# Corporations Amendment (Asia Region Funds Passport) Act 2018

# No. 61, 2018

## An Act to amend the law in relation to corporations, financial products and services, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (https://www.legislation.gov.au/)

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# Corporations Amendment (Asia Region Funds Passport) Act 2018

**No. 61, 2018**

## An Act to amend the law in relation to corporations, financial products and services, and for related purposes

[*Assented to 29 June 2018*]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Corporations Amendment (Asia Region Funds Passport) Act 2018*.



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## 2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|---|---|---|
| **Column 1** | **Column 2** | **Column 3** |
| **Provisions** | **Commencement** | **Date/Details** |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 29 June 2018 |
| 2. Schedules 1, 2, 2A and 3 | A day or days to be fixed by Proclamation.<br>However, if any of the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. | |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.



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# Schedule 1—Amendments inserting Chapter 8A

## *Corporations Act 2001*

### 1 After Chapter 8

Insert:

# Chapter 8A—Asia Region Funds Passport

## Part 8A.1—Preliminary

### 1210 Definitions

In this Chapter:

***APFRN***: see ***Australian Passport Fund Registration Number***.

***Australian Passport Fund Registration Number*** or ***APFRN*** means the number assigned to an Australian passport fund under paragraph 1212A(2)(a).

***consideration period*** for a notice of intention to offer interests in a foreign passport fund to a person in this jurisdiction: see section 1213D.

***home economy***, for a passport fund, means:

(a) if the passport fund is a regulated CIS, or a sub-fund of a regulated CIS, in only one participating economy—that participating economy; and

(b) if the passport fund is a regulated CIS, or a sub-fund of a regulated CIS, in more than one participating economy—the participating economy in which the fund is first registered or approved as a regulated CIS (however that registration or approval is described).

***home regulator***, for a passport fund, means the entity that is the Passport Regulator for the home economy for the passport fund under the Passport Rules for this jurisdiction.



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***host economy***: a participating economy is a ***host economy*** for a passport fund if:

(a) the participating economy is not the home economy for the fund; and

(b) either:

(i) it is permitted under the law of the participating economy to offer interests in the fund in that economy, on the basis that the fund is a passport fund; or

(ii) an application has been made under the law of the participating economy for permission to offer interests in the fund in that economy, on the basis that the fund is a passport fund.

***host regulator***, for a passport fund, means the entity that is the Passport Regulator for a host economy for the passport fund under the Passport Rules for this jurisdiction.

***Memorandum of Cooperation*** means the Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport signed on behalf of Australia on 28 April 2016, as it applies in relation to Australia from time to time.

***operator***, of a passport fund, means the entity that is the operator of the fund under the Passport Rules for this jurisdiction.

***participating economy***: a Participant, within the meaning of the Memorandum of Cooperation, is a ***participating economy*** at a particular time if:

(a) the Asia Region Funds Passport Joint Committee established under the Memorandum of Cooperation has published notification on the Passport website under subparagraph 5.6 of the Memorandum, at or before that time, that the Participant has effected implementation; and

(b) at that time:

(i) the Memorandum of Cooperation has not been terminated; and

(ii) the Participant has not withdrawn from the Memorandum of Cooperation.

***passport fund*** means a regulated CIS, or a sub-fund of a regulated CIS, registered as a passport fund in a participating economy.



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***Register of Passport Funds***: see section 1214.

***regulated CIS*** has the same meaning as in the Passport Rules for this jurisdiction.

***sub-fund***, in relation to a regulated CIS, has the same meaning as in the Passport Rules for this jurisdiction.

## 1210A List of participating economies

(1) The Minister must, by notifiable instrument, publish a list of participating economies.

(2) The Minister must:

(a) include in the instrument the date on which each Participant, within the meaning of the Memorandum of Cooperation, became a participating economy; and

(b) if a Participant, within the meaning of the Memorandum of Cooperation, ceases to be a participating economy—include in the instrument the date on which that Participant ceases to be a participating economy; and

(c) ensure that the instrument is updated as soon as is reasonably practicable after a Participant, within the meaning of the Memorandum of Cooperation, becomes, or ceases to be, a participating economy.

## 1210B Minister may determine that funds not to offer interests in this jurisdiction

(1) The Minister may, by legislative instrument, determine that the operators of passport funds, or a class of passport funds, the home economy for which is specified in the determination, must not offer interests in the funds in this jurisdiction.

(2) The Minister may only make a determination under subsection (1), if:

(a) the Minister is satisfied that:

(i) under the Memorandum of Cooperation, there are grounds for requiring the operators of the funds to which the determination applies not to offer interests in the funds in this jurisdiction; and



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(ii) the processes that, under the Memorandum of Cooperation, are to be followed before requiring the operators of the funds to which the determination applies not to offer interests in the funds in this jurisdiction, have been complied with; or

(b) the Memorandum of Cooperation has been terminated; or

(c) Australia or the home economy for the funds to which the determination applies withdraws from the Memorandum of Cooperation.

(3) If the Minister makes a determination under this section, the regulations may deal with matters of a transitional nature relating to the movement of funds to which the determination applies from participation in this jurisdiction under this Chapter to participation in this jurisdiction under the other provisions of the Corporations legislation dealing with managed investment schemes.

# Part 8A.2—Passport Rules

## 1211 Minister may make Passport Rules for this jurisdiction

(1) The Minister may, by legislative instrument, make rules that provide for matters relating to passport funds, or entities connected with passport funds.

(2) The rules made by the Minister under subsection (1) must be substantially the same as the Passport Rules set out in Annex 3 to the Memorandum of Cooperation.

(3) If the rules made by the Minister under subsection (1) taken together with other provisions of the Corporations legislation have substantially the same effect as the Passport Rules set out in Annex 3 to the Memorandum of Cooperation, the rules made by the Minister under subsection (1) are taken to be substantially the same as the Passport Rules set out in Annex 3 to the Memorandum of Cooperation.



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## 1211A Definition of *Passport Rules*

*Passport Rules for this jurisdiction*

(1) ***Passport Rules*** for this jurisdiction, means rules made by the Minister under section 1211 as in force from time to time.

*Passport Rules for a participating economy other than Australia*

(2) ***Passport Rules*** for a participating economy other than Australia, means rules that are:
   (a) substantially the same as the Passport Rules set out in Annex 3 to the Memorandum of Cooperation; and
   (b) in force from time to time in that participating economy.

## 1211B Compliance with the Passport Rules

(1) A person contravenes this subsection if:
   (a) an obligation is imposed on the person in relation to an Australian passport fund under the Passport Rules for this jurisdiction; and
   (b) the person does not comply with the obligation.

(2) A person contravenes this subsection if:
   (a) an obligation is imposed on the person in relation to a notified foreign passport fund under the Passport Rules for this jurisdiction; and
   (b) the person does not comply with the obligation; and
   (c) the failure to comply results, or is likely to result, in a person in this jurisdiction who holds an interest in the fund suffering financial or other disadvantage.

(3) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

(4) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

Penalty: 60 penalty units.



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(5) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (3) or (4).

# Part 8A.3—Australian passport funds

## 1212 Application for registration

(1) A person may lodge an application with ASIC to have a managed investment scheme registered as a passport fund if:
  (a) the scheme is a registered scheme and the person is the responsible entity for the scheme; or
  (b) an application has been made for the scheme to be registered under section 601EB, and the person is the proposed responsible entity for the scheme.

(2) The application must:
  (a) be in the prescribed form; and
  (b) include a copy of the Product Disclosure Statement that the responsible entity for the scheme would be required to prepare if:
    (i) the responsible entity were a regulated person required to give a Product Disclosure Statement to a retail client under subsection 1012B(3); and
    (ii) the scheme were registered as a passport fund.

(3) The applicant may withdraw the application by notice lodged in the prescribed form at any time before the scheme is registered as an Australian passport fund.

(4) ASIC may, by legislative instrument, determine that information that is lodged with ASIC under this section will not be available for inspection or copying from ASIC if it is of a kind specified in the determination.

## 1212A Registration of registered scheme as a passport fund

(1) ASIC must register a registered scheme as a passport fund if ASIC is of the opinion that:



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(a) the responsible entity for the scheme is an eligible entity, within the meaning of section 3 of Annex 2 of the Memorandum of Cooperation; and

(b) each of the following is likely to be complied with in relation to the scheme:

(i) this Act (including the Passport Rules for this jurisdiction);

(ii) the ASIC Act.

(2) A registered scheme is registered as a passport fund by ASIC:

(a) assigning a unique number to the passport fund (the ***Australian Passport Fund Registration Number*** or ***APFRN*** for the passport fund); and

(b) ensuring that details of the fund are entered on the Register of Passport Funds.

### 1212B All documents etc. lodged with ASIC to bear APFRN

After a registered scheme is registered as a passport fund, all documents relating to the fund that are lodged with ASIC must set out the scheme's APFRN.

### 1212C Notifying ASIC if offering interests in another participating economy in another name

(1) The operator of an Australian passport fund must notify ASIC in accordance with this section if:

(a) the operator of the fund offers interests in the fund in a participating economy other than Australia; and

(b) the name of the fund in the other participating economy is not the same as the name of the Australian passport fund.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(2) The notice must be given:

(a) in the prescribed form; and

(b) within 7 days after interests in the fund begin to be offered under that name.



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# Part 8A.4—Notified foreign passport funds

## Division 1—Becoming a notified foreign passport fund

### 1213 Notice of intention to offer interests in a foreign passport fund

(1) The operator of a foreign passport fund may lodge with ASIC a notice of intention to offer interests in the fund to persons in this jurisdiction, provided the operator is a registered foreign company.

(2) The notice must:
  (a) be in the prescribed form; and
  (b) include a copy of the Product Disclosure Statement that the operator of the foreign passport fund would be required to prepare if:
    (i) the operator were a regulated person required to give a Product Disclosure Statement to a retail client under subsection 1012B(3); and
    (ii) the fund were a notified foreign passport fund.

(3) The operator of the foreign passport fund may withdraw the notice of intention by notice lodged in the prescribed form at any time during the consideration period for the notice.

(4) ASIC may, by legislative instrument, determine that information that is lodged with ASIC under this section will not be available for inspection or copying from ASIC if it is of a kind specified in the determination.

### 1213A ASIC may notify operator that notice of intention lacks information required

(1) ASIC may, within the consideration period for the notice of intention, notify the operator of the foreign passport fund that ASIC is of the opinion that information required under the prescribed form has not been provided.

(2) ASIC's notification must be given in writing.



