

LIST OF CONSULTATION QUESTIONS

NO.	QUESTION	CP PG. NO.
QUESTIONS ABOUT THE SUBSTANTIVE REQUIREMENTS		
Basic Eligibility		
Types of CIS		
Q3.1	<p>Should there be any restrictions on the legal form of passport funds in some or all economies such as for example an exclusion of CIS that are partnerships? If so why?</p> <p>Flexibility in the legal form of passport funds will be appreciated from CIS operators' perspective. In any case, the CIS operators are likely to adopt legal forms which are familiar to the investors in the markets in which they wish to distribute such funds. A consideration for the regulators of the participating countries would be whether their local laws are wide enough to regulate such legal forms of CIS which are not currently available/ approved locally (e.g. partnership in Singapore and structures which are not unit trusts in Australia).</p>	Pg 11
Q3.2	<p>Would the restriction on naming and promotion in relation to MMFs give rise to any practical problems? If so please explain.</p> <p>From a product perspective, we do not see the practicality/opportunities of marketing local currency MMFs to a foreign market as the foreign investors in the host country would be exposed to foreign currency risk. And typically, MMF has very short settlement cycle which would make it an additional consideration for cross-border distribution.</p>	Pg 11
Q3.3	<p>To what extent are offers likely to be made of interests in a passport fund that is an ETF in its home economy but not able to be traded on a financial market in the host economy?</p> <p>Not applicable.</p>	Pg 12
Q3.4	<p>There is a risk of retail investors misunderstanding how they can realise their investment in an ETF where the interests are not traded on a local financial market. Is there reason for concern that this risk is not sufficiently addressed by host economy laws and regulations about disclosure and distribution? If so please explain.</p> <p>Not applicable.</p>	Pg 12
Offer in the home economy		
Q3.5	<p>Would the requirement for an offer in the home economy give rise to any practical problems? If so please explain.</p>	Pg 13

	<p>There may be practical problems associated with a requirement to distribute funds in home economies. There is likely to be a level of tailoring of funds to be distributed in host economies – such tailoring includes fund classes denominated in currencies different to that of home economies and disclosure documents prepared in a language which is different to that commonly used in home economies. A requirement to make such offers available in home economies could give rise to unnecessary expense.</p> <p>If this is an integrity measure, we think appropriate regulation of fund managers by the home economy would mitigate the risk of inappropriate fund distribution in host economies.</p>	
Q3.6	<p>Would the requirement for an offer in the home economy promote investor confidence in the effectiveness of supervision of passport funds by the home regulator? What other possible measures could be applied?</p> <p>Technically yes on the assumption that the home economy regulator will supervise passport funds more closely with the view of protecting local investors. Having said that, regulators should adopt a consistent approach in the supervision of passport funds whether such funds are offered in the home country to instill confidence in that jurisdiction as a home economy.</p> <p>Other possible measures include stating details and statistics of passport fund approvals granted by each home economy (including waivers granted, if any) on a joint website to ensure information transparency and ease of comparison by interested applicants and, more generally, appropriate regulation of, and enforcement action against, fund managers distributing inappropriate funds in host economies.</p>	Pg 13
Licensing of the passport fund operator		
Operational requirements		
Q3.7	<p>Is the requirement for an audit of certain home economy laws and regulations related to the passport fund operational requirements sufficient to ensure that passport funds are operated in accordance with the prescribed standards?</p> <p>We note that under “passport fund operational requirements” on page 14, it is mentioned that the passport fund operator puts in place adequate internal control mechanisms to ensure compliance with ‘applicable laws and regulations of the host economy’. As such, if there are indeed additional host economy requirements, then these should be audited as well.</p>	Pg 14
Q3.8	<p>Are there any practical problems associated with the compliance audit rule? In particular are there any particular aspects that would be burdensome or inappropriate to audit?</p>	Pg 14

