



Submission on Asian Region Funds Passport

Submission by:

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31 July 2014

Asia Region Funds Passport
Investment Law Team
Ministry of Business, Innovation and Employment
Wellington 6011

By email: investment@mbie.govt.nz

To whom it may concern,

Submission on the Consultation Paper - Arrangements for the Asia Region Funds Passport

Thank you for the opportunity to provide feedback to the Ministry of Business, Innovation and Employment (**MBIE**) on the Consultation Paper - Arrangement for the Asia Region Funds Passport (**Consultation Paper**).

ANZ Bank New Zealand Limited (**ANZ**) welcomes the establishment of an Asia-regional platform where investment funds can be bought and sold across national borders with reasonable and appropriate compliance requirements.

The Asia Region Funds Passport (**ARFP**) will be likely to increase choice for investors and may also increase regional cross-border capital flows, trade and investment. ANZ supports the efforts of APEC and the New Zealand government to continue the pursuit of multilateral free trade for investment funds in our region.

There are some key messages that we would like to specifically draw to your attention:

Key messages

1. Ensure ARFP remains commercially attractive by appropriately balancing commercial and regional public policy/economic objectives
2. Ensure reasonable compliance requirements through not requiring an offer to be made in the home economy
3. To facilitate the uptake of fund managers, ARFP should recognise current host economy operational requirements as opposed to recreating similar requirements as part of the ARFP regime

Further details on these key messages are set out in Appendix I. ANZ's specific responses to MBIE consultation questions in the Consultation Paper are set out in the attached appendix II.

About ANZ

ANZ is the largest financial institution in New Zealand. The ANZ New Zealand group comprises many brands including ANZUDC Finance, OnePath New Zealand, ANZ New



Zealand Securities and Bonus Bonds and offers a full range of financial products and services including financial advisory, personal banking, institutional banking and wealth management.

ANZ New Zealand Investments Limited, a wholly owned subsidiary of ANZ is the second largest fund manager in New Zealand. ANZ New Zealand Investments Limited manages \$18 billion in investments for over 640,000 investors.

Contact for submission

We welcome the opportunity to discuss our submission directly with MBIE officials. If you would like to establish a time to do so, please contact:

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(04) 4366267
Damian.Hoff@anz.com

Once again, thank you for the opportunity to provide feedback.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Damian Hoff', with a large, stylized loop at the beginning.

Damian Hoff
Head of Compliance
ANZ Bank New Zealand



Appendix I – Key Messages

ANZ address each of the key messages in turn:

1. Ensure ARFP remains commercially attractive by appropriately balancing commercial and regional public policy/economic objectives

A key potential benefit of ARFP to New Zealand is the likelihood of attracting capital from Asia to assist growth in New Zealand, and provide New Zealand retail investors with an opportunity to diversify their range of investment opportunities.

We understand that the European version of ARFP - Undertaking for Collective Investments Transferable Securities (**UCITS**) - holds in excess of €6 Trillion in assets. It has been reported that Asia has represented up to 40 % of total net sales into UCITS funds in recent times.¹ UCITS products have significant scale, efficiency and familiarity advantages over the yet to be developed ARFP. Given the penetration of UCITS in Asia, if investment managers regard UCITS as a superior vehicle, ARFP may not be heavily utilised.

The ARFP model must develop as a commercially viable structure for all investment managers operating in the region. If the ARFP model is too restrictive or not competitive with vehicles such as UCITS, then ARFP is unlikely to be commercially viable.

ANZ understands that the commercial reality needs to be balanced with public policy objectives of regional governments. These governments are working to ensure that the ARFP increases economic activity and taxation collection in the APEA region (rather than Europe, for instance).

ANZ also believes ARFP is a sound public policy goal for the APEA region. APEA countries should derive the maximum benefit of managing investments and savings in the Asian region as populations' age and the middle classes grow.

In weighing these considerations, ANZ has proposed recommendations which seek to establish ARFP as commercially viable, but which also attempt to maximise regional economic benefits.

2. Ensure reasonable compliance requirements through not requiring an offer to be made in the home economy.

ANZ understands the proposed requirement for an entity to offer each of their passport products in the home economy has been included as an integrity measure.

In some cases, passport products will be specifically tailored for investors in host economies with the result that the product may be not be supported by the marketing and distribution support required in the home country. For example, a Korean scheme operator may choose to provide a Korean bond fund, issued in New Zealand dollars to New Zealand investors. This product may not have been designed for "domestic" or home investors as the product is issued in New Zealand dollars and the marketing materials are printed in English.