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## 1213B Rejecting a notice of intention

*Circumstances in which ASIC may reject a notice of intention*

(1) ASIC may, within the consideration period for the notice of intention, reject the notice if:

(a) ASIC is of the opinion that one or more of the following has not been, is not being or is not likely to be complied with in relation to the fund:

(i) this Act (other than the Passport Rules for this jurisdiction);

(ii) the ASIC Act;

(iii) the law of the home economy for the fund, to the extent that the law is administered by the home regulator for the fund (including the Passport Rules for the home economy for the fund); or

(b) ASIC is of the opinion that it is not in the public interest in this jurisdiction for the operator to offer interests in the passport fund in this jurisdiction; or

(c) both of the following are satisfied:

(i) an exemption has been given, or a modification made, to the Passport Rules for the home economy for the passport fund that affects the fund or entities connected with the fund;

(ii) ASIC does not consent to the exemption or modification; or

(d) the name of the passport fund in relation to which the operator has given notice is not available in this jurisdiction.

(2) In determining its opinion in relation to a matter mentioned in subparagraph (1)(a)(iii), ASIC must:

(a) make a request, in writing, to the home regulator for the fund for the opinion of the home regulator on the matter; and

(b) specify in the request the basis for ASIC's concerns about compliance with the law of the home economy; and

(c) state a reasonable period during which ASIC will wait for a reply before acting; and

(d) if the home regulator replies to the request within that period—give effect to the opinion of the home regulator on the matter.



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(3) In paragraph (1)(b), ***public interest*** does not include any benefit in this jurisdiction that may arise from limiting competition for managed investment schemes operating principally in this jurisdiction.

(4) Nothing in this section requires ASIC to conduct an assessment of the public interest in this jurisdiction in each case.

(5) A name is not available to a foreign passport fund in this jurisdiction for the purposes of paragraph (1)(d) if:

(a) the name is:

(i) identical (under rules set out in the regulations) to a name that is reserved or registered under this Act for another body; or

(ii) identical (under rules set out in the regulations) to a name of a managed investment scheme that is the subject of an application for registration that has been lodged under section 601EA but not yet determined; or

(iii) identical (under rules set out in the regulations) to a name of a foreign passport fund in relation to which a notice of intention under section 1213 has already been lodged; or

(iv) identical (under rules set out in the regulations) to a name that is held or registered on the Business Names Register in respect of another individual or body who is not the operator; or

(v) unacceptable for registration under the regulations; and

(b) the operator of the fund has not notified ASIC and the home regulator for the fund in writing that it will adopt an available alternative name for the fund in this jurisdiction.

(6) The Minister may consent in writing to a name being available to a foreign passport fund in this jurisdiction even if the name would not otherwise be available because of paragraph (5)(a).

(7) The Minister's consent may be given subject to conditions.

*Circumstances in which ASIC must reject a notice of intention*

(8) ASIC must, within the consideration period for the notice of intention, reject the notice if:



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(a) the Minister has made a determination under subsection 1210B(1) that the operators of passport funds, or a class of passport funds, the home economy for which is specified in the determination, must not offer interests in the fund in this jurisdiction; and

(b) the determination applies to the passport fund.

*ASIC must notify operator of decision to reject*

(9) The notice of intention is rejected by ASIC giving the operator of the foreign passport fund notification in writing of the rejection.

## 1213C Notified foreign passport funds—authority to offer interests in this jurisdiction

(1) A foreign passport fund becomes a ***notified foreign passport fund*** if:

(a) the operator of the fund has lodged a notice of intention to offer interests in the fund to persons in this jurisdiction with ASIC under section 1213; and

(b) the operator of the fund has not withdrawn the notice of intention under subsection 1213(3); and

(c) within the consideration period for the notice of intention, ASIC has not given the operator:

(i) notification under section 1213A that ASIC is of the opinion that information required under the prescribed form has not been provided; or

(ii) notification under section 1213B that the notice of intention has been rejected.

(2) The foreign passport fund becomes a ***notified foreign passport fund*** on the first day after the end of the consideration period for the notice of intention.

(3) The foreign passport fund ceases to be a ***notified foreign passport fund*** if it is removed as a notified foreign passport fund under Division 2 of Part 8A.7.

(4) A notified foreign passport fund may offer interests in the fund to persons in this jurisdiction.



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### 1213D Definition of *consideration period*

(1) The ***consideration period***, for a notice of intention to offer interests in a foreign passport fund in this jurisdiction, is:

(a) a period of 15 business days beginning on the day after the notice is lodged with ASIC; or

(b) if ASIC and the operator agree that the period is to be extended under subsection (2)—the extended period.

(2) ASIC and the operator of the foreign passport fund may agree, in writing, to one or more extensions of the consideration period. However, each extension must be for no more than 5 business days.

## Division 2—Treatment of notified foreign passport funds

### 1213E Notified foreign passport funds to be treated as managed investment schemes

(1) A notified foreign passport fund is a ***managed investment scheme*** for the purposes of this Act, even if it would not otherwise be a managed investment scheme for the purposes of this Act because of the way in which that term is defined in section 9.

Note: This subsection does not affect the other legal characteristics of a notified foreign passport fund for the purposes of this Act. For example, if a notified foreign passport fund is a body corporate, it remains a body corporate for the purposes of this Act.

(2) The constituent document (as defined in the Passport Rules for this jurisdiction) for the notified foreign passport fund is taken to be the constitution of the fund as a managed investment scheme.

### 1213F Operators and notified foreign passport funds not to be treated as companies etc.

To avoid doubt:

(a) neither the operator of a notified foreign passport fund nor the fund is to be treated as a company for the purposes of the corporations legislation, merely because the operator or the fund is registered as a foreign company under Division 2 of Part 5B.2; and



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(b) a reference in the corporations legislation to a share does not include an interest in a notified foreign passport fund unless the fund is also a company.

## 1213G Offences relating to the operation of notified foreign passport funds

(1) This section applies if:

(a) one of the following persons engages in conduct that constitutes an alleged offence against this Act or the ASIC Act:

(i) a notified foreign passport fund;

(ii) the operator of a notified foreign passport fund;

(iii) a person with responsibilities in relation to a notified foreign passport fund; and

(b) the conduct occurs in relation to the operation of the fund; and

(c) the conduct occurs wholly in a foreign country; and

(d) the person who engages in the conduct is not:

(i) an Australian citizen; or

(ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

(e) it is not otherwise a physical element of the offence that the conduct results, or is likely to result, in a person in this jurisdiction who has an interest in the fund suffering financial or other disadvantage.

(2) It is a physical element of the offence that the conduct results, or is likely to result, in a person in this jurisdiction who has an interest in the fund suffering financial or other disadvantage.

(3) In this section:

***person with responsibilities in relation to a notified foreign passport fund*** means a person (other than a regulator) who has functions or duties in relation to the fund under the Passport Rules for this jurisdiction.



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## Division 3—Conduct of notified foreign passport funds in this jurisdiction

### 1213H Notified foreign passport funds must not issue debentures in this jurisdiction

The operator of a notified foreign passport fund commits an offence if the operator or the fund:

(a) makes an offer of debentures in this jurisdiction that needs disclosure to investors under Chapter 6D, or does not need disclosure to investors under Chapter 6D because of subsection 708(14) (disclosure document exclusion for debenture roll overs) or section 708A (sale offers that do not need disclosure); or

(b) makes an offer of debentures in this jurisdiction or elsewhere as consideration for the acquisition of securities under an off-market takeover bid.

Penalty: 60 penalty units.

Note: For rules about when an offer of debentures will need disclosure to investors under Chapter 6D, see sections 706, 707, 708, 708AA and 708A.

## Division 4—Providing key information in relation to notified foreign passport funds

## Subdivision A—Obligations to provide information to members in this jurisdiction

### 1213J Constitution—right to obtain a copy

*Right to a copy of the consolidated constitution*

(1) The operator of a notified foreign passport fund commits an offence of strict liability if:

(a) a person makes an application to the operator in accordance with subsection (2) for a copy of the consolidated constitution of the fund; and

(b) the person is:

(i) an Australian member of the fund; or



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(ii) a former member of the fund who acquired an interest in the fund in this jurisdiction, or is ordinarily resident in this jurisdiction; and

(c) the person pays the reasonable costs of the operator, up to a prescribed amount, in providing a copy of the consolidated constitution; and

(d) the operator fails, or refuses, to give the person a copy of the consolidated constitution in accordance with this section; and

(e) as a result, the person does not obtain a copy of the consolidated constitution of the fund in accordance with this section.

Penalty: 60 penalty units.

*Application for a copy of the consolidated constitution*

(2) An application to the operator of a notified foreign passport fund is in accordance with this subsection if the application is in writing.

*Manner in which the consolidated constitution must be provided*

(3) If, in the application, the applicant requests a paper copy of the consolidated constitution, the operator must post the applicant a copy of the consolidated constitution within 7 days after the application is made.

(4) Otherwise, the operator must give the applicant a copy of the consolidated constitution electronically, within 7 days after the application is made.

(5) ASIC may allow a longer period for the operator to give the applicant a copy of the consolidated constitution.

*Language in which consolidated constitution must be provided*

(6) If, in the application, the applicant requests that the copy of the consolidated constitution be in an official language of the home economy of the fund (other than English), the copy of the consolidated constitution given to the applicant must be in that language.

(7) Otherwise, the copy of the consolidated constitution given to the applicant must be in English.



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*Geographical jurisdiction*

(8) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1).

## 1213K Register of members—right to obtain a copy

*Right to a copy of the register of members of a fund*

(1) The operator of a notified foreign passport fund commits an offence of strict liability if:
  (a) a person makes an application to the operator in accordance with subsection (2) for a copy of the register of members for the fund; and
  (b) the person is:
    (i) in this jurisdiction; or
    (ii) an Australian member of the fund; or
    (iii) a former member of the fund who acquired an interest in the fund in this jurisdiction, or is ordinarily resident in this jurisdiction; and
  (c) the person pays the reasonable costs of the operator, up to a prescribed amount, in providing a copy of the register; and
  (d) the operator fails, or refuses, to give the person a copy of the register in accordance with this section; and
  (e) as a result, the person does not obtain a copy of the register of the fund in accordance with this section.

Penalty: 60 penalty units.

*Application for a copy of the register*

(2) An application to the operator of a notified foreign passport fund is in accordance with this subsection if:
  (a) the application is in writing; and
  (b) the application states each purpose for which the applicant wishes to obtain a copy of the register; and
  (c) none of those purposes is a prescribed purpose.



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*Manner in which register must be provided*

(3) If, in the application, the applicant requests a paper copy of the register, the operator must post the applicant a copy of the register within 7 days after the application is made.

(4) Otherwise, the operator must give the applicant a copy of the register electronically, within 7 days after the application is made.

(5) ASIC may allow a longer period for the operator to give the applicant a copy of the register.