	We think this will potentially lead to additional costs incurred that will increase fund expenses.	
Q3.9	<p>Would it be clearer or more practical to instead require an audit of whether the passport fund operational requirements are being met?</p> <p>We think it will be clearer to require an audit of whether the passport fund operational requirements are being met instead of different countries having different compliance audit scope.</p>	Pg 14
Track Record of Operator		
Q3.10	<p>Is this restriction on counting the experience of an operator or related party under different control sufficient to ensure that the operator has the capability to act as a passport fund operator? Would the restriction give rise to any practical problems? If the experience of the operator is permitted to be counted despite a change in control because it meets the requirements about continuity of staffing and decision making processes, should there be additional documentation requirements? If so please explain.</p> <p>If this is allowed, then it should be subject to the same ongoing compliance audit to ensure that the combined entity continues to meet the "Exception" rule provided for.</p>	Pg 16
Q3.11	<p>Should operators be allowed to count experience operating other types of retail investment schemes (for example, pension funds) as the requirement is currently drafted? Are there other types of experience which should be allowed to be counted?</p> <p>Experience gained as sub-advisor to retail investment schemes should be counted as well.</p>	Pg 16
Qualification of officers of the operator		
Q3.12	<p>Are the qualification standards appropriate and sufficient to ensure the ability of the passport fund operator to perform its functions?</p> <p>The minimum number of years' of experience for the CEO and executive directors should be limited to "managerial experience or experience in a supervisory capacity".</p>	Pg 16
Q3.13	<p>Should they apply to any other persons involved in the operation of a passport fund?</p> <p>No comments.</p>	Pg 17
Q3.14	<p>Should the proposed requirements for there being a qualified person who is an officer or employee of the operator apply to ensure this important function is done in the organisation directly regulated as a passport fund operator? What if any practical problems would arise?</p>	Pg 17

	<p>The requirement to have at least one person responsible for making discretionary investment decisions for the passport fund who is an officer or employee of the operation of the passport fund should not apply to those passport funds which are 100% sub-delegated.</p>	
Q3.15	<p>The European Securities and Markets Authority (ESMA) in its technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive recommended allowing a degree of substitutability between professional indemnity insurance and capital to cover professional liability risks. Should a passport fund operator be able to substitute for capital (in whole or in part) the amount of cover provided by holding professional indemnity insurance which meets specified requirements given that a purpose of the requirement for capital for passport fund operators is to address professional liability risk?</p> <p>Yes, a passport fund operator should be allowed to substitute for capital (in whole or in part) the amount of cover provided by holding professional indemnity insurance (“PII”) which meets specified requirements. As of this juncture, a number of regulatory authorities such as those operating within the EU (UK, Germany) as well non-EU countries such as Australia require PII to safeguard the operators’ financial stability. Accordingly, we view this recommendation to be an established and recognized method of replacing capital adequacy requirements.</p> <p>We have no specific comments in regards to the degree of substitution of capital, whether in whole or in part, by PII. But we have noted that the regulators would usually allow for operators to apply PII in substitution with capital requirements to cover any excess (i.e. deductible) which cannot be covered by PII under the prevailing capital adequacy requirements.</p>	Pg 17
Q3.16	<p>If professional indemnity insurance is permitted as a substitute what requirements should apply? Should there be minimum requirements concerning the terms and level of coverage of the insurance policy and the insurance provider? For example:</p> <p>Requirements on the terms and level of coverage:</p> <p>(a) The policy must have an initial term of no less than one year. (b) Coverage must include liabilities of the fund’s directors, officers or staff of third parties for whom the fund has vicarious liability.</p> <p>Requirements concerning insurance provider:</p> <p>(a) The insurance provider is a third party entity and subject to prudential regulation and ongoing supervision. (b) The fund manager must assess that the insurance provider has sufficient financial strength with regard to its ability to pay claims.</p>	Pg 17

We agree that as part of the minimum requirements on the terms and level of coverage, PII should have an initial term of no less than one year, and the coverage should include liabilities of the fund's directors and officers. In addition, in regards to requirements concerning the insurance provider, we agree that insurance provider should be a third party entity which has sufficient financial strength and it has to be subject to prudential regulation and ongoing supervision by the relevant regulatory authorities.

It is common for fund complexes to maintain a "joint insurance policy" where the said policy is structured such that they cover all affiliated advisers and/or other affiliated service providers (together with the related funds' own directors and officers) as the insured parties. But specifically in response to the proposed coverage requirements for "staff of third parties for whom the fund has vicarious liability", the typical PII does not directly cover claims arising from the acts and omissions of such unaffiliated third parties. On the assumption that this becomes a requirement of PII, the insurers would have to further consider the extent of a fund's vicarious liability to unaffiliated 3rd parties when pricing their PII cover, and coverage in this area may in turn be cost prohibitive or unavailable at the worst case.

