG 138.284 We must take reasonable measures to protect from unauthorised use and disclosure information we receive in confidence in connection with our statutory functions and powers: see s127(1) of the ASIC Act and section 8(1) of Annex 2 to the [Memorandum of Cooperation](#).

### Authorised disclosure of confidential information

- RG 138.285 Certain uses and disclosures of information that we receive are authorised: see s127(2)–(6) of the ASIC Act.

Note: For more information on our approach to releasing confidential information that we have obtained in connection with our statutory functions, see [Regulatory Guide 103 Confidentiality and release of information](#) (RG 103).

- RG 138.286 Under s127(2) of the ASIC Act, we may disclose confidential information provided by a notified foreign passport fund or the notified foreign passport fund operator if the disclosure is required or permitted by Australian law.
- RG 138.287 Where disclosure is permitted but not required under Australian law, we will consider whether the disclosure is reasonable having regard to the purposes of the [Memorandum of Cooperation](#) and the interests of the notified foreign passport fund, operator or other person to which the information relates. This is consistent with section 8(3) of Annex 2 to the [Memorandum of Cooperation](#),

*Disclosure to other passport regulators*

- RG 138.288 We may disclose information to other regulators or government agencies to assist them perform their functions or exercise their powers: see s127(2) and (4) of the ASIC Act. This includes disclosure to enable or assist the performance of functions or exercise of powers under the [Memorandum of Cooperation](#): see s127(3AA) of the ASIC Act.
- RG 138.289 We will cooperate as fully as possible under applicable Australian law with passport regulators that seek assistance and may exchange information in the following situations:
- (a) on written request to enable a passport regulator to assess compliance with its laws and regulations in relation to regulated entities, or to assess a relief application;
  - (b) by notification of specific events to the home passport regulator and any other passport regulators in jurisdictions where interests in the notified foreign passport fund are offered; and
  - (c) on an ‘unsolicited’ basis, where we may give information that we have to another passport regulator if we consider it useful to the regulator in the performance of its functions and for the purposes specified by us (see Annex 4 to the [Memorandum of Cooperation](#)).

- RG 138.290 The arrangements under the [Memorandum of Cooperation](#) are intended to complement and not override other cross-border regulatory cooperation arrangements: see section 3(2) and (3) of Annex 4.

Note: For more information, see [International regulatory and enforcement cooperation](#) (including a list of MOUs and other international agreements to which we are a signatory) on our website.

## Freedom of information requests

- RG 138.291 We may be required to disclose information under the *Freedom of Information Act 1982* (Cwlth) (FOI Act). The information we disclose will be made available on request and described in the [FOI disclosure log](#) on our website.

- RG 138.292 In Australia, the FOI Act provides a legally enforceable right of access to government documents unless the document falls under an exemption or conditional exemption in the FOI Act (and releasing the document would be contrary to the public interest test). Government documents cover any documents held by ASIC, including those provided to ASIC by entities such as a notified foreign passport fund or its operator on a confidential basis.
- RG 138.293 Personal information is protected from disclosure under the FOI Act where this would be unreasonable and contrary to the public interest: see s11C(1)(a) of the FOI Act. Information about the business, commercial, financial or professional affairs of a person is also protected from disclosure under the FOI Act if it would be unreasonable to publish that information: see s11C(1)(b) of the FOI Act.

Note: For more information on the FOI Act and its operation, see [Freedom of information](#) on the Office of the Australian Information Commissioner's website.

## Our approach to non-compliance

- RG 138.294 A notified foreign passport fund operator or fund may be subject to administrative, civil or criminal action for failure to comply with an obligation under the Corporations Act, the Australian Passport Rules or the ASIC Act.
- RG 138.295 Generally, we expect home regulators to take necessary enforcement action in relation to breaches of the home economy laws and regulations or the home economy Passport Rules. However, we may also take enforcement action against a notified foreign passport fund in relation to alleged breaches of Australian laws that we administer if we consider it necessary to protect Australian members or potential Australian investors.
- RG 138.296 We will take into account any action that has been or may be taken by a home regulator in considering whether to take administrative, civil or criminal action in Australia.
- RG 138.297 We may use our investigative and information-gathering powers under Pt 3 of the ASIC Act where we have reason to suspect non-compliance with the Corporations Act, the Australian Passport Rules or the ASIC Act.

