

10 April 2015

Asia Region Funds Passport Working Group  
C/o Financial Services Unit  
Financial System and Services Division  
The Treasury

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**Asia Region Funds Passport  
EY response to consultation on the detailed rules and operational arrangements**

Dear Committee Members

Thank you for the opportunity to provide a further submission in response to the proposed Asia Region Funds Passport (the Passport), now reflected in a draft memorandum of understanding (MOU) released on 27 February 2015.

In our submission, we make some overall comments on the rules and operational arrangements and then address some specific questions that were raised in the consultation paper (MOU Annexes 1,2 and 3). In line with our earlier submission, we have not provided responses to each question in the draft MOU.

**High Level Observations**

The Passport is an initiative that has received much support but also some apprehension, in particular, on the rules and their actual implementation. As asset managers find themselves contemplating not one but three Asian cross-border fund initiatives, the compliance cost of having to comply with the rules of the Passport versus the benefits will determine the attractiveness of each initiative. While the initiatives are broadly the same, the specific requirements will differ, taking into consideration the different regulatory regimes in each jurisdiction.

With the ASEAN passport framework already launched, it will form the baseline on the rules that asset managers might expect in a scheme that allows investment funds to be sold across borders. In order for asset managers operating in participating economies common to both initiatives to reap the benefits under the ASEAN framework as well as the Passport, the rules should be relatively similar so that asset managers do not find themselves incurring additional compliance cost. We see that this is currently considered in the proposed rules such as the qualification of the operator and the financial resource requirements where a minimum of USD 1million equity is required.

Overall, the rules are well developed and appear to be adequately stringent to protect investors' interests while allowing some level of flexibility for the Operators.

The approach of the proposed rules and arrangements is still broadly to apply the 'Home Economy' regulatory requirements to a fund from that economy and then to harmonise specified requirements and to provide limited exceptions to allow the Host Economy to apply its rules, including in respect of disclosure and distribution, rather than adopting a single common approach to the rules (or mutual recognition).

We expect there may be concerns by asset managers in some jurisdictions on how the Passport's approach to meeting regulatory and disclosure requirements will impact on the relative cross border opportunities of funds and whether funds in certain countries may be at a disadvantage under this approach. Such concerns may need to be separately addressed by the regulators of the fund's Home Economy.

Further, rule 3 in Annex 1, allowing a range of additional requirements to be imposed by the Host Economy, may need to be subject to some central oversight as part of the covering MOU (and potentially also as part of Annex 4), including to ensure they are reasonable in accordance with the rule and that there is some consistency between Passport countries.

The proposed rule (Annex 1, 4(2)) that "Each Participant will ensure that the offering of interests of a Passport Fund in a Host Economy will not create a taxable presence in that economy" is welcome to assist asset managers to participate in the Passport without unexpected tax issues arising to them. The scope and application of this rule will require separate development by each Passport country and we expect these rules will need to be harmonised between the countries.

However the Australian tax issues for investors in funds, both Australians investing offshore and Asian residents investing into Australia, remain unresolved. Separate work will be required to address the current lack of certainty of tax outcomes in an Australian context. Such issues should be considered as part of consultation on proposals to extend the range of collective investment vehicles that can be offered by Australian funds managers, announced by the Australian Government, as part of its 30 March 2015 'Re:think' tax discussion paper.

### ***Compliance review requirement***

We note that the compliance audit requirement is now amended to be a compliance review requirement. It should be noted that in such a review only a negative assurance opinion is provided. (However we note in Australia, in comparison, an audit of a fund's compliance plan is required annually by law.)

It is currently not clear which standards will be followed for the compliance review, for example, whether it will be an agreed upon procedures report, and the format of the report to be submitted is not specified.

One suggestion is to have a set of terms of reference which sets out the general and specific procedures required for the compliance review and the format of the report to be submitted. This will ensure common standards are applied and allow comparison by the regulators on the findings from the report.

We would be happy to work with the working group in developing the necessary reporting framework to support this initiative.

**Specific consultation questions (Annexes 1, 2 and 3)**

**Consultation question 1:** For certainty, the Working Group intends to provide a table which will specify who is a qualified distributor in a Participant. This will reflect the approach identified in subsection (3) above, although there will be some differences.

For Singapore, a qualified distributor may be restricted to certain entities such as banks and holders of a capital markets service licence. For Australia, a qualified distributor would be the holder of an Australian financial services licence authorised to deal in interests in managed investment schemes.

The Working Group is seeking feedback on whether, in relation to each economy, there are adequate avenues through which an Operator is able to market a Passport Fund without obtaining a licence in that economy.

Qualified distributors are normally licensed as noted in the case of Singapore and Australia. Such distributors should meet minimum requirements of “fit and proper” and other criteria in carrying out their functions in complying with these licencing rules.

Distributors should be appropriately licensed as required per the local regulatory regime. The MOU document should specify the responsibilities of the distributor with respect to the Passport Fund.

Annex 3 Part 3 sets out the requirements for the Operator of the Fund which will ensure they meet certain minimum standards. However as long as the distributors are licensed, the requirement for the Operator to obtain the license should not be necessary.

The consultation paper should also incorporate discussion on the minimum standards for the product disclosure documents that are used for distribution to investors.

**Consultation question 2:** The financial resources test is set with reference to a specific currency, USD. Is it appropriate to set the currency as USD for the purposes of the requirements, given possible fluctuations in currency?

We agree that the USD is the most appropriate currency to set the financial resource requirement as it allows consistency and comparability for measurement. This is also currently used by the ASEAN CIS scheme as the currency for its financial resource requirement.

To address possible fluctuations in currency, the rules could allow the operator of the Passport to use the exchange rate at date of inception of the fund (i.e. when capital is first injected), or when it first enters the passport (time when the entry process is complete), with the exchange rate to be adjusted should it exceed a certain tolerance threshold.

## **Conclusion**

Thank you for the opportunity to provide input into this important initiative. If EY can provide any further assistance or if you would like to clarify any aspect of this consultation response, please do not hesitate to contact either of us – Antoinette Elias on + 61 2 8295 6251 or Graeme McKenzie on +61 2 9248 4689.

Yours sincerely

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