While the above minimum requirements for PII should apply, we would also recommend that due consideration should also be given the prevailing market trends and practices of the insurance industry as far as PII is concerned in regards to its terms and coverage. For example, and in the case of the ESMA, its PII requirements actually exceed the scope of what the currently available PII policies would normally offer. In this case, the operators would be required to purchase an additional number of insurance coverage to meet the full requirements.

Are there any other set of requirements that need to be applied?

We have a strong preference for the PII requirements to remain as simple and concise as possible, as opposed to having numerous complexities involved in PII requirements which make it difficult and expensive for the operators to achieve full compliance, so much so that the operators may choose to just maintain the relevant amount of capital for purposes of capital adequacy.

Other than the above, there should also be an upper limit placed to the total amount of PII which the operators need to be insured for. This refers to the all-inclusive PII requirements for the operators to participate in the ARFP and not merely just for purposes of capital substitution. In addition, the weightage given to a dollar of PII (for purposes of capital substitution) should preferably be equal to a dollar of capital funded by the operators' own monies, as far as the capital substitution requirements are concerned.

	Ideally, the PII requirements should just read as stated in the above questions, but without the vicarious liability coverage requirement for unaffiliated 3 rd party entities, i.e. the PII should only provide additional coverage for liabilities of the fund's directors and officers only. In addition, there should be a minimum one year term and the insurer should be a bona-fide 3 rd party insurance company which is subject to prudential regulations and ongoing supervision. Finally, the operators should also be required to assess that the insurance company has sufficient financial strength with regard to its ability to pay claims when required.	
Operation of the passport fund		
Independent oversight		
Q3.17	<p>Are there other means to ensure the policy objective of independent oversight is met? If so please explain these other means and why they should be permitted.</p> <p>Given the need for an annual compliance audit, the need to have additional independent oversight may be costly for the passport funds.</p>	Pg 21
Compliance audit		
Q3.18	<p>Should an independent oversight entity be permitted to conduct a compliance audit?</p> <p>No. If Independent Oversight and Compliance Audit are both compulsory, then part of the Compliance Audit program should also include the review of the Independent Oversight function to ensure they have discharged their duties appropriately. However we still feel rather than having the need for annual compliance audit by independent auditors, as well as the need to have independent oversight by a compliance committee, board of directors or the trustee, we think one of them should be adequate. If not, it may increase the expenses of the passport funds unnecessarily.</p>	Pg 22
Q3.19	<p>Should an independent oversight entity be permitted to self-certify its own compliance in respect of its own obligations under the passport rules instead of arranging its compliance to be audited in any circumstances? If so, under what circumstances should such self-certification be allowed and how can the potential conflict of interests be satisfactorily mitigated?</p> <p>No.</p>	Pg 22
Q3.20	<p>Would there be any practical difficulties in an auditor providing the opinion proposed? If so please elaborate and identify any alternative measures or alternative form of report that would sufficiently address the policy objective of ensuring compliance through independent checking where reasonable (for example, a review engagement providing negative assurance or an agreed upon procedures report from the auditor).</p>	Pg 23