Note 1: For more information, see [Information Sheet 145](#) *ASIC's compulsory information gathering powers* (INFO 145).

Note 2: For more information on how we select matters for formal investigation under Pt 3 of the ASIC Act, see [Information Sheet 151](#) *ASIC's approach to enforcement* (INFO 151).

- RG 138.298 We will not generally take enforcement action in respect of an alleged offence relating to the operation of a notified foreign passport fund if the conduct constituting the alleged offence:
- (a) occurs wholly in a foreign country;

- (b) involves a body corporate incorporated outside Australia or a person who is not an Australian citizen; and
- (c) does not result, or is not likely to result, in a person with an interest in the fund in Australia suffering financial or other disadvantage (see s1213G).

## When can we make a stop order?

RG 138.299 A stop order is an administrative mechanism that allows ASIC to make an order that the notified foreign passport fund operator do one or more of the following:

- (a) cease offering, or not begin offering, interests in the notified foreign passport fund in Australia, either indefinitely or for a specified period;
- (b) take some other specified action; or
- (c) cease taking some other specified action (see s1215A(1)).

RG 138.300 We also have a statutory power under s1020E to make a stop order in relation to specified situations. This includes when there is a misleading or deceptive statement in, or omission from, a PDS or other disclosure material or content that is not worded or presented in a 'clear, concise and effective' manner.

### Preconditions to the exercise of our stop order powers

RG 138.301 We may only make a stop order in relation to a notified foreign passport fund if one of the following circumstances applies:

- (a) in our opinion, both of the following are satisfied:
  - (i) the Corporations Act, the Australian Passport Rules, the ASIC Act or the law of the home economy (including the home economy Passport Rules) has not been, is not being, or is not likely to be complied with in relation to the notified foreign passport fund, in Australia or in any other place; and
  - (ii) the stop order is necessary having regard to the effect on present and prospective Australian members of the failure or potential failure to comply with the law and any action taken or that may be taken by the home regulator;
- (b) the foreign passport fund operator has ceased to be a registered foreign company;
- (c) the foreign passport fund operator has not had a local agent for more than 21 days;
- (d) the responsible Minister has made a determination under s1210B that foreign passport fund operators from a specified home economy must not offer interests in Australia; or

- (e) in the case of an order to take or not take an action specified in the order, taking the specified action or not taking the action is reasonably necessary to ensure the foreign passport fund operator ceases offering, or does not begin offering, interests in Australia (see s1215A(3)).

RG 138.302 Stop orders must be in writing and given to the notified foreign passport fund operator as soon as reasonably practicable after they are made: see s1215A(1) and (8).

RG 138.303 Before we make a stop order, we must hold a hearing and give a reasonable opportunity to interested persons to make oral or written submissions to ASIC on whether the order should be made: see s1215A(7).

### **Interim stop orders**

RG 138.304 We may make a stop order on an interim basis if grounds for the order exist and there is a delay that would be prejudicial to the public interest: see s1215B(1). An interim stop order may be made without holding a hearing, or during a hearing, if the conditions for its making are met.

RG 138.305 The maximum duration of an interim stop order that is not made during a hearing is 21 days. Interim stop orders made during a hearing last until we make a final stop order after the conclusion of the hearing or the interim stop order is revoked: see s1215B(2).

RG 138.306 Interim stop orders must be in writing and given to the foreign passport fund operator as soon as reasonably practicable after they are made: see s1215B(2) and (3).

### **Revoking stop orders**

RG 138.307 A notified foreign passport fund operator can apply to ASIC to have a stop order that is in force in relation to the notified foreign passport fund revoked on the basis there are no longer any grounds for the order: see s1215C(2). The application must be in the prescribed form and set out why the operator believes there are no longer grounds for the stop order.

RG 138.308 If we are of the opinion that there are no longer grounds for the stop order, whether in response to an application or otherwise, we must revoke the order: see s1215C(3), (4)(b) and (5).

## **When can we take civil action?**

RG 138.309 We may take court action to seek a wide range of civil enforcement remedies for breaches of the Australian Passport Rules, the Corporations Act and other applicable Australian laws and regulations that we administer. We may

proceed against any person involved with a notified foreign passport fund, including the operator and third parties.