*Language in which register must be provided*

(6) If, in the application, the applicant requests that the copy of the register be in an official language of the home economy of the fund (other than English), the copy of the register given to the applicant must be in that language.

(7) Otherwise, the copy of the register given to the applicant must be in English.

*Geographical jurisdiction*

(8) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1).

## 1213L Use of information on register of members

*Offence—using information obtained from the register to contact members*

(1) A person who obtains a copy of a register of members of a notified foreign passport fund under section 1213K must not:
   (a) use information about a person (the ***other member***) obtained from the register to contact or send material to the person; or
   (b) disclose information of that kind knowing that the information is likely to be used to contact or send material to the other member.

Penalty: 60 penalty units.



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Note: An example of using information to send material to a person is putting a person's name and address on a mailing list for advertising material.

*Exception*

(2) Subsection (1) does not apply if the use or disclosure of the information is:

(a) relevant to the holding of the interests recorded in the register or the exercise of the rights attaching to them; or

(b) approved by the operator of the fund.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

*Offence—using information obtained from the register for a prescribed purpose*

(3) A person who obtains a copy of a register of members of a notified foreign passport fund under section 1213K must not:

(a) use information obtained from the register for any purpose prescribed by regulations made for the purposes of paragraph 1213K(2)(c); or

(b) disclose information of that kind knowing that the information is likely to be used for any such purpose.

Penalty: 60 penalty units.

*Strict liability*

(4) An offence based on subsection (1) or (3) is an offence of strict liability.

*Geographical jurisdiction*

(5) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1) or (3).

*Liability to pay compensation*

(6) A person who contravenes subsection (1) or (3) is liable to compensate anyone else who suffers loss or damage because of the contravention.



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*Returning profits made by contravening subsection (1) or (3)*

(7) A person who makes a profit by contravening subsection (1) or (3) owes a debt to the fund. The amount of the debt is the amount of the profit.

(8) If a person owes a debt under subsection (7) to the fund:
  (a) the debt may be recovered by the operator of the fund as a debt due to it; and
  (b) any amount paid or recovered in respect of the debt forms part of the property of the fund.

## 1213M Reports required under the law of the home economy

*Right to a copy of reports*

(1) The operator of a notified foreign passport fund commits an offence of strict liability if:
  (a) the operator or the fund is required under the law of the home economy for the fund to prepare a report (however described) in relation to the fund; and
  (b) the operator or the fund makes the report available to members of the fund in the home economy without charge; and
  (c) the operator does not give Australian members of the fund, in accordance with this section:
    (i) a copy of the report; and
    (ii) if a summary in English of all or part of the report is required under subsection (5)—a summary in English of all or that part of the report.

Penalty: 60 penalty units.

*Manner in which report must be made available*

(2) The report must be given to Australian members of the fund within 7 days after the first day on which the report is made available to a member of the fund in the home economy without charge.

(3) The report may be given to Australian members of the fund by:
  (a) putting the report on the fund's website so that it is accessible to Australian members of the fund; and



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(b) if members of the fund in the home economy are notified that the report is available on the fund's website, or notified how those members may access it—giving equivalent notice to Australian members of the fund.

(4) The report must be given without charge.

*English summary of the report*

(5) If all or part of the report is not in English, the operator must also give an Australian member of the fund a summary of the report, or that part of the report, in English in the same manner as the operator gives the report under subsections (2), (3) and (4).

*Exception*

(6) Subsection (1) does not apply if the operator of the fund is required under another provision of this Act to lodge the report, or to give the report to Australian members of the fund.

*Geographical jurisdiction*

(7) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1).

## 1213N Order for copies of books of a notified foreign passport fund

(1) A person may apply to the Court for an order under subsection (2) if the person is:
   (a) an Australian member of the fund; or
   (b) a former member of the fund who acquired an interest in the fund in this jurisdiction, or is ordinarily resident in this jurisdiction.

(2) On application by the member or former member, the Court may order the operator of the fund to give the member or former member an electronic copy of any or all of the following:
   (a) all or a specified part of the books of the operator that relate to the fund;
   (b) all or a specified part of the books of the fund;



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(c) an English translation of all or a specified part of the books of the operator that relate to the fund;

(d) an English translation of all or a specified part of the books of the fund.

(3) The Court may make the order only if it is satisfied that:

(a) the applicant is acting in good faith; and

(b) the books, or the specified part of the books, are to be obtained for a proper purpose.

(4) The member or former member may make copies of the books, or the specified part of the books, unless the Court orders otherwise.

## Subdivision B—Obligations to provide information to ASIC

### 1213P Register of members—ASIC may require lodgment

(1) The operator of a notified foreign passport fund commits an offence of strict liability if:

(a) ASIC requires the operator of the fund to lodge a copy of the whole or a specified part of the register of members of the fund, in accordance with subsections (2) and (3); and

(b) the operator fails, or refuses, to lodge a copy of the register in accordance with this section.

Penalty: 60 penalty units.

*Notice requiring operator to lodge register of members*

(2) ASIC may, by written notice given to the operator of a notified foreign passport fund, require the operator to lodge a copy of the whole or a specified part of the register of members of the fund.

(3) ASIC may, in the notice, require the copy of the whole or the specified part of the register to be lodged in English.

*Manner in which register must be lodged*

(4) The operator must lodge a copy of the register with ASIC electronically, within 7 days after being given notice to do so in accordance with subsections (2) and (3).



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(5) ASIC may allow a longer period for the operator to lodge a copy of the register.

*Language in which register must be provided*

(6) If, in the notice, ASIC requires a copy of the whole or a specified part of the register to be lodged in English, the operator must lodge the whole or that part of the register in English.

*Geographical jurisdiction*

(7) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1).

### 1213Q Destruction of records by ASIC

ASIC may destroy or otherwise dispose of any document that is lodged under, or for the purposes of, a provision of this Chapter or the Passport Rules for this jurisdiction if:

(a) ASIC is of the opinion that it is no longer necessary or desirable to retain it; and

(b) it has been in the possession of ASIC for such period as is specified in the regulations, either generally or in relation to a particular document or class of documents.

## Part 8A.5—Register of Passport Funds

### 1214 Register of Passport Funds

(1) ASIC must either:

(a) establish and maintain a Register of Passport Funds; or

(b) ensure that a Register of Passport Funds is established and maintained.

(2) If the Register of Passport Funds is established and maintained by ASIC, ASIC may do so in any form that ASIC considers appropriate.

(3) The Register of Passport Funds:



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(a) must include the prescribed details of Australian passport funds and notified foreign passport funds; and
(b) must include the prescribed details of funds that have been deregistered as Australian passport funds and funds that have been removed as notified foreign passport funds; and
(c) may include details of other passport funds.

(4) For the purposes of the Corporations legislation, a reference to a register kept by ASIC under this Act is taken to include a Register of Passport Funds that ASIC ensures is established and maintained under paragraph (1)(b).

# Part 8A.6—Stop orders

## 1215 Stop order—Australian passport funds

*ASIC may make stop orders*

(1) ASIC may, by written instrument, order the operator of an Australian passport fund to do one or more of the following:
(a) cease to offer, or not to begin offering, interests in the fund to persons in this jurisdiction either indefinitely or for a period specified in the order;
(b) cease to offer, or not to begin offering, interests in the fund to persons in another participating economy either indefinitely or for a period specified in the order;
(c) take other action specified in the order;
(d) cease to take other action specified in the order.

The order is a ***stop order***.

(2) A stop order may include a statement that specified conduct engaged in contrary to the order will be regarded as not complying with the requirements of a specified provision of this Act.

*Basis on which stop orders may be made*

(3) However, ASIC may only make a stop order under this section if ASIC is of the opinion that:



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(a) one or more of the following has not been, is not being or is not likely to be complied with in relation to the fund (whether in this jurisdiction or in any other place):
  (i) this Act (including the Passport Rules for this jurisdiction);
  (ii) the ASIC Act; or
(b) if the order is made under paragraph (1)(c)—taking the action specified in the order is reasonably necessary to ensure that an order made under paragraph (1)(a) or (b) is complied with; or
(c) if the order is made under paragraph (1)(d)—not taking the action specified in the order is reasonably necessary to ensure that an order made under paragraph (1)(a) or (b) is complied with.

*Hearing before stop order made*

(4) Before making a stop order, ASIC must:
  (a) hold a hearing; and
  (b) give a reasonable opportunity to any interested people to make oral or written submissions to ASIC on whether an order should be made.

*ASIC must give notice if stop order made*

(5) If ASIC makes a stop order under this section, ASIC must give the operator of the fund a copy of the order as soon as reasonably practicable after it is made.

## 1215A Stop order—notified foreign passport fund

*ASIC may make stop orders*

(1) ASIC may, by written instrument, order the operator of a notified foreign passport fund to do one or more of the following:
  (a) cease to offer, or not to begin offering, interests in the fund to persons in this jurisdiction either indefinitely or for a period specified in the order;
  (b) take other action specified in the order;
  (c) cease to take other action specified in the order.

The order is a ***stop order***.



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(2) A stop order may include a statement that specified conduct engaged in contrary to the order will be regarded as not complying with the requirements of a specified provision of this Act.

*Basis on which stop orders may be made*

(3) However, ASIC may only make a stop order under this section if:
  (a) subsections (4) and (7) are satisfied; or
  (b) the operator of the fund has ceased to be a registered foreign company; or
  (c) the operator of the fund has not had a local agent for more than 21 days; or
  (d) both of the following are satisfied:
    (i) the Minister has made a determination under subsection 1210B(1) that the operators of passport funds, or a class of passport funds, the home economy for which is specified in the determination, must not offer interests in the fund in this jurisdiction;
    (ii) the determination applies to the passport fund;
  (e) if the order is made under paragraph (1)(b)—taking the action specified in the order is reasonably necessary to ensure that an order made under paragraph (1)(a) is complied with; or
  (f) if the order is made under paragraph (1)(c)—not taking the action specified in the order is reasonably necessary to ensure that an order made under paragraph (1)(a) is complied with.

(4) For the purposes of paragraph (3)(a), this subsection is satisfied if ASIC is of the opinion that one or more of the following has not been, is not being or is not likely to be complied with in relation to the fund (whether in this jurisdiction or in any other place):
  (a) this Act (including the Passport Rules for this jurisdiction);
  (b) the ASIC Act;
  (c) the law of the home economy for the fund, to the extent that the law is administered by the home regulator for the fund (including the Passport Rules for the home economy of the fund).

(5) In determining its opinion in relation to compliance with the Passport Rules for this jurisdiction, as mentioned in paragraph (4)(a), ASIC must make a request, in writing, to the



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home regulator for the fund for the opinion of the home regulator on the interpretation of any provision of the Passport Rules for the home economy that is equivalent to a provision of the Passport Rules for this jurisdiction under consideration by ASIC.