	This should be part of external auditors' response so no comments from FT.	
Q3.21	<p>Is this the most appropriate approach to ensure there are adequate standards which are applied consistently?</p> <p>Our view is that there should only be one appropriate standards for all Passport Economies rather than having individual ones for each country. This will facilitate easy comparison of financial reports across Passport funds regardless where they are domiciled.</p>	Pg 23
Investment restrictions		
Q3.22	<p>Do any of the permitted assets (for example, depository receipts over gold) lack appropriate qualities of liquidity and reliable valuation and therefore should not be permitted or should be further restricted in keeping with the object of passport funds being relatively non-complex investments while enabling passport funds to be offered that will attract investor interest? If so what should be excluded or what restrictions should apply?</p> <p>With the exception of depository receipts over gold which we cannot comment on, none of the permitted assets lack appropriate qualities of liquidity and reliable valuation as an overall asset class. Obviously this does not guarantee that certain assets within any given class will be liquid, so additional requirements on liquidity could be added to the language, with the possibility of including any illiquid securities in the "10% unquoted shares, stocks, and interest in investment schemes" limit. This would mirror the existing UCITS fund guidelines.</p>	Pg 24
Q3.23	<p>Are there any other assets that have appropriate qualities of liquidity and reliable valuation that should be permitted consistent with the object of passport funds being relatively non-complex investments while enabling passport funds to be offered that will attract investor interest? If so what assets should be permitted and within what limits?</p> <p>The investment restrictions are very broad at an asset class level however the investment restrictions at a portfolio allocation level could potentially prevent many managers from offering existing products as passport funds because they may be far more restrictive in terms of single entity limits than existing fund investment guidelines.</p> <p>The single entity limit of 5% can be raised to a limit of 10% upon performing issuer credit assessments under the current framework. However a limit of 10% of the portfolio in any one security is low in relation to the Australian equity market given the concentrated nature of the market. For example, the largest company in the Australian equity market, Commonwealth Bank (CBA), constitutes 11.7% of the top 50 universe and 10.5% of the top 100 universe (as measured by the S&P/ASX 50 and 100 Accumulation Indices respectively). Actively</p>	Pg 24

	<p>managed large cap equity funds that are benchmarked to the top 50 or top 100 universes would be forced to hold an underweight position in CBA simply because of the market capitalisation of the company and not for any specific investment rationale. This would therefore impact on the ability of managers to offer large cap equity funds into the passport regime.</p> <p>Large cap equity funds are more likely to have security limits based on the % of the portfolio that can be held relative to the index weight for each security and not have limits based on the absolute % of the portfolio that can be held in any security. The passport framework contains additional limits for index funds and benchmark funds that allow a position in a single security of index weight + 2% up to a maximum of 25%. This effectively allows index funds and enhanced index funds to participate in the passport regime but is restrictive for the majority of actively managed equity funds. There is a huge difference between a fund that can hold a position of index weight + 2% (appropriate for relatively benchmark aware funds or enhanced index funds) and a large cap equity fund that can invest in the top 200 stocks with a security limit of index weight +/- 5% or index weight +/- 10% for example. Such funds would still be considered to be well-diversified across issuers.</p> <p>Similarly, a large number of listed property funds in Australia would be excluded from the passport regime due to the high level of market concentration among the A-REIT stocks.</p> <p>While the current passport limits are heavily based on UCITS investment restrictions, this may be relevant in Europe but may not so readily reflect the structure of some markets in our region. The investment restrictions as they are currently outlined in the framework would prevent most Australian active equity managers from offering their standard equity products into the passport regime. Managers would be required to undertake significant product development work to create new products to fit the current framework. Managers would also be limited in their ability to reference the performance track records of their existing strategies to demonstrate their investment capability if they are not offering an existing product.</p>	
Q3.24	<p>To what extent does Table 2 in Schedule B appropriately measure exposure of a passport fund? To the extent it does not, what other measuring standards should apply?</p> <p>No comments.</p>	Pg 31
Q3.25	<p>To what extent does the calculations required by Schedule A, including in respect of what collateral may be considered, appropriately measure the maximum potential loss of a passport fund due to a counterparty failing? To the extent it does not, what other measuring standards should apply?</p>	Pg 32