- RG 138.310 The civil enforcement remedies include:
- (a) ‘preservative’ remedies, which are designed to prevent or contain damage caused by suspected wrongdoing;
  - (b) ‘compensation’ remedies, which aim to recover damages for persons who have suffered loss;
  - (c) ‘protective’ remedies, which are primarily designed to protect investors and financial consumers, rather than punish those involved in breaches of the law; and
  - (d) civil penalties, which may be imposed for serious contraventions of specified Corporations Act provisions with the penalty based on civil court processes and which involve a lesser onus of proof than criminal prosecution.

RG 138.311 Civil action may be undertaken on its own or in addition to criminal action.

Note: For more information on how we generally approach our enforcement role, including the circumstances when we may take court action to obtain civil enforcement remedies, see [INFO 151](#).

## When can we issue an infringement notice?

- RG 138.312 The infringement notice regimes, which include the penalty notice regime under s1313, allow ASIC to deal with certain criminal offences by requiring payment of a penalty as an alternative to prosecution.
- RG 138.313 Infringement notices are designed to provide a fast and effective remedy that is proportionate and proximate to the alleged breach. We will aim to issue an infringement notice promptly after identifying the alleged breach, consistent with properly assessing the facts and our conclusion that there has been an actionable breach.
- RG 138.314 An infringement notice will state the amount that is payable under the notice. This amount is typically payable within 28 days after the notice is given, unless we grant an extension. We may withdraw an infringement notice given to a person within the period for compliance, whether or not the person has made written representations seeking withdrawal, if we are satisfied it is appropriate to do so.
- RG 138.315 A person’s liability will not be discharged or affected, and they may be subject to other civil or criminal proceedings in relation to an alleged contravention, if:
- (a) we do not give the person an infringement notice in relation to that alleged contravention;

- (b) the person does not comply with the infringement notice given to them in relation to an alleged contravention; or
- (c) an infringement notice given to the person in relation to such an alleged contravention is subsequently withdrawn.

Note: For more information on infringement notices for particular breaches, see [Regulatory Guide 73](#) *Continuous disclosure obligations: Infringement notices* (RG 73) and [Information Sheet 139](#) *ASIC Act infringement notices: Your rights* (INFO 139).

## When can we accept a court enforceable undertaking?

RG 138.316 Under s93AA of the ASIC Act, we may accept a written undertaking (a court enforceable undertaking) from a person on a matter over which we have a function or power under the ASIC Act. This includes our functions and powers relating to notified foreign passport funds. The undertaking is enforceable by the Federal Court of Australia.

RG 138.317 We may only accept court enforceable undertakings as an alternative to civil court action or certain administrative actions if certain conditions are met. We cannot accept a court enforceable undertaking as an alternative to commencing criminal proceedings.

Note: For more information on how we use enforceable undertakings, see [Regulatory Guide 100](#) *Enforceable undertakings* (RG 100). See also [INFO 151](#) for general information on enforceable undertakings.

## When can we take criminal prosecution action?

RG 138.318 If a person breaches requirements in the Australian Passport Rules, the Corporations Act, the ASIC Act, the Corporations Regulations, the ASIC Regulations or the ASIC Supervisory Cost Levy Regulations, they may be guilty of a criminal offence. We will generally consider criminal prosecution action for serious conduct that is dishonest, intentional or highly reckless.

RG 138.319 Proof of fault (or an intention) is ordinarily required to establish a criminal offence as well as proof of the physical elements of the offence. This is because persons should generally not be subject to pecuniary penalties or imprisonment for unintended or unforeseen consequences of their conduct.

RG 138.320 However, a number of corporate law offences, referred to as strict liability offences, may be prosecuted in the absence of an intention. For such offences to be made out, ASIC must prove that the relevant person engaged in the physical elements of the offence only.

RG 138.321 Table 9 lists strict liability offences for notified foreign passport fund operators and others involved with a notified foreign passport fund. These offences are also subject to the penalty notice regime: see RG 138.312–RG 138.315.