(6) In determining its opinion in relation to a matter mentioned in paragraph (4)(c), ASIC must:
   (a) make a request, in writing, to the home regulator for the fund for the opinion of the home regulator on the matter; and
   (b) specify in the request the basis for ASIC's concerns about compliance with the law of the home economy; and
   (c) state a reasonable period during which ASIC will wait for a reply before acting; and
   (d) if the home regulator replies to the request within that period—give effect to the opinion of the home regulator on the matter.

(7) For the purposes of paragraph (3)(a), this subsection is satisfied if ASIC is of the opinion that the stop order is necessary, having regard to:
   (a) the impact on the members and prospective members of the fund of the failure, or potential failure, to comply with a law mentioned in subsection (4); and
   (b) any action taken, or that may be taken, by the home regulator for the fund.

*Hearings before certain stop orders made*

(8) Before making a stop order on the basis of subsections (4) and (7), ASIC must:
   (a) hold a hearing; and
   (b) give a reasonable opportunity to any interested people to make oral or written submissions to ASIC on whether an order should be made.

*ASIC must give notice if stop order made*

(9) If ASIC makes a stop order under this section, ASIC must give the operator of the fund a copy of the order as soon as reasonably practicable after it is made.



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## 1215B Interim stop orders

(1) ASIC may make an interim stop order, if ASIC is of the opinion that:

(a) any delay in making a stop order under section 1215 or 1215A would be prejudicial to the public interest; and

(b) either:

(i) in the case of an order that is to be made in relation to an Australian passport fund—one or more of the circumstances mentioned in subsection 1215(3) exists; or

(ii) in the case of an order that is to be made in relation to a notified foreign passport fund—one or more of the circumstances mentioned in subsection 1215A(3) exists.

(2) An interim stop order under subsection (1):

(a) may be made without holding a hearing, or during a hearing; and

(b) must be in writing; and

(c) lasts:

(i) if the stop order is made during a hearing—until ASIC makes a stop order after the conclusion of the hearing, or the interim stop order is revoked; and

(ii) otherwise—for 21 days after the day on which it is made, unless sooner revoked.

(3) If ASIC makes an interim stop order, ASIC must give the operator of the fund a copy of the order as soon as reasonably practicable after it is made.

## 1215C Revocation of stop order made under section 1215 or 1215A

(1) The operator of an Australian passport fund may make an application to ASIC, in accordance with this section, to have a stop order that is in force in relation to the fund revoked on the basis that there are no longer grounds for the order under subsection 1215(3).

(2) The operator of a notified foreign passport fund may make an application to ASIC, in accordance with this section, to have a stop order that is in force in relation to the fund revoked on the basis



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that there are no longer grounds for the order under subsection 1215A(3).

(3) An application under subsection (1) or (2) must:
  (a) be in the prescribed form; and
  (b) without limiting paragraph (a), set out the basis on which the operator of the fund believes that there are no longer grounds for the stop order.

(4) ASIC must:
  (a) revoke a stop order made under section 1215 in relation to an Australian passport fund if:
    (i) an application is made under subsection (1) of this section; and
    (ii) ASIC is of the opinion that there are no longer grounds for the stop order; and
  (b) revoke a stop order made under section 1215A in relation to a notified foreign passport fund if:
    (i) an application is made under subsection (2) of this section; and
    (ii) ASIC is of the opinion that there are no longer grounds for the stop order.

(5) Nothing in this section limits the circumstances in which ASIC may revoke or vary a stop order made under section 1215 or 1215A.

### 1215D Compliance with stop orders

(1) This section applies if:
  (a) ASIC gives the operator of an Australian passport fund a copy of a stop order under subsection 1215(5) or an interim stop order under subsection 1215B(3); or
  (b) ASIC gives the operator of a notified foreign passport fund a stop order under subsection 1215A(9) or an interim stop order under subsection 1215B(3).

(2) The operator must not contravene the order.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).



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(3) The operator must take reasonable steps to ensure that any other person who might engage in conduct that is contrary to the order, is aware of the order.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(4) A person who is aware of the order must not engage in conduct that is contrary to the order.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

# Part 8A.7—Deregistration and denotification

## Division 1—Deregistration of Australian passport funds

### Subdivision A—Voluntary deregistration

#### 1216 Application to deregister

(1) The operator of an Australian passport fund may lodge an application for deregistration of the fund as an Australian passport fund.

(2) The application must be in the prescribed form.

#### 1216A ASIC to deregister

(1) On an application under section 1216, ASIC must deregister a fund as an Australian passport fund if ASIC is satisfied that:
   (a) there are no members of the fund who became members (whether in this jurisdiction or any host economy for the fund) after the fund became an Australian passport fund; and
   (b) there are no members of the fund who became members (whether in this jurisdiction or any host economy for the fund) on the expectation that the fund would become an Australian passport fund.

(2) For the purposes of subsection (1), ignore any member of the fund that:
   (a) is, or has at any time been, the operator of the fund; or



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(b) is a related party of an entity that is, or has at any time been, the operator of the fund.

### 1216B When is there an expectation that a fund would become an Australian passport fund?

For the purposes of this Act (including the Passport Rules for this jurisdiction), a person becomes a member of a fund on the ***expectation*** that it would become an Australian passport fund if:

(a) a representation has been made by the fund or the operator of the fund in any document, or other means of communication, that might reasonably be expected to be available to persons considering acquiring an interest in the fund that the fund will become, or that it is intended or expected that the fund will become, an Australian passport fund; and

(b) the person acquires an interest in the fund after that representation was made.

## Subdivision B—Deregistration initiated by ASIC

### 1216C Deregistration—initiated by ASIC

(1) ASIC may decide to deregister an Australian passport fund if ASIC is of the opinion that one or more of the following has not been, is not being or is not likely to be complied with in relation to an Australian passport fund (whether in this jurisdiction or in any other place):

(a) this Act (including the Passport Rules for this jurisdiction);

(b) the ASIC Act.

(2) However, ASIC must not decide to deregister an Australian passport fund if ASIC is of the opinion that to do so would not be in the interests of:

(a) members of the fund who became members (whether in this jurisdiction or any host economy for the fund) after the fund became an Australian passport fund; and

(b) members of the fund who became members (whether in this jurisdiction or any host economy for the fund) on the expectation that the fund would become an Australian passport fund.



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(3) For the purposes of subsection (2), ignore any member of the fund that:
  (a) is, or has at any time been, the operator of the fund; or
  (b) is a related party of an entity that is, or has at any time been, the operator of the fund.

Note: See section 1216B for the circumstances in which a person becomes a member of a fund on the expectation that it would become an Australian passport fund.

(4) Before deciding to deregister the fund as an Australian passport fund, ASIC must give the operator of the fund a written notice that requires the operator to show cause, at a hearing before a specified person, why the fund should not be deregistered as an Australian passport fund.

(5) The notice must specify:
  (a) the grounds on which it is proposed to deregister the fund as an Australian passport fund; and
  (b) a reasonable time and place at which the hearing is to be held.

However, if the operator consents, the person conducting the hearing may fix a different time or place.

(6) The person conducting the hearing must:
  (a) give the operator an opportunity to be heard at the hearing; and
  (b) give ASIC:
    (i) a report about the hearing; and
    (ii) a recommendation about the grounds in the notice on which it is proposed to deregister the fund.

(7) After considering the report and recommendation, ASIC may decide to:
  (a) take no further action in relation to the matter and give written advice of that decision to the operator; or
  (b) deregister the fund as an Australian passport fund.

(8) Neither of the following is a legislative instrument:
  (a) a notice under subsection (4);
  (b) a report under subsection (6) (if it is in writing).



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## Subdivision C—Process for deregistration

### 1216D Process for deregistration

*Notice before deregistration*

(1) If ASIC proposes to deregister a fund as an Australian passport fund under subsection 1216A(1) or paragraph 1216C(7)(b), ASIC must give written notice setting out the date on which ASIC proposes to deregister the fund as an Australian passport fund to:
  (a) the operator of the fund; and
  (b) each host regulator for the fund.

(2) The notice must be given at least 5 business days before the fund is deregistered.

*Deregistration*

(3) The fund is deregistered as an Australian passport fund by including an annotation on the Register of Passport Funds that the fund has been deregistered. The fund ceases to be an Australian passport fund on the day on which the annotation is made.

*Notice of deregistration*

(4) If ASIC deregisters a fund as an Australian passport fund under subsection 1216A(1) or paragraph 1216C(7)(b), ASIC must give written notice that the fund has been deregistered and of the date of deregistration to:
  (a) the operator of the fund; and
  (b) each host regulator for the fund.

(5) The notice must be given within 5 business days after the fund is deregistered.



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## Division 2—Denotification of notified foreign passport funds

### Subdivision A—Voluntary denotification

#### 1216E Application to be removed as a notified foreign passport fund

(1) The operator of a notified foreign passport fund may lodge an application for the fund to be removed as a notified foreign passport fund.

(2) The application must be in the prescribed form.

#### 1216F ASIC to remove fund as a notified foreign passport fund

(1) On an application under section 1216E, ASIC must remove a fund as a notified foreign passport fund if ASIC is satisfied that:
   (a) there are no members of the fund who became members in this jurisdiction after the fund became a notified foreign passport fund; and
   (b) there are no members of the fund who became members in this jurisdiction on the expectation that the fund would become a notified foreign passport fund.

(2) For the purposes of subsection (1), ignore any member of the fund that:
   (a) is, or has at any time been, the operator of the fund; or
   (b) is a related party of an entity that is, or has at any time been, the operator of the fund.

#### 1216G When is there an expectation that a fund would become a notified foreign passport fund?

For the purposes of this Act (including the Passport Rules for this jurisdiction), a person becomes a member of a fund on the ***expectation*** that it would become a notified foreign passport fund if:

(a) a representation has been made by the fund or the operator of the fund in any document, or other means of communication, that might reasonably be expected to be available to persons considering acquiring an interest in the fund that the fund



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will become, or that it is intended or expected that the fund will become, a notified foreign passport fund; and

(b) the person acquires an interest in the fund after that representation was made.

## Subdivision B—Notified foreign passport fund deregistered in the fund's home economy

### 1216H ASIC to remove a fund as a notified foreign passport fund

ASIC must remove a fund as a notified foreign passport fund if the home regulator for the fund notifies ASIC that the fund has been deregistered as a passport fund in the home economy for the fund.