	No comments.	
Delegation		
Q3.26	<p>Are these eligibility requirements sufficient to ensure that the delegates have the necessary experience to perform the delegated functions and are subject to appropriate regulatory oversight? If not, what other measures should apply?</p> <p>Generally, yes. It may be helpful to publish the list of 'approved countries' in which the delegate may be based/ regulated. It can be a non-exclusive list which is updated from time to time. This can provide more certainty/ clarity to CIS operator wishing to delegate any function.</p> <p>The Committee may want to also refer to the EU delegation rules under AIFMD in this regard. Separately, we note that the delegate has to meet certain capital requirements. In this regard, we note that U.S. advisers are not currently subject to any capital requirements and hence, this may be an issue for some U.S. delegates.</p> <p>That said, the primary safeguard with respect to delegated activities should be that the fund manager is responsible to investors for all aspects of a fund (including those aspects which are to be delegated). Including this overriding obligation on fund managers is likely to result in fund managers assessing organisations to perform delegated functions and including appropriate liability and indemnity provisions in contractual agreements with organisations performing delegated functions. Imposing rules relating to delegation could give rise to unnecessary regulation and limit the universe of service providers.</p>	Pg 37
Q3.27	<p>Is it appropriate to apply the same requirements as apply to an operator to a delegate in relation to the experience of its chief executive officer and executive directors? If not, why not?</p> <p>It depends on the role/ function delegated. If the delegate is to perform a discretionary investment management role, we are of the view that requirement on the experience of its CEO (10 years financial or capital markets experience) / executive directors (at least 2 with minimum 5 years financial or capital markets experience) is reasonable/ appropriate.</p> <p>However, if the delegated function is more administrative/ operational in nature, it may not be appropriate to impose the same requirements.</p> <p>The imposition of an overriding obligation that fund managers are responsible to investors would also ensure the appointment of service providers that are appropriate for the delegated function. As set out above, the imposition of rules relating to delegation could give rise to unnecessary regulation and limit the universe of service providers from which the fund manager can appoint.</p>	Pg 37

Financial reporting and audit		
Q3.28	<p>Is it appropriate for a host regulator to require financial statements and audit reports to be translated to an official language of the host economy? If not, why not?</p> <p>From a cost perspective, requiring the mandatory preparation of financial statements in the local language will impose a burden and cost on the funds and investors because there potentially could be four language requirements (English, Korean, Thai, Tagalog).</p> <p>However, there needs to be a balance of cost versus investor benefit. Some guidance should be provided and discretion given to passport member funds to adopt a practice that is investor driven (and not imposed by the regulator) – e.g., investors may avoid funds that do not provide local language financial statements.</p> <p>Practically speaking, given most fund reports are due to investors 2 months or 3 months before the end of the fund’s financial year or quarter, it would be operationally difficult to provide translated versions of each fund report before the same deadline. For example, the fund accounting and fund marketing teams would work on the English annual fund report as of June which is due by end September. Timing is already very tight for the standard report, and is especially so when it’s an audited version. Based on this, it would be hard to have both the English audited version and the Korean audited version (as an example) be made available before the same deadline.</p> <p>If translated fund reports are mandatory, a reasonable amount of lead time should be granted for the release of the translated documents.</p>	Pg 41
General questions about the substantive requirements		
<p>For each area of CIS regulation outlined in the framework:</p> <ul style="list-style-type: none"> • Basic eligibility • Licensing of the passport fund operator • Operation of the passport fund • Dealing with investors 		
Q3.29	<p>Do you agree with the proposed approach in terms of whether home, host or passport rules apply to this area of CIS regulation?</p> <p>We think the disclosure rules should be set by “Home & Passport” or “Passport” instead of “Host”. This will ensure some consistency in presenting information in offering documents, financial statements, fact sheets, information memoranda, etc.</p>	Pg 43
Q3.30	<p>Do you think that the proposed approach would enable the passport to achieve its key objective of providing a high degree of investor protection? If not, in what way can the approach be enhanced?</p>	Pg 43

	No comments.	
Q3.31	Where the passport rules apply, do you agree with the proposed content of the passport rules? If you do not agree, please explain why not. In your view, are there better ways to achieve the underlying purpose of the proposed rules? No comments.	Pg 43
Q3.32	What impact would the proposed approach have on competitiveness and investor confidence? No comments.	Pg 43
Q3.33	For prospective passport fund operators or current and prospective fund managers, what impact would the proposed approach have on your business? If the proposed approach would result in an increase or reduction in compliance or other costs, please quantify. No comments.	Pg 43
Q3.34	Do you require more information about the proposed approach? If so, what? No comments.	Pg 43
Other:		
Q3.35	Are there any additional requirements you would suggest? If so, what are the rules and why? No comments.	Pg 43
Q3.36	Do you have questions about how the passport will work that are not addressed in the proposed framework? What are they? See 'Other Areas for ARFP discussion'.	Pg 43

QUESTIONS ABOUT THE REGULATORY FUNCTIONS

Registration and assessment

Q4.1	Is the proposed registration and assessment process operationally practicable? No comments.	Pg 49
Q4.2	If not, what changes would you propose? What impact would the proposed approach have on competitiveness and ensuring investor confidence? No comments.	Pg 49