**Table 9: Strict liability offences**

Offence	Corporations Act reference
Non-compliance with obligations in relation to a notified foreign passport fund under the Australian Passport Rules that results, or is likely to result, in an Australian member suffering financial or other disadvantage	s1211B(4)
Non-compliance with the obligation on notified foreign passport fund operators to provide Australian members or former members that acquired interests in the fund in Australia, or are ordinarily resident in Australia, with a copy of the constitution on payment of a fee	s1213J(1)
Non-compliance with the obligation on notified foreign passport fund operators to provide eligible persons with a copy of the register of members on application	s1213K(1)
Non-compliance with the prohibitions on using information from a register of members: <ul style="list-style-type: none"> <li>to contact or send material to a person or disclose information knowing that it is likely to be used to contact or send material to that person; or</li> <li>for a prescribed purpose or knowing that disclosure will likely mean the information is used for a prescribed purpose</li> </ul>	s1213L(1), (3)
Non-compliance with the obligation on notified foreign passport fund operators to provide Australian members with any copy of reports provided to home economy members free of charge, including an accompanying summary English translation	s1213M(1)
Non-compliance with the obligation on notified foreign passport fund operators to lodge the whole or part of the register of members as ASIC requires	s1213P(1)
Non-compliance with the obligations on notified foreign passport funds to: <ul style="list-style-type: none"> <li>provide Australian members with financial reports and auditors' reports prepared in accordance with laws of the home economy (in English unless the member elects for them to be in the home economy language); and</li> <li>notify Australian members of their right to receive, free of charge, a copy of the financial reports and auditors' reports</li> </ul>	s314(9)
Failure to lodge each of the following with ASIC: <ul style="list-style-type: none"> <li>a copy of the financial reports prepared in accordance with the home economy laws; and</li> <li>a copy of the auditor's report</li> </ul>	s319(1AA)
Failure to lodge amended reports, including amended financial reports, with ASIC within 14 days and to provide a copy of the amended report to any Australian member that asks for it free of charge	s321(1A), 322

Note: For more information on when we may take criminal prosecution action, see [INFO 151](#). For an explanation of why strict liability was imposed for the offences in Table 9, see paragraphs 9.55–9.60 of the [Explanatory Memorandum to the Corporations Amendment \(Asia Region Funds Passport\) Bill 2018](#).

## Review of ASIC decisions

RG 138.322 A notified foreign passport fund operator, notified foreign passport fund or other interested person may apply to the Administrative Appeals Tribunal

(AAT) to review decisions made by the responsible Minister or ASIC: see Pt 9.4A.

RG 138.323 This review is not available for decisions by ASIC to give, withdraw or not withdraw a penalty notice for:

- (a) breaching the Australian Passport Rules;
- (b) misusing information on the register of members;
- (c) failing to lodge a register of members; or
- (d) failing to provide a copy of the constitution, register of members or report to which members are entitled under the home economy laws (see s1317C(gf)).

RG 138.324 These decisions are excluded from AAT review because penalty notices are not final or operative determinations of substantive rights and a person may elect to challenge the penalty notice in court. This exclusion is also consistent with the treatment of other similar decisions (e.g. under s1317C(i) and (j)).

Note: For more information on rights to review of our decisions, see [Regulatory Guide 57 Notification of rights of review](#) (RG 57) and [Information Sheet 9 ASIC decisions: Your rights](#) (INFO 9).

## Key terms

Term	Meaning in this document
AAT	Administrative Appeals Tribunal
ABN	Australian Business Number
AFCA	Australian Financial Complaints Authority—AFCA is the operator of the AFCA scheme, which is the external dispute resolution scheme for which an authorisation under Pt 7.10A of the Corporations Act is in force
AFS licence	An Australian financial services licence under s913B of the Corporations Act that authorises a person who carries on a financial services business to provide financial services  Note: This is a definition contained in s761A.
AFS licensee	A person who holds an AFS licence under s913B of the Corporations Act
Annex 3 (for example)	An annex to the <a href="#">Memorandum of Cooperation</a> (in this example numbered 3)
APFRN	Australian Passport Fund Registration Number—the number assigned to an Australian passport fund under s1212A(2)(a) of the Corporations Act, and issued to a notified foreign passport fund for identification purposes
APPs	Australian Privacy Principles
ARBN	Australian Registered Body Number
Asia Region Funds Passport	An agreement between economies in the Asia region that allows passport funds established and regulated in one participating economy to offer interests to investors in another participating economy
Asia Region Funds Passport Register	An ASIC register that will include prescribed details of Australian passport funds, notified foreign passport funds, deregistered Australian passport funds and funds that have been removed as notified foreign passport funds
ASIC	Australian Securities and Investments Commission
ASIC Act	<i>Australian Securities and Investments Commission Act 2001</i>
ASIC Regulations	Australian Securities and Investments Commission Regulations 2001
ASIC Regulatory Portal	The internet channel that allows authenticated regulated entities to interact securely with ASIC, which can be accessed at the <a href="#">portal landing page</a>
ASIC Supervisory Cost Regulations	ASIC Supervisory Cost Recovery Levy Regulations 2017