## Subdivision C—Process for removal as a notified foreign passport fund

### 1216J Process for removal as a notified foreign passport fund

*Notice before removal*

(1) If ASIC proposes to remove a fund as a notified foreign passport fund under section 1216F or 1216H, ASIC must give written notice setting out the date on which ASIC proposes to remove the fund as a notified foreign passport fund to:

(a) the operator of the fund; and

(b) the home regulator for the fund and each other host regulator for the fund.

(2) The notice must be given at least 5 business days before the fund is removed.

*Removing the fund as a notified foreign passport fund*

(3) The fund is removed as a notified foreign passport fund by including an annotation on the Register of Passport Funds to that effect. The fund ceases to be a notified foreign passport fund on the day on which the annotation is made.



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*Notice of removal*

(4) If ASIC removes a fund as a notified foreign passport fund under section 1216F or 1216H, ASIC must give written notice that the fund has been removed and of the date of removal to:
  (a) the operator of the fund; and
  (b) the home regulator for the fund and each other host regulator for the fund.

(5) The notice must be given within 5 business days after the fund is removed.

## Division 3—Continued application of the Corporations legislation

### 1216K ASIC's power to continue the application of the Corporations legislation

*Declarations on continued application of the Corporations legislation*

(1) ASIC may:
  (a) declare that the Corporations legislation continues to apply:
    (i) in relation to a fund that has been deregistered as an Australian passport fund or removed as a notified foreign passport fund; and
    (ii) to an entity in relation to a fund that has been deregistered as an Australian passport fund or removed as a notified foreign passport fund; and
  (b) declare that the Corporations legislation continues to apply:
    (i) in relation to a fund that has been deregistered as an Australian passport fund or removed as a notified foreign passport fund; and
    (ii) to an entity in relation to a fund that has been deregistered as an Australian passport fund or removed as a notified foreign passport fund;

  as if specified provisions were omitted, modified or varied as specified in the declaration.

(2) The continued application of the Corporations legislation may:



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(a) apply to all or specified provisions of the Corporations legislation; and
(b) apply to all entities, a specified class of entities or a specified entity; and
(c) apply to all former passport funds, a specified class of former passport funds or a specified former passport fund; and
(d) relate to any other matter generally or as specified.

*Declarations relating to all or a class of entities or passport funds*

(3) A declaration that relates to all entities, a specified class of entities, all former passport funds or a specified class of former passport funds, must be made by legislative instrument.

*Declarations relating to specified entities or passport funds*

(4) A declaration that relates to a specified entity or a specified former passport fund must be made by notifiable instrument.

(5) ASIC must also:
(a) give a copy of a declaration that relates to a specified entity to the entity; and
(b) give a copy of a declaration that relates to a specified former passport fund to the most recent operator of the fund.

ASIC must do so as soon as is reasonably practicable after the declaration is made.

### 1216L Regulations may continue the application of the Corporations legislation

The regulations may:
(a) provide that the Corporations legislation continues to apply:
(i) in relation to a fund, all funds of a specified class or all funds that have been deregistered as Australian passport funds or removed as notified foreign passport funds; and
(ii) to an entity, all entities of a specified class or all entities in relation to a fund, all funds of a specified class or all funds that have been deregistered as Australian passport funds or removed as notified foreign passport funds; and
(b) provide that the Corporations legislation continues to apply:



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(i) in relation to a fund, all funds of a specified class or all funds that have been deregistered as Australian passport funds or removed as notified foreign passport funds; and

(ii) to an entity, all entities of a specified class or all entities in relation to a fund, all funds of a specified class or all funds that have been deregistered as Australian passport funds or removed as notified foreign passport funds; and

as if specified provisions were omitted, modified or varied as specified in the regulations.

# Part 8A.8—Exemptions and modifications

## 1217 ASIC's power to make exemptions and declare modifications etc. in relation to this Chapter

*Exemptions and declarations on application of this Chapter*

(1) ASIC may:

(a) exempt an entity from a provision of this Chapter; or

(b) declare that this Chapter applies to an entity as if specified provisions were omitted, modified or varied as specified in the declaration.

(2) The exemption or declaration may:

(a) apply to all or specified provisions of this Chapter; and

(b) apply to all entities, a specified class of entities or a specified entity; and

(c) apply to all passport funds, a specified class of passport funds or a specified passport fund; and

(d) relate to any other matter generally or as specified.

*Imposition of conditions on exemption*

(3) An exemption may apply unconditionally or subject to specified conditions.

(4) An entity to whom a condition specified in an exemption applies must comply with the condition.



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(5) The Court may order the entity to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.

*Exemptions and declarations relating to all or a class of entities or passport funds*

(6) An exemption or declaration that relates to all entities, a specified class of entities, all passport funds or a specified class of passport funds, must be made by legislative instrument.

*Exemptions and declarations relating to specified entities or passport funds*

(7) An exemption or declaration that relates to a specified entity or a specified passport fund must be made by notifiable instrument.

(8) ASIC must also:
  (a) give a copy of an exemption or declaration that relates to a specified entity to the entity; and
  (b) give a copy of an exemption or declaration that relates to a specified passport fund to the operator of the fund.

ASIC must do so as soon as is reasonably practicable after the exemption or declaration is made.

*Definitions*

(9) In this section:

***provisions of this Chapter*** include:
  (a) regulations made for the purposes of this Chapter; and
  (b) definitions in this Act or the regulations as they apply to references in:
    (i) this Chapter; or
    (ii) regulations made for the purposes of this Chapter.

## 1217A ASIC's power to make exemptions and declare modifications etc. in relation to the Passport Rules

*Exemptions and declaration on Passport Rules*

(1) ASIC may:



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(a) exempt an entity from a provision of the Passport Rules for this jurisdiction; or

(b) declare that the Passport Rules for this jurisdiction apply to an entity as if specified provisions were omitted, modified or varied as specified in the declaration.

(2) The exemption or declaration may:

(a) apply to all or specified provisions of the Passport Rules for this jurisdiction; and

(b) apply to all entities, a specified class of entities or a specified entity; and

(c) apply to all passport funds, a specified class of passport funds or a specified passport fund; and

(d) relate to any other matter generally or as specified.

(3) However:

(a) ASIC may only give an exemption or make a declaration under subsection (1) in relation to an Australian passport fund if each host regulator for the fund has agreed to the exemption being given or the declaration being made; and

(b) ASIC may only give an exemption or make a declaration under subsection (1) in relation to a foreign passport fund if the home regulator for the fund has granted an equivalent exemption or made a similar omission, modification or variation of the Passport Rules for the home economy for the fund.

*Imposition of conditions on exemption*

(4) An exemption may apply unconditionally or subject to specified conditions.

(5) An entity to whom a condition specified in an exemption applies must comply with the condition.

(6) The Court may order the entity to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.



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*Exemptions and declarations relating to all or a class of entities or passport funds*

(7) An exemption or declaration that relates to all entities, a specified class of entities, all passport funds or a specified class of passport funds, must be made by legislative instrument.

*Exemptions and declarations relating to specified entities or passport funds*

(8) An exemption or declaration that relates to a specified entity or a specified passport fund must be made by notifiable instrument.

(9) ASIC must also:
   (a) give a copy of an exemption or declaration that relates to a specified entity to the entity; and
   (b) give a copy of an exemption or declaration that relates to a specified passport fund to the operator of the fund.

ASIC must do so as soon as is reasonably practicable after the exemption or declaration is made.

## 1217B Exemptions and modification by regulations

The regulations may:
(a) exempt from all or specified provisions of the Corporations legislation (which includes this Chapter and the Passport Rules for this jurisdiction):
   (i) a passport fund, all passport funds of a specified class or all passport funds; or
   (ii) an entity, all entities of a specified class or all entities, in relation to a passport fund, all passport funds of a specified class or all passport funds;
(b) provide that the Corporations legislation (which includes this Chapter and the Passport Rules for this jurisdiction) applies in relation to:
   (i) a passport fund, all passport funds of a specified class or all passport funds; or
   (ii) an entity, all entities of a specified class or all entities, in relation to a passport fund, all passport funds of a specified class or all passport funds;



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as if specified provisions of the Corporations legislation were omitted, modified or varied as specified in the regulations.



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# Schedule 2—Amendments consequential on Chapter 8A

## *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*

### 1 Section 5

Insert:

> ***managed investment scheme*** has the same meaning as in the *Corporations Act 2001*.
>
> Note: A notified foreign passport fund is a managed investment scheme for the purposes of that Act, see section 1213E of that Act.
>
> ***notified foreign passport fund*** has the same meaning as in the *Corporations Act 2001*.

### 2 Section 5 (definition of *security*)

Omit "subsections 92(3) and (4)", substitute "subsections 92(2A), (3) and (4)".

### 3 Section 5 (note to the definition of *security*)

After "managed investment scheme", insert "(or a notified foreign passport fund which is a managed investment scheme for the purposes of that Act, see section 1213E of that Act)".

### 4 Subsection 6(2) (note)

Omit "Note", substitute "Note 1".

### 5 At the end of subsection 6(2)

Add:

> Note 2: For the purposes of item 35 of the table, a notified foreign passport fund is a managed investment scheme, see the definition of ***managed investment scheme*** in section 5.



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## *Australian Securities and Investments Commission Act 2001*

### 6 After subsection 11(16)

Insert:

(16A) ASIC has the functions and powers of a home regulator or a host regulator for a passport fund under the Memorandum of Cooperation. However, ASIC is not under a duty to perform such functions or exercise such powers.

### 7 Paragraph 11(17)(c)

Omit "or (14)", substitute ", (14) or (16A)".

### 8 Subsection 12BAA(7) (note)

Omit "Note", substitute "Note 1".

### 9 At the end of subsection 12BAA(7)

Add:

Note 2: A notified foreign passport fund is a managed investment scheme for the purposes of this Act and the Corporations Act, see subsection 5(2) of this Act and section 1213E of the Corporations Act.

### 10 Paragraph 12BAB(7)(c)

Repeal the paragraph, substitute:

(c) in relation to securities or interests in managed investment schemes—underwriting the securities or interests;

### 11 At the end of subsection 12BAB(7)

Add:

Note: A notified foreign passport fund is a managed investment scheme for the purposes of this Act and the Corporations Act, see subsection 5(2) of this Act and section 1213E of the Corporations Act.

### 12 After paragraph 12BAB(14)(b)

Insert:

(ba) the operation of a notified foreign passport fund;

(bb) the holding of the assets of a notified foreign passport fund;



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### 13 At the end of section 12BL

Add:

Note: A notified foreign passport fund is a managed investment scheme for the purposes of this Act and the Corporations Act, see subsection 5(2) of this Act and section 1213E of the Corporations Act.