Likewise, it is unlikely a product denominated in Singapore Dollar or Korean Won issued by a New Zealand manager will be attractive to New Zealand retail investors.

ANZ does not believe that the requirement to make an offer in the home economy in order to make the offer in the host economy provides additional investor confidence. The nature of products targeted at investors in different economies is likely to be very different. Instead it is likely to add additional compliance complexity which would not be commensurate with any benefits to the investor.

3. To facilitate the utilisation by fund managers, ARFO should recognise current host economy requirements as opposed to recreating similar requirements as part of the AFRP regime.

The proposed passport rule indicates that the independent oversight entity role would be expanded to consider compliance with offer documents.

Each member economy has existing laws regulating the making of an offer to ensure key risks of the scheme are mitigated and monitored and which include requirements for disclosure. The expansion of the independent oversight entity role should be clearly limited to the additional requirement as set out in the ARFP. Accordingly ANZ notes that compliance audit requirements are restricted to compliance with ARFP rules and a defined set of obligations under home economy laws and regulations that help ensure the Passport fund's operational requirements are in place.



Appendix I – Responses to Consultation Paper questions

Asia Region Funds Passport – Consultation Paper Questions	
Q #	Question
Basic Eligibility – Types of CIS	
3.1	<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>No.</p> <p>Each country will have local legislation that establishes the legal form of the managed fund. The ARFP should look to permit all CIS that are compliant with local requirements. Legal form in cross border offerings is likely to be determined by host country legal structure familiarity and demand.</p>
3.2	<p>Would the restriction on naming and promotion in relation to MMFs give rise to any practical problems? If so please explain.</p>
	<p>ANZ recommends there is a consistent naming convention for all fund types.</p> <p>The proposed model states a passport fund must not be called a MMF or otherwise promoted as a MMF in a host economy unless it complies with any specific additional requirements for a MMF in the host economy.</p> <p>This may lead to a MMF fund in New Zealand being marketed differently than that of the same MMF fund offered in Singapore or South Korea. This is confusing and potentially misleading for investors and may result in differing treatment between investors.</p>
Basic Eligibility – Offer in the home economy	
3.5	<p>Would the requirement for an offer in the home economy give rise to any practical problems? If so please explain.</p>
	<p>ANZ recommends that the passport rules should not require the CIS to be offered in the home economy</p> <p>ANZ understands the proposed requirement for an entity to offer each of their passport funds in the home economy has been included as an integrity measure.</p> <p>In some cases, passport products will be specifically tailored for investors in host economies and therefore the product may be not be supported by the necessary marketing and distribution support in the home country. For</p>



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Q #	Question	ANZ Response
		<p>example, a Korean scheme operator may choose to target a Korean bond fund, issued in New Zealand dollars to New Zealand investors. This product may not have been designed for “domestic” or home investors as the product class is issued in New Zealand dollars and the marketing materials are printed in English.</p> <p>Likewise, it is unlikely a product issued in Singapore Dollar or Korean Won product issued by an New Zealand manager will be attractive to New Zealand retail investors.</p>
3.6	<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>As outlined in Q3.5 above, ANZ does not believe that a home economy offer provides an additional investor confidence because the nature of products targeted at investors in different economies is likely to be very different. This difference should not be seen as managers offering sub-standard products to offshore investors. The tailoring of products for specific markets should increase investor confidence as it is a reflection of the increased suitability of the product for the particular risk/return profile and asset class appetite of investors in that economy.</p> <p>ANZ also understands that the rationale for requirement of home offer is based on a perception that there is higher incentive for the local regulator to supervise the passport fund. We believe the perception is unfounded, since the home regulator is the passport licensing authority as well as approver of the CIS. Hence, it would be in the interest of the home regulator to ensure compliance with local laws to preserve the integrity of New Zealand financial environment.</p>
<p>Licensing of the passport fund operator – operational requirements</p>		
3.7	<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</p>	<p>Refer our response under 3.8 below</p>