Term	Meaning in this document
ATO	Australian Taxation Office
Australia	Has the meaning given for the term 'this jurisdiction' in s5 of the Corporations Act
Australian member	Has the meaning given in section 9 of the Corporations Act
Australian passport fund	A registered scheme that is also registered as a passport fund under Pt 8A.3 of the Corporations Act
Australian Passport Rules	Annex 3 to the <a href="#">Memorandum of Cooperation</a> as incorporated by legislative instrument into Australian law under s1211 and 1211A of the Corporations Act
authorised representative	A person authorised by an AFS licensee, in accordance with s916A or 916B of the Corporations Act, to provide a financial service or services on behalf of the licensee  Note: This is a definition contained in s761A.
Ch 7 (for example)	A chapter of the Corporations Act (in this example numbered 7), unless otherwise specified
collective investment scheme	Has the meaning given in section 55 of the Australian Passport Rules
conflicted remuneration	A benefit given to an AFS licensee, or a representative of a licensee, who provides financial product advice to retail clients that, because of the nature of the benefit or the circumstances in which it is given, could reasonably be expected to influence: <ul style="list-style-type: none"> <li>the choice of financial product recommended to clients by the licensee or its representative; or</li> <li>the financial product advice given to clients by the licensee or its representative.</li> </ul> <p>In addition, the benefit must not be excluded from being conflicted remuneration by the Corporations Act or Corporations Regulations</p>
conflicted and other banned remuneration provisions	The provisions on conflicted remuneration and other banned remuneration in Divs 4 and 5 of Pt 7.7A of the Corporations Act and in Div 4 of Pt 7.7A of the Corporations Regulations
consideration period	A period of 15 business days beginning on the day after a notice of intention is lodged with ASIC, or any extended period we have agreed with the foreign passport fund operator  Note: See s1213D of the Corporations Act for the exact definition.
Corporations Act	<i>Corporations Act 2001</i> , including regulations made for the purposes of that Act
Corporations Regulations	Corporations Regulations 2001

Term	Meaning in this document
CRIS	ASIC's annual Cost Recovery Implementation Statement
denotification	Removal of a foreign passport fund as a notified foreign passport fund
derivative	Has the meaning given in s761D of the Corporations Act
distributor	The AFS licensee or its authorised representative through which a notified foreign passport fund operator offers, varies or sells interests in a notified foreign passport fund  Note: The distributor must be authorised to offer, vary or sell the fund's interests.
ED security	An enhanced disclosure security  Note: See s111AD of the Corporations Act for the definition.
financial firms	Firms covered by s1051(2)(a) of the Corporations Act, which includes: <ul style="list-style-type: none"> <li>• AFS licensees;</li> <li>• unlicensed product issuers;</li> <li>• unlicensed secondary sellers;</li> <li>• credit licensees;</li> <li>• credit representatives;</li> <li>• exempt special purpose funding entities;</li> <li>• regulated superannuation funds (other than self-managed superannuation funds);</li> <li>• approved deposit funds;</li> <li>• annuity providers;</li> <li>• life policy funds; and</li> <li>• insurers.</li> </ul> <p>This may also include financial firms that the AFCA board has accepted as eligible members to the scheme in accordance with its constitution</p>
financial market	Has the meaning given in s767A of the Corporations Act, and includes a facility through which offers to acquire or dispose of financial products are regularly made or accepted
financial product	A facility through which, or through the acquisition of which, a person does one or more of the following: <ul style="list-style-type: none"> <li>• makes a financial investment (see s763B);</li> <li>• manages financial risk (see s763C);</li> <li>• makes non-cash payments (see s763D)</li> </ul> <p>Note: This is a definition contained in s763A of the Corporations Act: see also s763B–765A.</p>
FOI Act	<i>Freedom of Information Act 1982</i> (Cwlth)
foreign company	Has the meaning given in s9 of the Corporations Act