### 14 Part 3A (heading)

Repeal the heading, substitute:

## Part 3A—Enforceable undertakings

### 15 Section 93A (heading)

Repeal the heading, substitute:

#### 93A Undertakings—registered schemes

### 16 At the end of Part 3A

Add:

#### 93B Undertakings—notified foreign passport funds

(1) ASIC may accept a written undertaking given by the operator of a notified foreign passport fund in connection with a matter:
  (a) concerning the fund; and
  (b) in relation to which ASIC has a power or function under the corporations legislation (other than the excluded provisions).

(2) The operator may withdraw or vary the undertaking at any time, but only with ASIC's consent.

(3) If ASIC considers that the operator has breached any of the terms of the undertaking, ASIC may apply to the Court for an order under subsection (4).

(4) If the Court is satisfied that the operator has breached a term of the undertaking, the Court may make all or any of the following orders:
  (a) an order directing the operator to comply with that term of the undertaking;



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(b) an order directing the operator to transfer to fund property an amount up to the amount of any financial benefit that the operator has obtained directly or indirectly and that is reasonably attributable to the breach;

(c) any order that the Court considers appropriate directing the operator to compensate any person who has suffered loss or damage as a result of the breach;

(d) any other order that the Court considers appropriate.

(5) ASIC must keep a record of the full text of the undertaking.

(6) ASIC must make available to a person who asks for it a copy of the text of the undertaking, but ASIC must delete from the copy information:

(a) that the operator has asked it not to release; and

(b) that ASIC is satisfied:

(i) is commercial in confidence; or

(ii) should not be disclosed because it would be against the public interest to do so; or

(iii) consists of personal details of an individual.

(7) If ASIC makes available a copy that has information deleted from it, the copy must include a note stating that information has been deleted.

### 17 After subsection 127(3)

Insert:

(3AA) For the purposes of subsection (1), the disclosure of information by a person to enable or assist the performance of functions, or exercise of powers, by a home regulator or a host regulator for a passport fund under the Memorandum of Cooperation is authorised use and disclosure of the information.

## *Corporations Act 2001*

### 18 Section 9

Insert:

***Australian member***: a person is an ***Australian member*** of a notified foreign passport fund if:



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(a) the person holds an interest in the fund that was acquired in this jurisdiction; or

(b) the person is ordinarily resident in this jurisdiction and holds an interest in the fund.

***Australian passport fund*** means a managed investment scheme:

(a) that is registered under section 601EB as a registered scheme and also registered as an Australian passport fund under Part 8A.3; and

(b) that is not deregistered as a registered scheme and an Australian passport fund under Division 2 of Part 5C.10, or deregistered as an Australian passport fund under Division 1 of Part 8A.7.

## 19 Section 9 (paragraph (a) of the definition of *cash management trust interest*)

After "registered scheme", insert "or a notified foreign passport fund".

## 20 Section 9 (paragraph (c) of the definition of *civil penalty order*)

Omit "or 1317HC", substitute ", 1317HC or 1317HE".

## 21 Section 9 (definition of *consolidated entity*)

Omit "registered managed investment scheme", substitute "registered scheme".

## 22 Section 9 (note at the end of the definition of *constitution*)

Omit "Note", substitute "Note 1".

## 23 Section 9 (at the end of the definition of *constitution*)

Add:

Note 2: The constituent document (as defined in the Passport Rules for this jurisdiction) for a notified foreign passport fund is taken under section 1213E to be the constitution of the fund as a managed investment scheme.

## 24 Section 9 (subparagraph (b)(iii) of the definition of *continuously quoted securities*)

Omit "section 340 or 341", substitute "section 340, 340A, 341 or 341A".



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## 25 Section 9 (definition of *entity*)

Omit "Chapter 2E", substitute "Chapters 2E and 8A".

## 26 Section 9

Insert:

***expectation***:

(a) a person has an ***expectation*** that a managed investment scheme will become an Australian passport fund only as set out in section 1216B; and

(b) a person has an ***expectation*** that a fund will become a notified foreign passport fund only as set out in section 1216G.

## 27 Section 9 (definition of *extract of particulars*)

Omit "a company or a registered scheme", substitute "a company, registered scheme or notified foreign passport fund".

## 28 Section 9 (paragraph (a) of the definition of *extract of particulars*)

Repeal the paragraph, substitute:

(a) some or all of the particulars in relation to the company, scheme or fund that are recorded in a register that ASIC maintains, or ensures is maintained, under subsection 1214(1) or 1274(1);

## 29 Section 9 (definition of *financial year*)

Repeal the definition, substitute:

***financial year***, when used in a provision outside Schedule 2, has the following meaning:

(a) for a company, registered scheme or disclosing entity (other than a notified foreign passport fund)—the meaning given by section 323D;

(b) for a notified foreign passport fund—the meaning given by section 323DAA.

## 30 Section 9

Insert:



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***foreign passport fund*** means a passport fund the home economy for which is not Australia.

***foreign passport fund product***, when used in a provision outside Chapter 7, has the same meaning as in Chapter 7.

***fund property*** of a notified foreign passport fund means:

(a) contributions of money or money's worth to the fund; and

(b) money that forms part of the fund property under provisions of this Act or the ASIC Act; and

(c) money borrowed or raised by the operator of the fund for the purposes of the fund; and

(d) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a), (b) or (c); and

(e) income and property derived, directly or indirectly, from contributions, money or property referred to in paragraph (a), (b), (c) or (d).

Note: Paragraph (a)—if what a member contributes to a fund is rights over property, the rights in the property that the member retains do not form part of the fund property.

***home economy***, for a passport fund, when used in a provision outside Chapter 8A, has the same meaning as in Chapter 8A.

***home regulator***, for a passport fund, when used in a provision outside Chapter 8A, has the same meaning as in Chapter 8A.

***host economy***, for a passport fund, when used in a provision outside Chapter 8A, has the same meaning as in Chapter 8A.

***host regulator***, for a passport fund, when used in a provision outside Chapter 8A, has the same meaning as in Chapter 8A.

## 31 Section 9 (definition of *interest*)

After "in a managed investment scheme", insert "(including a notified foreign passport fund)".

## 32 Section 9

Insert:

***investment*** in a notified foreign passport fund means:



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(a) an interest in the fund; or
(b) a legal or equitable interest in an interest in the fund; or
(c) an option to acquire (whether by way of issue or transfer) an investment in the fund covered by paragraph (a) or (b); or
(d) an option to dispose of an investment in the fund covered by paragraph (a) or (b); or
(e) an interest a person holds under an arrangement that is a derivative if:
  (i) the consideration to be provided under the arrangement; or
  (ii) the value of the arrangement;
  is ultimately determined, derived from or varies by reference to an investment in the fund covered by paragraph (a), (b), (c) or (d); or
(f) an investment in the operator of the fund.

To avoid doubt, the consideration to be provided under, or the value of, an arrangement in relation to an index is taken not to be ultimately determined, derived from or vary by reference to an investment in the fund merely because the investment is taken into account in determining the value of the index.

### 33 Section 9 (definition of *listing market*)

Omit "or (1A)", substitute ", (1A) or (1B)".

### 34 Section 9 (note after paragraph (c) of the definition of *managed investment scheme*)

Repeal the note.

### 35 Section 9 (note after paragraph (i) of the definition of *managed investment scheme*)

Repeal the note.

### 36 Section 9 (note at the end of the definition of *managed investment scheme*)

Omit "Note", substitute "Note 1".



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## 37 Section 9 (at the end of the definition of *managed investment scheme*)

Add:

Note 2: Paragraphs (c) and (i) have an extended meaning in relation to Chapter 8 (see subsection 1200A(3)).

Note 3: Under section 1213E, a notified foreign passport fund is to be treated as a managed investment scheme for the purposes of this Act.

## 38 Section 9

Insert:

***Memorandum of Cooperation***, when used in a provision outside Chapter 8A, has the same meaning as in Chapter 8A.

***notified foreign passport fund***: see section 1213C.

***operator***, of a passport fund, when used in a provision outside Chapter 8A, has the same meaning as in Chapter 8A.

***passport fund***, when used in a provision outside Chapter 8A, has the same meaning as in Chapter 8A.

***Passport Rules***: see section 1211A.

## 39 Section 9 (definition of *related party*)

Repeal the definition, substitute:

***related party***:

(a) when used in Chapter 2E—has the meaning given by section 228; and

(b) when used in Part 6D.3A—has the meaning given by subsection 738G(3); and

(c) when used in Division 2 of Part 5C.10, Chapter 8A and the Passport Rules for this jurisdiction—has the meaning given by the Passport Rules for this jurisdiction.

## 40 Section 9 (definition of *relevant financial market*)

Omit “or listed registered scheme,”, substitute “listed registered scheme or listed notified foreign passport fund”.



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### 41 Section 9 (paragraphs (a) and (b) of the definition of *relevant financial market*)

Omit "the company or scheme", substitute "the company, scheme or fund".

### 42 Section 9 (definition of *relevant market operator*)

Omit "or listed registered scheme,", substitute "listed registered scheme or listed notified foreign passport fund".

### 43 Section 9 (paragraphs (a) and (b) of the definition of *relevant market operator*)

Omit "the company or scheme", substitute "the company, scheme or fund".

### 44 Section 9

Insert:

> ***responsible holding party*** for an Australian passport fund or a notified foreign passport fund means the responsible holding party of the assets of the fund under the Passport Rules for this jurisdiction.

### 45 Section 9 (definition of *return of particulars*)

Omit "a company or a registered scheme", substitute "a company, registered scheme or notified foreign passport fund".

### 46 Section 9 (paragraph (a) of the definition of *return of particulars*)

Repeal the paragraph, substitute:

(a) some or all of the particulars in relation to the company, scheme or fund that are recorded in a register that ASIC maintains, or ensures is maintained, under subsection 1214(1) or 1274(1);

### 47 Section 9 (definition of *substantial holding*)

Repeal the definition, substitute:

> ***substantial holding***: a person has a ***substantial holding*** in a body corporate, listed registered scheme or listed notified foreign passport fund, if:



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(a) the total votes attached to voting shares in the body or voting interests in the scheme or fund, in which they or their associates:

(i) have relevant interests; and

(ii) would have a relevant interest but for subsection 609(6) (market traded options) or 609(7) (conditional agreements);

is 5% or more of the total number of votes attached to voting shares in the body or interests in the scheme or fund; or

(b) the person has made a takeover bid for voting shares in the body or voting interests in the scheme, and the bid period has started and not yet ended.

Note 1: For ***relevant interest***, see section 608.

Note 2: Paragraph (b) does not apply in relation to a notified foreign passport fund.

## 48 Section 9 (definition of *this Act*)

Omit "and the Insolvency Practice Rules", substitute ", the Insolvency Practice Rules and the Passport Rules for this jurisdiction".