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Q #	Question
ANZ Response	
3.8	<p>passport funds are operated in accordance with the prescribed standards?</p> <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>
3.9	<p>Would it be clearer or more practical to instead require an audit of whether the passport fund operational requirements are being met?</p>
Licensing of the passport fund operator – Track record of operator	
3.10	<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>
Licensing of the passport fund operator – Qualification of officers of the operator	
3.14	<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>
	<p>Compliance audit requirements in respect of passport funds compliance with operational requirements must recognise existing audit requirements under home economy laws.</p> <p>Any additional compliance audit requirements must be restricted to compliance with ARFP rules.</p> <p>Refer our response under 3.8 above</p> <p>The relevant Track Record differs according to the various capacities which may be undertaken by different sections of a business and/or by delegates. The roles of the Trustee/governance body, Investment Manager, Administrator, Distributor/Promoter and Depository should each have appropriate track records but may have achieved by organisations independently of one another.</p> <p>To fulfil the objectives of the Passport the Regulator should be satisfied that the Operator has brought these together sufficiently in aggregate to meet the requirements. For example, the Investment Manager and governance body may not have previously had experience in retail activities but provided the Administrator and Distributor have done so then this element of the Passport's requirements should be able to be accepted.</p> <p>The rules must not restrict managers from sub-delegating investment management to non-passport suppliers. Such suppliers could be related parties or other managers within a manager of managers' structure and should not be ruled out of the passport structure.</p>

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Q #	Question	ANZ Response
Licensing of the passport fund operator – Capital requirements		
3.15	<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>ANZ agrees that the passport fund operator should be able to substitute capital amount in whole by holding a professional indemnity insurance which address professional liability risk.</p>
3.16	<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.</p> <p>(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 s a third party entity and subject to prudential regulation and on-going supervision.</p> <p>(b) The fund manager must assess that the insurance provider has sufficient financial strength with regard to its ability to pay claims.</p> <p>Are there any other set of requirements that need to be</p>	<p>ANZ notes that if professional indemnity insurance is sought as a substitute for holding capital, then the value of the insured amount should be restricted to the value to capital that would have been required to be held in the event that there was no professional indemnity insurance.</p> <p>In respect of requirements concerning an insurance provider, ANZ notes that, the rules should allow captive insurance and not require an insurance provider to be a 3rd party.</p>

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Q #	ANZ Response
Operation of the passport fund	
Independent Oversight	
3.17	<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>It appears the role of independent entity includes consideration of compliance with offer documents and local laws.</p> <p>ANZ believes the current legislative requirements have adequate provisions to ensure compliance with offer documents and local laws as well as monitoring and management of key risks of the scheme.</p> <p>The role of independent entity should be limited to the additional passport requirements as set out in the ARFP.</p>
Compliance Audit	
3.18	Should an independent oversight entity be permitted to conduct a compliance audit?
	<p>ANZ agrees that the independent entity should be permitted to conduct a compliance audit. However these should be restricted where conflicts can be appropriately managed and the independence of the compliance monitoring can be demonstrated.</p> <p>The independent entity should be able to conduct a compliance audit where independent oversight is through a separate and independent entity (Trustee model) which is unrelated to the operator of the Fund and any party delegated a function of the passporting fund.</p>
3.19	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?
3.21	Is this the most appropriate approach to ensure there are adequate standards which are applied consistently?
	Yes
Delegation	
3.26	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>ANZ recommends removing the proposed delegation rule and expanding the passport rules into distribution.</p> <p>ANZ does not support a rule which compels scheme operators to undertake certain delegated activities solely in the passport economies. The proposal</p>



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Q #	Question	ANZ Response
		<p>is inconsistent with commercial realities of international asset management.</p> <p>The rule would seemingly preclude a scheme operator from delegating a proportion of a product’s portfolio management to a non-member economy. This design feature presents a serious risk to the passport’s viability. Scheme operators managing products such as global equity or global bonds would be unable to use the passport as the necessary component of the management to Europe or the Americas would be banned.</p> <p>As UCITS does not impose such restrictions, this design feature could compromise the passport’s prospects for scale and wide adoption by scheme operators. This is particularly the case when considering that one of the most attractive products for distribution through the ARFP would be global equity funds. This is because portfolio management of such funds occurs across the globe.</p> <p>Scheme operators commonly utilise portfolio management capability “on the ground” in the region in which the assets are managed. There is often no substitute for managing the assets from close proximity.</p> <p>The following provision is most problematic: ...the delegate is regulated by an organisation that to the satisfaction of the home regulator, following consultation with other passport economy regulators, has co-operation arrangements in place with the home regulator which are comparable to, and as effective as, those in place between the passport economy regulators;</p> <p>It is virtually impossible to imagine that the same level of multilateral mutual recognition could be achieved beyond the ARFP signatories. The ARFP will deliver an unprecedented agreement between our regulators to work together on this project. We have not seen any intention for this level of cooperation to be shared more broadly with the United States or European Union; which we expect to be highly unlikely.</p> <p>Accordingly, we believe this proposed design feature would make it impossible for certain products such as global equity funds to fit within the</p>