Term	Meaning in this document
foreign exchange contract	A contract to buy or sell currency, or to exchange one currency for another (whether the currencies are Australian or not) Note: This is a definition contained in s761A of the Corporations Act.
foreign passport fund	A passport fund with a home economy other than Australia
foreign passport fund product	Has the meaning given in s761A of the Corporations Act
home economy	The participating economy in which a passport fund is first registered, approved or authorised as a regulated collective investment scheme
home economy Passport Rules	The Passport Rules in relation to a passport fund that are administered by its home regulator
home regulator	The passport regulator in a passport fund's home economy
host economy	A participating economy that is not a passport fund's home economy and either: <ul style="list-style-type: none"> <li>permits the fund to offer interests in the fund in that economy under the Asia Region Funds Passport; or</li> <li>has accepted an application from the fund to offer interests in the fund in that economy under the Asia Region Funds Passport (but not to register the fund as a passport fund in that economy)</li> </ul>
host economy Passport Rules	The Passport Rules in relation to a passport fund that are administered by a host regulator
host regulator	The passport regulator in a passport fund's host economy
IDR procedures	The internal dispute resolution procedures that meet the requirements and approved standards of ASIC under <a href="#">RG 165</a>
independent oversight entity	A body established under section 14 of the home economy Passport Rules
Memorandum of Cooperation	The <a href="#">Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport</a>
minimum subscription condition	A condition that prevents the issue or sale of financial products of a particular kind unless: <ul style="list-style-type: none"> <li>applications for a minimum number of products of that kind are received; or</li> <li>a minimum amount is raised</li> </ul>
NFPFRN	Notified Foreign Passport Fund Registration Number
notice of intention	A notice of intention to offer interests in a foreign passport fund to persons in Australia

Term	Meaning in this document
notified foreign passport fund	A foreign passport fund that has become a notified foreign passport fund under s1213C of the Corporations Act
notified foreign passport fund operator	A foreign passport fund operator of a fund becomes a notified foreign passport fund under s1213C of the Corporations Act
participating economy	An economy that is a participant under the <a href="#">Memorandum of Cooperation</a> (while it is in effect) and has: <ul style="list-style-type: none"> <li>• advised the Asia Region Funds Passport Joint Committee that it has implemented the Asia Region Funds Passport; and</li> <li>• not withdrawn from the <a href="#">Memorandum of Cooperation</a></li> </ul>
passport fund	A regulated collective investment scheme, or sub-fund of a regulated collective investment scheme, registered as a passport fund in a participating economy <p>Note: Some regulated collective investment schemes, or sub-funds of regulated collective investment schemes, that have been deregistered as passport funds remain subject to obligations as if they were still a passport fund.</p>
passport regulator	The entity that regulates passport funds in a participating economy <p>Note: See also the definition of 'passport regulator' in section 55 of the Australian Passport Rules.</p>
Passport Rules	The requirements in Annex 3 to the <a href="#">Memorandum of Cooperation</a> , as incorporated into the domestic law of a participating economy
PDS	A Product Disclosure Statement—a document that must be given to a retail client for the offer or issue of a financial product in accordance with Div 2 of Pt 7.9 of the Corporations Act <p>Note: See s761A for the exact definition.</p>
periodic statement	A statement required to be sent to certain persons who acquired financial products as a retail client under s1017D of the Corporations Act on an annual basis and after they cease to hold the financial product
personal information	Has the meaning given in s6 of the Privacy Act
Privacy Act	<i>Privacy Act 1988</i>
provide a financial service	A person provides a financial service if they: <ul style="list-style-type: none"> <li>• provide financial product advice;</li> <li>• deal in a financial product;</li> <li>• make a market for a financial product;</li> <li>• operate a registered scheme;</li> <li>• provide a custodial or depository service; or</li> <li>• provide traditional trustee services</li> </ul> <p>Note: This is a definition contained in s766A of the Corporations Act.</p>