## 49 Section 9 (definition of *voting interest*)

After "managed investment scheme", insert "(including a notified foreign passport fund)".

## 50 Section 9 (paragraph (c) of the definition of *voting interest*)

After "the scheme", insert "or fund".

## 51 Subsection 9A(2)

Omit "a managed investment scheme", substitute "a registered scheme or notified foreign passport fund".

## 52 Paragraph 9A(3)(a)

Omit "the body or responsible entity (as the case requires)", substitute "the offering entity".

## 53 Paragraphs 9A(3)(b) and (c)

Omit "the body or responsible entity", substitute "the offering entity".



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## 54 After subsection 9A(3)

Insert:

(3A) For the purposes of subsection (3), ***offering entity*** means the following:

(a) in relation to an offer of securities in a body that is not a registered scheme or a notified foreign passport fund—the body;

(b) in relation to an offer of interests in a registered scheme—the responsible entity of the scheme;

(c) in relation to an offer of interests in a notified foreign passport fund—the operator of the fund.

## 55 Section 64A

Omit "Chapter 2E", substitute "Chapters 2E and 8A".

## 56 After subsection 92(2)

Insert:

(2A) In Part 1.2A, ***securities*** means:

(a) shares in a body; or

(b) debentures of a body; or

(c) interests in a registered scheme or a notified foreign passport fund; or

(d) legal or equitable rights or interests in:

(i) shares; or

(ii) debentures; or

(iii) interests in a registered scheme or a notified foreign passport fund; or

(e) options to acquire (whether by way of issue or transfer) a security covered by paragraph (a), (b), (c) or (d).

It does not cover:

(f) a derivative (as defined in Chapter 7), other than an option to acquire by way of transfer a security covered by paragraph (a), (b), (c) or (d); or

(g) a market traded option.

Note 1: A derivative does not include an option to acquire a security by way of issue (see the note to subsection (1)).

Note 2: Section 9 defines ***body***.



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## 57 Subsection 92(3)

Repeal the subsection, substitute:

(3) In Chapters 6 to 6CA (inclusive):

***securities*** means:

(a) shares in a body; or

(b) debentures of a body; or

(c) interests in a registered scheme; or

(d) when used in Chapter 6C—an interest in a listed notified foreign passport fund; or

(e) legal or equitable rights or interests in:

(i) shares; or

(ii) debentures; or

(iii) interests in a registered scheme or interests in a fund mentioned in paragraph (d); or

(f) options to acquire (whether by way of issue or transfer) a security covered by paragraph (a), (b), (c), (d) or (e).

It does not cover:

(g) a derivative (as defined in Chapter 7), other than an option to acquire by way of transfer a security covered by paragraph (a), (b), (c), (d) or (e); or

(h) a market traded option; or

(i) when used outside Chapter 6C—an interest in a notified foreign passport fund.

Note 1: A derivative does not include an option to acquire a security by way of issue (see the note to subsection (1)).

Note 2: Section 9 defines ***body***.

## 58 Paragraph 111AD(1)(a)

After “111AFA,”, insert “111AFB,”.

## 59 Section 111AE (heading)

Repeal the heading, substitute:



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### 111AE Securities of bodies or undertakings included in a licensed market's official list

## 60 Paragraph 111AE(1)(a)

After "a body corporate", insert "(other than a notified foreign passport fund)".

## 61 After subsection 111AE(1A)

Insert:

(1B) If:

(a) an undertaking to which interests in a notified foreign passport fund relate is, with the agreement, consent or acquiescence of the operator of the fund, included in the official list of a prescribed financial market; and

(b) the market's listing rules (according to their terms) apply to the fund in relation to a class (which may be some or all) of foreign passport fund products that relate to the fund;

foreign passport fund products in that class that relate to the fund are ***ED securities***, and that market is a ***listing market*** in relation to the fund.

## 62 After section 111AFA

Insert:

### 111AFB Foreign passport fund products held by 100 or more persons

Foreign passport fund products in a class of foreign passport fund products issued by a body are ***ED securities*** if 100 or more people who reside in this jurisdiction hold foreign passport fund products in that class.

## 63 Section 111AH (heading)

Repeal the heading, substitute:



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### 111AH When a person holds securities for the purposes of sections 111AF, 111AFA, 111AFB and 111AG

## 64 After subsection 111AH(1)

Insert:

(1A) For the purposes of section 111AFB, a person holds securities in a notified foreign passport fund if, and only if:

(a) the person is registered as the holder of securities in the fund on a register maintained by the operator of the fund under the law of the home economy for the fund; or

(b) the person is entitled to be so registered.

## 65 Subsection 111AH(2)

After "111AFA", insert ", 111AFB".

## 66 Section 111AX

Omit "section 340, 341", substitute "section 340, 340A, 341, 341A".

## 67 Subsection 111L(1) (table item 11, column 2)

Omit "and registered schemes", substitute ", registered schemes and notified foreign passport funds".

## 68 Subsection 168(1) (note 1A)

Omit "or registered scheme", substitute ", listed registered scheme or listed notified foreign passport fund".

## 69 Section 178 (heading)

Repeal the heading, substitute:

### 178 Overseas branch registers—companies

## 70 Subsection 178(1)

After "a branch register of members", insert "of the company".

## 71 At the end of Part 2C.1

Add:



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### 178AA Overseas branch registers—Australian passport funds

(1) An Australian passport fund may keep a branch register of members of the fund outside Australia.

(2) If an Australian passport fund keeps an overseas branch register under subsection (1):

(a) the fund must keep the branch register in the same manner as this Act requires the fund to keep the register kept under section 169 (the ***principal register***); and

(b) the fund must enter in the principal register the details contained in the branch register; and

(c) the fund must distinguish interests that are registered in the branch register from the interests registered in the principal register.

## 72 At the end of Division 1 of Part 2D.1

Add:

### 190C Division does not apply in relation to notified foreign passport funds or their operators

This Division does not apply to an act or omission by a person, if:

(a) the act or omission is in the person's capacity as a director, other officer or employee of a notified foreign passport fund; or

(b) the act or omission:

(i) is in the person's capacity as a director, other officer or employee of the operator of a notified foreign passport fund; and

(ii) is connected with the operation of the fund.

## 73 After subsection 197(3)

Insert:

(3A) This section does not apply to a liability incurred by a corporation that is:

(a) a notified foreign passport fund; or

(b) the operator of a notified foreign passport fund acting in that capacity.



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## 74 Paragraph 199A(2)(b)

Omit "or 1317HC", substitute ", 1317HC or 1317HE".

## 75 Subsection 199A(3) (note 1)

Omit "or 1317HC", substitute ", 1317HC or 1317HE".

## 76 At the end of subsection 206B(6)

Add:

; or (c) being a director of a passport fund, or of an operator of a passport fund; or

(d) being concerned in the management of a passport fund.

## 77 Subparagraph 206EAA(1)(a)(ii)

Omit "company; and", substitute "company; or".

## 78 At the end of paragraph 206EAA(1)(a)

Add:

(iii) being a director of a passport fund, or of the operator of a passport fund; or

(iv) being concerned in the management of a passport fund; or

(v) carrying on activities that the Court is satisfied are substantially similar to being a director of a passport fund, or of the operator of a passport fund, or being concerned in the management of a passport fund; and

## 79 Paragraph 206EAA(3)(a)

After "a foreign company", insert "or a passport fund (as the case requires)".

## 80 Section 206H (heading)

Repeal the heading, substitute:

### 206H Limited application of Part to foreign companies

## 81 After section 206H

Insert:



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### 206HAA Limited application of Part to notified foreign passport funds and their operators

This Part (except for subsection 206B(6) and section 206EAA) does not apply in respect of an act or omission by a person while they are managing a corporation that is either the operator of a notified foreign passport fund, or a notified foreign passport fund, unless the act or omission occurred in connection with:

(a) the operator or the fund carrying on business in this jurisdiction; or

(b) an act that the operator or the fund does, or proposes to do, in this jurisdiction; or

(c) a decision by the operator or the fund whether or not to do, or refrain from doing, an act in this jurisdiction.

## 82 Section 247A (heading)

Repeal the heading, substitute:

### 247A Order for inspection of books of company or registered scheme

## 83 Subsection 247A(1)

Omit “registered managed investment scheme”, substitute “registered scheme”.

## 84 Part 2G.4 (heading)

Repeal the heading, substitute:

# Part 2G.4—Meetings of members of registered schemes

## 85 Subsection 285(1) (heading)

Repeal the heading, substitute:

*Obligations under this Chapter—companies, registered schemes and disclosing entities*

## 86 Subsection 285(1) (table heading)

Repeal the heading, substitute:



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**Annual financial reporting for companies, registered schemes and disclosing entities**

## 87 After subsection 285(1)

Insert:

*Obligations under this Chapter—notified foreign passport funds*

(1A) Under this Chapter, all notified foreign passport funds must provide reports on financial matters to Australian members of the fund (see section 314A) and to ASIC (see section 319).

## 88 At the end of section 285

Add:

*Application to notified foreign passport funds*

(4) For the purposes of applying this Chapter to a notified foreign passport fund:
  (a) the operator of the fund is responsible for the performance of obligations in respect of the fund; and
  (b) the debts incurred in operating the fund are taken to be the debts of the fund.

## 89 Section 314 (heading)

Repeal the heading, substitute:

**314 Annual financial reporting by companies, registered schemes and disclosing entities to members**

## 90 Subsection 314(1A) (note)

Repeal the note.

## 91 After section 314

Insert:



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## 314A Annual financial reporting by notified foreign passport funds to Australian members

(1) A notified foreign passport fund must report to Australian members of the fund for each financial year for the fund by providing Australian members with each of the following:

(a) a copy of a report for the fund for the year, prepared in accordance with the financial reporting requirements applying to the fund under the Passport Rules for the home economy for the fund;

(b) a copy of each auditor's report that relates to the report mentioned in paragraph (a).

Note: Under the Passport Rules for this jurisdiction, the operator of a notified foreign passport fund must ensure that the financial report for the fund is audited and an audit report prepared.

(2) A notified foreign passport fund may provide the reports for a financial year by doing all of the following:

(a) sending, to each Australian member of the fund who has made the election referred to in paragraph (3)(a):

(i) a hard copy of the reports; or

(ii) if the member has elected to receive the reports as an electronic copy in accordance paragraph (3)(c)—an electronic copy of the reports;

(b) making a copy of the reports readily accessible, in English, on a website;

(c) directly notifying, in writing, all members who did not make the election referred to in paragraph (3)(a) that the copy is accessible on the website, and specifying the direct address on the website where the reports may be accessed.

Note: A direct address may be specified, for example, by specifying the URL of the reports.