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SUPERVISION AND ENFORCEMENT		
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Civil and criminal actions		
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Q4.3	<p>Will members of passport funds have sufficient ability to seek compensation in the event of wrongdoing by passport funds? Is it appropriate to require the constitutive documents of a passport fund to provide that disputes between a member of the passport fund and the passport fund operator are to be heard by a court in the economy of the member (with the exemptions discussed above)? Are there practical or legal difficulties with these proposals?</p> <p>We feel that the proposal provides sufficient fund investor protection to take action against a passport fund or its operator. Investor protection might be enhanced with the inclusion of a specific mechanism by, or through which, investors can more easily elect to be notified of, and be party to, proceedings taking place in jurisdictions other than their home economy. For instance, this might be achieved by imposing an obligation on passport funds and/or their operator to notify members of a claim being made against the passport fund and/or its operator to which other members, or a class of members, may have a cause of action.</p> <p>That said, it may well be too restrictive to require the constitutive documents of a passport fund to provide that disputes between a member of the passport fund and the passport fund and/or its operator are to be heard by a court in the economy of the member. Flexibility may be required to address various factual situations.</p>	Pg 52
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Other		
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Q4.4	<p>Are the proposed supervision and enforcement arrangements operationally practicable and sufficient?</p> <p>No comments.</p>	Pg 52
Q4.5	<p>Please detail any other matters you consider relevant to the supervision and enforcement arrangements that need to be reflected in the passport arrangements.</p> <p>No comments.</p>	Pg 52

OTHER AREAS FOR ARFP DISCUSSION		
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Operations		
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Page 38 of the consultation talks about the currencies that a fund must be offered in. Our proposal would be that the passport should only require home and host currency (or as per existing home and host country laws) and any other currencies should be permissible at the discretion of the manager.

Other operations-related questions:

- Are there any currency controls that would limit the ability to offer funds in a market and how will these be addressed? – E.g. KRW may not be freely tradable.
- Would home or host country rules apply to redemption settlement? How would we address any differences between rules around this?
- How would we address cases where one jurisdiction permits commissions but another does not?
- Do any data privacy considerations have to be considered, particularly around cross border transfer of investor data?
- Which aspects of regulatory reporting would rest with home v/s host country? From a fund manager perspective, a FATCA IGA type structure where all reporting takes place to the home country and regulators share information amongst themselves may be preferred.
- Should there be any recommendation on application/use of local language for transfer agency statements (e.g. passport countries have different languages that are based on local script – Thai, Korean)?
- Omnibus or individual transfer agency records – should there be harmonization of rules on recording investors at an omnibus level or individual shareholder level?
- Should there be harmonization of AML rules in term of documents required for client onboarding?
- Page 49 of the consultation deals with stop orders. The question is whether redemptions would be permissible while a stop order is in effect?

Fund Accounting

1. Accounting Standards

Passport countries have different accounting standards where Singapore, Australia and NZ have similar IFRS-based accounting standards. Other countries have local standards that may be GAAP based. Should there be any guidance on how passported funds have to prepare their financial statements and calculate NAVs?

2. NAV Calculation

There needs guidance on harmonization of local rules on NAV calculation between passported countries including NAV calculation methodology, NAV valuation point and publication time (T-date or T+1).

3. NAV Errors, Compensations

Local regulations provide guidance on NAV calculation methodology (e.g. no of decimals NAV is calculated to / reported).

Compensation practices should be harmonized including tolerance thresholds (0.50% NAV error tolerance for example) and de minimus rules.

4. Others

Harmonisation on various other reporting including fund expense ratios (passport countries have loose guidance on what expenses are included/excluded in expense ratio calculations).

Fund Tax

The ARFP does not discuss tax matters affecting funds between passport economies. We think that the following tax matters affecting funds needs to be addressed to implement an effective passport regime:

- (a) Tax Neutrality – We agree with the ICI points regarding the need for tax neutrality. However, the 6 passport member economies have very different rules for tax on funds which would currently result in a different after tax outcome for investors if investing in offshore or onshore funds. For example, Australia and New Zealand have the Foreign Accumulation Funds (FAF) and/or Foreign Investment Funds (FIF) rules, which may create a tax disadvantage for their tax residents investing into offshore funds. These rules are anti-deferral regimes, similar to the PFIC example within the ICI paper. Any anti-deferral regime that a passport member state enacts should ensure that the principle of tax neutrality is followed. For example, if local funds are required to distribute income which is taxed on a revenue basis, anti-deferral provisions applicable to passport funds should only capture the equivalent amount of income that would otherwise be required to be distributed if the fund were local (i.e. it should not capture unrealized or realized gains and losses).