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Q #	ANZ Response
	<p>ARFP.</p> <p>If a delegation rule is required, we believe that the first four bullet points on page 36 of the model would be sufficient.</p> <p>However, ANZ is cognisant of the desire to include passport rules which ensure that the benefits of the passport accrue to the Asia Pacific region through increased direct and indirect economic activity, employment and taxation growth.</p> <p>We believe that the best way to deliver a stronger economic benefit to the region would be to create a viable ARFP which also includes distribution in the model.</p> <p>By building scalable products which are domiciled in our region and capturing the second layer of the value chain (after manufacturing or scheme operators), the passport would deliver increased economic activity in this region.</p> <p>Expanding the passport rules to distribution also has the benefit of removing inconsistency, ambiguity and removing any perception of protectionism.</p>
3.27	<p>No, ANZ does not believe this is required since the first four points under delegation should be sufficient to achieve the outcome that is desired by imposing this rule.</p>
General questions about the substantive requirements	
3.29	<p>The requirements in relation to custody arrangements may require further clarification. These requirements are discussed on pages 19-20 of the model. We agree that a passport fund must ensure there is a custodian for the assets. We also agree that the activities that relate to the asset holding must be performed by officers who are separate from, and able to act</p>



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Q #	Question	ANZ Response
		<p>independently from, people involved in investment or trading decisions. However, we query the benefit of the requirement that the custodian must be authorised by the home regulator. In our view, it may not always be appropriate for a passport fund operator to appoint a local custodian to hold fund assets, particularly where the fund invests in global assets. The "authorisation" requirement may deter passport operators from domiciling their CIS funds in a passport economy.</p> <p>In our view the custody arrangements should be clarified so that passport fund operators are free to appoint a custodian that meets the operation requirements of the passport rules, but without a requirement that the custodian be domiciled in a passport economy.</p>
3.31	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?	<p>Custody/home economy See our response to Q3.29 above.</p>
3.33	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.	<p>ANZ believes there will be increased compliance cost for those operators that intend to operate a passport fund. The intention to apply for a passport operator license will hinge on the level of demand from investors. At the present time ANZ is unable to estimate the cost of compliance.</p>
3.34	Do you require more information about the proposed approach? If so, what?	<p>ANZ recommends the passport rules, in their final form, must ensure that existing products can utilise the passport regime.</p> <p>Passport restrictions to apply at class or sub-fund level, instead of establishing a brand new fund structure.</p> <p>For managers to be able to take full advantage of the passport it is necessary to allow as many pre-existing funds to meet the eligibility requirements as possible.</p>



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Q #	Question
	<p>ANZ Response</p> <p>Setting up new funds is a costly process and the greatest economies of scale will be gained when managers can set up a new passport class within an existing fund structure, instead of establishing a brand new fund. If passport criteria apply at the fund level instead of the class level, economies of scale will be difficult to achieve.</p> <p>We understand that there is no policy objection to passport investment criteria applying at the class level, as opposed to the fund level. We request that this position is clarified in either the passport rules..</p>
Other	
3.36	<p>Do you have questions about how the passport will work that are not addressed in the proposed framework? What are they?</p> <p>ANZ recommends harmonising distribution arrangements to eliminate regulatory arbitrage.</p> <p>Distribution in host economy It is critical that symmetry is achieved between passport economies in the mutual recognition of distribution licensing. The regulatory elements that comprise the distribution function must be understood so that equivalence is achieved.</p> <p>The further the passport rules go in allowing distribution of funds, the greater profit will be made in the region. Currently there is significant mismatch of distribution licensing rules within the region, with a broad range of contexts for what is allowable activity for fund manufacturers. This will lead to regulatory arbitrage.</p> <p>The following bullet points highlight the differences:</p> <ul style="list-style-type: none"> • In New Zealand to provide financial services one must be registered as a financial service provider (FSP) on the FSP register maintained by the Companies Office. • In the Australian context, distribution of retail funds is tied to the concept of providing “financial product advice”, and fund distributors