Term	Meaning in this document
Pt 7.7A (for example)	A part of the Corporations Act (in this example numbered 7.7A), unless otherwise specified
reg 7.9.74 (for example)	A regulation of the Corporations Regulations 2001 (in this example numbered 7.9.74), unless otherwise specified
registered scheme	A managed investment scheme that is registered under s601EB of the Corporations Act
regulated collective investment scheme	A regulated collective investment scheme as defined by the Passport Rules for a participating economy
replacement PDS	<p>A document that replaces an earlier PDS to:</p> <ul style="list-style-type: none"> <li>• correct a misleading or deceptive statement or omission,</li> <li>• update, or add to, information contained in the earlier PDS; or</li> <li>• change a statement of a kind referred to in s1016E(1)(a) or (b) of the Corporations Act.</li> </ul> <p>Note: This is a definition contained in s1014H of the Corporations Act.</p>
responsible Minister	The Australian Minister responsible for the Asia Region Funds Passport
retail client	A client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations
RG 51 (for example)	An ASIC regulatory guide (in this example numbered 51)
s9 (for example)	A section of the Corporations Act (in this example numbered 9), unless otherwise specified
Sch 6 (for example)	A schedule to the Corporations Regulations (in this example numbered 6), unless otherwise specified
shelf-space fee	A fee for making a funds manager's products available through a platform. It also includes a discount on an amount payable, or a rebate of an amount paid, by a platform operator to a funds manager, where the discount or rebate is for the funds manager's products being available through the platform
wholesale client	A client who is not a retail client as defined in s761G of the Corporations Act and Div 2 of Pt 7.1 of the Corporations Regulations



## Related information

### Headnotes

Asia Region Funds Passport, Australian Passport Rules, consideration period, denotification, foreign passport fund, foreign passport fund operator, home economy, home economy Passport Rules, home regulator, host economy, host regulator, Memorandum of Cooperation, notice of intention, notified foreign passport fund, passport regulator, Passport Rules

### Legislative instruments

[\[CO 09/339\]](#) *Internal dispute resolution procedures*

[\[CO 14/1252\]](#) *Technical modifications to Schedule 10 of the Corporations Regulations*

[ASIC Corporations \(Consents to Statements\) Instrument 2016/72](#)

[ASIC Corporations \(Updated Product Disclosure Statements\) Instrument 2016/1055](#)

[ASIC Corporations \(Application Form Requirements\) Instrument 2017/241](#)

### Regulatory guides

[RG 2](#) *AFS Licensing Kit: Part 2—Preparing your AFS licence or variation application*

[RG 21](#) *How ASIC charges fees for relief applications*

[RG 38](#) *The hawking provisions*

[RG 51](#) *Applications for relief*

[RG 57](#) *Notification of rights of review*

[RG 73](#) *Continuous disclosure obligations: Infringement notices*

[RG 78](#) *Breach reporting by AFS licensees*

[RG 97](#) *Disclosing fees and costs in PDSs and periodic statements*

[RG 100](#) *Enforceable undertakings*

[RG 103](#) *Confidentiality and release of information*

[RG 121](#) *Doing financial services business in Australia*

[RG 165](#) *Licensing: Internal and external dispute resolution*

[RG 168](#) *Disclosure: Product Disclosure Statements (and other disclosure obligations)*

[RG 176](#) *Foreign financial services providers*

[RG 190](#) *Offering financial products in New Zealand and Australia under mutual recognition*

[RG 198](#) *Unlisted disclosing entities: Continuous disclosure obligations*

[RG 221](#) *Facilitating digital financial services disclosures*

[RG 234](#) *Advertising financial products and services (including credit): Good practice guidance*