This is the primary tax issue where investing in offshore vs onshore funds may result in a different tax outcome.

Additional details are provided in Appendix 5 of a paper prepared by PWC on the Asia Region Funds Passport (link below):

<http://www.pwc.com.au/industry/asset-management/publications/asia-region-funds-passport/index.htm>

- (b) Tax Certainty – Within Australia, the FIF rules have been repealed but the FAF anti-deferral regime has not yet been implemented. This has created uncertainty for Australian investors as they contemplate potential investments into overseas investment vehicles and could be an impediment to investment in passport funds. Passport member states should ensure that applicable tax legislation such as the proposed FAF rules in Australia are implemented and are done so in a tax neutral manner so as to place a local investor investing in an offshore passport fund pari passu with a local investor investing in an identical onshore fund.

- (c) Funds As a Tax Free Vehicle – funds are generally free from local income tax at the fund

level. In Singapore and Korea, there are no conditions; however in Australia and NZ, there is a condition that substantially all income/gains need to be distributed in order for the funds not to be assessed income tax. To achieve tax neutrality, passport funds should generally not have to pay tax at the fund level and income and gains should be assessed by investors by their local tax regimes (e.g. an investor in Australia should pay Australian tax on income/gains as determined by the Australian tax rules regardless of whether their investment is in an offshore or onshore fund). Hence, funds in countries like Singapore which does not have a requirement for a flow thru of income/gains to be tax exempt may have difficulty in Australia/NZ where there is a condition for the funds to pass thru substantially all of its income/gains. Presumably, a properly designed anti-deferral regime within countries that require distributions could address this and allow domiciles such as Singapore to continue without the requirement for funds to distribute. However, it will be important to ensure that the tax legislation within the passport countries is structured properly to achieve this result.

- (d) Access to Treaty Benefits – funds should have access to tax treaties between passport member economies for both distributions, redemptions and investment income. For example, Korea recently denied tax treaty benefits to SICAVs and other funds domiciled outside Korea. Similarly, due to Asia funds primarily being set up as Unit Trusts, there may be difficulty in getting a tax residency certificates accepted in certain tax jurisdictions. Distributions made from a passport fund to a tax resident in another passport country should not be subject to withholding taxes, as they will instead be taxed based on their home country tax regime.
- (e) Tax Reporting Rules – implement simple tax filing & reporting rules to encourage cross border funds passports, e.g.:
- While funds are generally exempt from income tax in their country of domicile in Asia, some markets require funds to prepare and file tax returns. If the funds are not subject to tax, filing of tax returns should be eliminated.
 - Although an important part of cross-border distribution and an anti-deferral regime is transparency, the passport states should avoid the implementation of overly complex reporting rules.
- (f) Indirect Taxes – passport member economies have different indirect tax regimes like Goods & Services Tax (or other Value Added Taxes).
- Singapore – GST (7% standard rate): investment management fee is generally applied at a rate of 0% (zero rated). Exported services are exempt from GST.
 - Australia – GST is standard rated at 10% but funds can generally file for a reclaim for a substantial part for GST paid on services.
 - Tax Question: will passport funds be subject to GST for services in host economy service providers or will there be some relief (e.g. reclaim, GST exempted?)

Marketing

While the general rules are similar, the Singapore MAS has some unique marketing requirements such as applying a specific formula for calculating fund performances and a minimum font size used in marketing materials (10 point Times New Roman). Should the non-Singapore funds be subject to these unique requirements when marketed in Singapore, there will be substantial additional costs incurred in developing the marketing infrastructure required to support the distribution of these funds in Singapore. Since most of the marketing guidelines are similar across the passport jurisdictions, our suggestion is to review and

remove the current Singapore advertising/marketing unique requirements in order to achieve harmonization (and reduce fund costs) with the rest of the ARFP participating countries.