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Q #	Question	ANZ Response
		<p>must hold an Australian Financial Service Licence that authorises them to provide financial product advice. Offshore funds must register locally to access local retail investors directly, unless going through certain third party platform arrangements.</p> <ul style="list-style-type: none"> • Singapore has a broadly similar framework to Australia, where fund managers that produce retail funds must hold a capital market services licence, and distributors must be licenced under the Financial Advisers Act. However offshore funds can be sold directly to retail investors in certain circumstances, such as with UCITS. • Funds in Korea are governed by the Financial Service and Capital Markets Act, which dictates that all funds must be sold through a local distributor or brokerage which is licenced as an investment broker/dealer. • The Securities and Exchange Commission of Thailand also stipulates that offshore funds must be sold through local feeder fund structures. <p>The varying requirements of distributing and marketing the funds will be a significant hindrance and cost burden over and above meeting the passport requirements, and take-up of the passport would be low where marketing under the mutual recognition does not add any benefits over setting up a normal distribution arrangement outside the passport.</p>

Questions about Regulatory Functions

Registration and assessment

4.1	Is the proposed registration and assessment process operationally practicable?	Refer comment under 4.2
4.2	If not what changes would you propose? What impact would the proposed approach have on competitiveness and ensuring investor confidence?	To avoid the same mistakes of the UCITS which ultimately led to UCITS IV, it is important that once a fund has been approved as a ARFP fund by the home regulator there is a streamlined process for the registration in the host economy with limited restriction on the host economy's ability to review the application.



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Q #	Question
	<p style="text-align: center;">ANZ Response</p> <p>The purpose of the application is to notify the host economy of the intention to distribute the product. Until a universal offer document is created under the Passport, the main risk is compliance with the host economy’s distribution rules and any other requirements.</p> <p>To ensure such applications can be treated as notifications rather than applications to be reviewed it is proposed that with each application, a legal sign off within the host economy is provided with the application to confirm compliance.</p> <p>Provided the required documents are lodged to the host with the external legal sign off, the host should register the fund within 21 days unless it can be refused on public interest grounds.</p> <p>It will be very important to establish minimum requirements for regulators to approve funds.</p> <p>For example, host regulators need to provide approval (or otherwise) quickly. And it should be clear how often the clock can be restarted if the host regulator asks for more information or requests a change to the detail of an application.</p>
Other	
4.5	<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>FATCA The Foreign Account Tax Compliance Act (FATCA) was enacted by the United States Congress in March 2010 to improve compliance with US tax laws. FATCA will impose certain due diligence and reporting obligations on foreign (non-US) financial institutions, including New Zealand institutions. These institutions will be required to report to the US Internal Revenue Service (IRS) information on US citizens with financial accounts.</p> <p>On 12 June 2014, New Zealand and the US signed an intergovernmental agreement to assist in the facilitation of FATCA for New Zealand financial institutions. A key objective of the intergovernmental agreement is to support New Zealand financial institutions’ compliance with FATCA in a way</p>



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Q #	Question	ANZ Response
		<p>that reduces its overall burden on New Zealand business. This includes reporting the information via the Inland Revenue Department (IRD) under the existing NZ-US tax treaty arrangements.</p> <p>We seek clarity that FATCA reporting by New Zealand financial institutions on New Zealand domiciled passport funds would follow the same rules as those for investors into non-passport funds.</p> <p>Other Reporting</p> <p>It is currently unclear whether there will be additional disclosure requirements expected of the fund manager by the home economy for the manager to report the host economy in regards to investors in their funds. The extent of reporting requirement needed may influence fund managers decision and readiness to participate in the Passport when ready.</p> <p>Regulatory Reporting – Efficiencies would be gained if the home regulator shared regulatory reporting requirements with other regulators in the region so that duplicate submissions are not required.</p> <p>Current Focus on Retail Offers – Efficiencies and cost savings would be gained if institutional offers could be subject to a similar notification/proposed Country Supplement process in place of registration drawing upon the processes envisioned for the Passport.</p> <p>AML/KYC</p> <p>The passport rules should clarify the economies’ agreement on how AML/KYC rules and FATCA/CRS are to be applied, including what reporting is required.</p>

ⁱ Joint report issued in 2010 by the Australian Financial Services Council and Pricewaterhouse Coopers, *Asia Region Funds Passport: The future of the funds management industry in Asia.*