[RG 240](#) *Hedge funds: Improving disclosure*

[RG 246](#) *Conflicted and other banned remuneration*

[RG 267](#) *Oversight of the Australian Financial Complaints Authority*

## Legislation

ASIC Act, Pt 3, s13, 93AA, 127

ASIC Regulations

Australian Passport Rules, Part 8, sections 12, 13, 15, 17, 50, 55

Corporations Act, Chs 6CA, 8A, Pts 5B.2, 7.7A, 7.9, 8A.8, 9.4A, s9, 88A, 111AE–111AG, 314, 314A, 315, 316AA, 319, 321, 322, 345A, 345B, 346B, 346C, 348A, 348B, 351, 601CD, 601CF–601CH, 601CJ, 601CK, 601CT, 601CTA, 601CV, 601CW, 601DD, 601DE, 601DF, 601DG, 601DH, 601EA, 672DA, 675, 676, 677, 761A, 764A, 766A, 766D, 766E, 911A, 912A, 912B, 913B, 916A, 916B, 960A, 963A, 963E, 963G, 963H, 963J, 963K, 964, 964A, 992AA, 1011A, 1012A–1012D, 1012J, 1013A, 1013B–1013E, 1013F, 1013FA, 1013H, 1013IA, 1013J, 1013K, 1014A–1014D, 1015B, 1015C, 1016A, 1016C, 1016D, 1016E, 1017A, 1017B, 1017D, 1017F, 1017G, 1018A, 1019B, 1020E, 1210B, 1211, 1211A, 1211B, 1213, 1213B, 1213C, 1213D, 1213G, 1213J, 1213K, 1213L–1213N, 1213P, 1214, 1215A, 1215B, 1215C, 1216F, 1216H, 1216J, 1216K, 1216L, 1217A, 1217B, 1274, 1300, 1313, 1317C

Corporations Regulations, Div 6 of Pt 7.9, regs 5B.2.05, 5B.3.03, 6CA.1.01, 7.1.33A, 7.1.33E, 7.6.02AG, 7.9.14C, 7.9.63I, 7.9.67, 7.9.74(1), 7.9.75, Sch 6, Sch 7, Sch 10

[draft Corporations Regulations](#), regs 1.0.08, 1.0.16, 2N.2.01, 2N.4.01, 7.9.64, 7.9.65, 8A.5.10, 9.4A.02

[draft ASIC Supervisory Cost Regulations](#), reg 35A

FOI Act, s11C

Privacy Act, s15

## Information sheets

[INFO 9](#) *ASIC decisions: Your rights*

[INFO 30](#) *Fees for commonly lodged documents*

[INFO 32](#) *Foreign companies*

[INFO 71](#) *Company name availability*

[INFO 139](#) *ASIC Act infringement notices: Your rights*

[INFO 145](#) *ASIC's compulsory information gathering powers*

[INFO 151](#) *ASIC's approach to enforcement*

[INFO 230](#) *Exchange traded products: Admission guidelines*

## Consultation papers and reports

[CP 296](#) *Funds management*

[REP 582](#) *Response to submissions on CP 296 Funds management*

## ASIC forms

[Form 402](#) *Application for registration as a foreign company*

[Form 403](#) *Verification of copy of document authorising, on behalf of a foreign company, execution of a document appointing a local agent*

[Form 404](#) *Notification of change to agent of a foreign company*

[Form 405](#) *Statement to verify financial statements of a foreign company*

[Form 406](#) *Annual return of a foreign company*

[Form 407](#) *Notification of cessation, winding up or dissolution of a foreign company or registered Australian body*

[Form 409](#) *Notification of change to details of a foreign company or a registered Australian body*

[Form 418](#) *Memorandum of appointment of local agent*

[Form 488](#) *Application to change the review date of a company or registered scheme*

[Form 489](#) *Notification of change of registered office or office hours of a registered body*

[Form 490](#) *Notification of change to directors of a registered body*

[Form 906](#) *Notification of disqualification from managing corporations under Part 2D.6*

[Form 1003](#) *Disclosure notice for unlisted disclosing entity (ASIC Form Code 7053)*

[Form 5111](#) *Compliance plan audit report of a registered scheme*

[Form 5130](#) *Notification of office at which register of interests is kept*

[Form FS10](#) *Application for exemption from or modification of FSR provisions*

### **Other documents**

ASIC's [Privacy policy](#)

[Explanatory Memorandum to the Corporations Amendment \(Asia Region Funds Passport\) Bill 2018](#)

Joint Committee, [Guidance on host economy laws and regulations relating to the Asia Region Funds Passport](#) (PDF 937 KB), 25 July 2017

[Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport](#) (Memorandum of Cooperation)