(3) For the purposes of paragraph (2)(a), a notified foreign passport fund must, on at least one occasion, directly notify in writing each Australian member of the fund that:

(a) the member may elect to receive, free of charge, a copy of the reports for each financial year for the fund; and

(b) if the member does not so elect—the member may access the report on a specified website; and



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(c) if the member elects to receive reports under paragraph (a) and the fund offers to send reports either as a hard copy or an electronic copy—the member may elect to receive the copy as either a hard copy or an electronic copy; and

(d) if the member elects to receive reports under paragraph (a), the member may elect to receive the reports in English, or in an official language of the home economy of the fund.

(4) An election made under subsection (3) is a standing election for each later financial year for the fund until the member changes his, her or its election.

(5) An Australian member of the fund may, for the purposes of paragraph (2)(c) or subsection (3), be notified by electronic means only if the member has previously nominated that means as one by which the member may be notified.

(6) A notified foreign passport fund may provide the reports by sending each Australian member of the fund:

(a) a hard copy of the reports; or

(b) an electronic copy of the reports if the member has nominated that means as one by which the member may be sent the reports.

(7) A notified foreign passport fund must provide the reports in the following language:

(a) if the member elects under paragraph 314A(3)(d) to receive reports in English or in an official language of the home economy of the fund—in the language elected by the member;

(b) otherwise—in English.

(8) Subsection (1) does not apply in relation to an Australian member of the fund for a financial year if the member has elected under subsection 316AA(1) not to receive the report for the year.

(9) An offence based on subsection (1), (3) or (7) is an offence of strict liability.



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## 92 After subsection 315(3)

*Notified foreign passport funds*

(3A) A notified foreign passport fund must report to Australian members of the fund under section 314A within 3 months after the end of the financial year for the fund.

## 93 At the end of section 315

Add:

(6) For the purposes of this section, a notified foreign passport fund that reports in accordance with subsection 314A(2) is taken to report at the time the fund has fully complied with the requirements of that subsection.

## 94 Section 316 (heading)

Repeal the heading, substitute:

### 316 Choices for members of companies, registered schemes or disclosing entities

## 95 Subsection 316(4) (note)

Repeal the note.

## 96 After section 316

Insert:

### 316AA Choices for Australian members of notified foreign passport funds

(1) An Australian member of a notified foreign passport fund may request the fund not to send the member one or more of the reports required under subsection 314A(1).

(2) A request under subsection (1) may be a standing request or for a particular financial year for the fund.

## 97 After subsection 319(1)

Insert:



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(1AA) A notified foreign passport fund must lodge each of the following with ASIC for each financial year for the fund:

(a) a copy of a report for the fund for the year, prepared in accordance with the financial reporting requirements applying to the fund under the Passport Rules for the home economy for the fund;

(b) a copy of each auditor's report that relates to the report mentioned in paragraph (a).

## 98 Subsection 319(1A)

After "subsection (1)", insert "or (1AA)".

## 99 Paragraph 319(3)(a)

Omit "or registered scheme", substitute ", registered scheme or notified foreign passport fund".

## 100 After subsection 321(1)

Insert:

(1AA) ASIC may give a notified foreign passport fund a direction to lodge with ASIC:

(a) a copy of a report for the fund for a financial year, prepared in accordance with the financial reporting requirements applying to the fund under the Passport Rules for the home economy for the fund; and

(b) a copy of each auditor's report that relates to the report mentioned in paragraph (a).

## 101 Subsection 321(1A)

After "subsection (1)", insert "or (1AA)".

## 102 Before subsection 322(1)

Insert:

*Financial reports and directors' reports lodged by companies, registered schemes or disclosing entities*

## 103 After subsection 322(1)

Insert:



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*Reports on financial matters lodged by notified foreign passport funds*

(1A) If a report lodged with ASIC by a notified foreign passport fund is amended after it is lodged with ASIC, the notified foreign passport fund must:

(a) lodge the amended report with ASIC within 14 days after the amendment; and

(b) give a copy of the amended report free of charge to any Australian member who asks for it.

*Notifying members if there is a material amendment*

## 104 Subsection 322(2)

After "registered scheme", insert ", notified foreign passport fund".

## 105 Paragraph 322(2)(b)

After "subsection (1)", insert "or (1A)".

## 106 Before subsection 322(3)

Insert:

*Offence*

## 107 Subsection 322(3)

Omit "subsection (1) or (2)", insert "subsection (1), (1A) or (2)".

## 108 Section 323D (heading)

Repeal the heading, substitute:

### 323D Financial years and half-years for companies, registered schemes and disclosing entities

## 109 At the end of Division 7 of Part 2M.3

Add:

### 323DAA Financial years for notified foreign passport funds

A ***financial year*** for a notified foreign passport fund means:



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(a) a period of 12 months in relation to which the operator of the fund must, under the Passport Rules for the home economy for the fund, prepare a report in accordance with the financial reporting requirements applying to the fund under those Passport Rules; or

(b) if, under the law of the home economy for the fund, an exception allows a report in accordance with the financial reporting requirements applying to the fund under the Passport Rules for the home economy for the fund to be prepared for a shorter or longer period—that period.

## 110 After section 340

Insert:

### 340A Exemption orders—notified foreign passport funds

(1) On an application made in accordance with subsection (3) in relation to a notified foreign passport fund, ASIC may make an order, in writing, relieving any of the following from all or specified requirements of Part 2M.3:

(a) a notified foreign passport fund;

(b) the operator of a notified foreign passport fund;

(c) directors of the operator of a notified foreign passport fund.

Note: For the criteria for making orders under this section, see section 342.

(2) The order may:

(a) be expressed to be subject to conditions; and

(b) be indefinite or limited to a specified period.

(3) The application must be:

(a) authorised by the operator of the notified foreign passport fund; and

(b) in writing; and

(c) lodged with ASIC.

(4) ASIC must give the applicant written notice of the making, revocation or suspension of the order.

## 111 After section 341

Insert:



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### 341A Exemption orders—class orders for notified foreign passport funds

(1) ASIC may, by legislative instrument, make an order in respect of a specified class of notified foreign passport funds, relieving any of the following from all or specified requirements of Part 2M.3:

(a) notified foreign passport funds;

(b) the operators of notified foreign passport funds;

(c) the directors of the operators of notified foreign passport funds.

Note: For the criteria for making orders under this section, see section 342.

(2) The order may:

(a) be expressed to be subject to conditions; and

(b) be indefinite or limited to a specified period.

## 112 Section 342 (heading)

Repeal the heading, substitute:

### 342 Exemption orders—criteria for orders for companies, registered schemes, notified foreign passport funds and disclosing entities

## 113 Subsection 342(1)

Omit “section 340 or 341”, substitute “section 340, 340A, 341 or 341A”.

## 114 Paragraph 343(a)

After “registered scheme”, insert “, notified foreign passport fund”.

## 115 Paragraph 343(b)

After “registered schemes”, insert “, notified foreign passport funds”.

## 116 At the end of Part 2M.6

Add:



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### 343A Minister may apply the Chapter to notified foreign passport funds

(1) The Minister may, by legislative instrument:

(a) order that this Chapter, or provisions of this Chapter specified in the legislative instrument, are to apply in relation to one or more of the following:

(i) notified foreign passport funds the home economy for which is specified in the legislative instrument;

(ii) operators and other entities connected with notified foreign passport funds the home economy for which is specified in the legislative instrument; and

(b) modify the operation of this Chapter, or those provisions of this Chapter specified in the legislative instrument, for the purpose of giving effect to an order under paragraph (a).

(2) The legislative instrument has effect according to its terms.

## 117 Subsection 344(1) (note)

Omit “This section”, substitute “This subsection”.

## 118 After subsection 344(1)

Insert:

(1A) A person contravenes this section if:

(a) the person is a director of the operator of a notified foreign passport fund; and

(b) the person fails to take all reasonable steps to comply with, or to secure compliance with, Part 2M.3.

Note: This subsection is a civil penalty provision (see section 1317E).

## 119 Subsection 344(2)

After “subsection (1)”, insert “or (1A)”.

## 120 Chapter 2N (heading)

Repeal the heading, substitute:



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# Chapter 2N—Updating ASIC information about companies, registered schemes and notified foreign passport funds

## 121 At the end of section 345A

Add:

(3) The ***review date*** for a notified foreign passport fund is:

(a) the anniversary of the day on which the fund first became a notified foreign passport fund; or

(b) if a choice of a different date has effect under section 345C—that different date.

## 122 Section 345B (heading)

Repeal the heading, substitute:

### 345B Company, responsible entity or operator may change review date

## 123 After subsection 345B(2)

Insert:

(2A) With ASIC's approval, the operator of a notified foreign passport fund may choose as the review date for the fund a date that is different from the anniversary of the day on which the fund first became a notified foreign passport fund.

## 124 Subsection 345B(3)

Omit "the company or responsible entity", substitute "the company, responsible entity or operator".

## 125 Section 345C

Omit "the company or responsible entity", substitute "the company, responsible entity or operator".

## 126 Paragraphs 345C(a) and (b)

Omit "company or scheme", substitute "company, scheme or fund".



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## 127 Subsections 346A(1) and (2)

Repeal the subsections, substitute:

(1) ASIC must, within 2 weeks after each review date for a company, registered scheme or notified foreign passport fund, give to the company, responsible entity of the scheme or operator of the fund an extract of particulars for the company, scheme or fund.

(1A) Subsection (2) applies if an agreement or approval under subsection 352(1) covers the lodgment of a response to an extract of particulars for a company, registered scheme or notified foreign passport fund.

(2) ASIC may satisfy subsection (1) by making the extract of particulars available by electronic means to:

(a) the company, the responsible entity of the scheme or the operator of the fund; or

(b) an agent of the company, the responsible entity or the operator.

## 128 Section 346B

Repeal the section, substitute:

### 346B ASIC may ask questions

ASIC may include, in an extract of particulars for a company, registered scheme or notified foreign passport fund, a requirement that the company, responsible entity of the scheme or operator of the fund provide a particular prescribed by the regulations for the purposes of this section.

## 129 Subsections 346C(1) and (2)

Omit “A company, or responsible entity of a registered scheme,”, substitute “A company, a responsible entity of a registered scheme or an operator of a notified foreign passport fund”.

## 130 Subsection 346C(3)

Omit “by a company, or by the responsible entity of a registered scheme”, substitute “by a company, the responsible entity of a registered scheme or the operator of a notified foreign passport fund”.



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## 131 After subsection 348A(1)

Insert:

(1A) ASIC may give to the operator of a notified foreign passport fund a return of particulars for the fund if ASIC suspects or believes that particulars recorded in relation to the fund in a register:

(a) that ASIC maintains, or ensures is maintained, under subsection 1214(1); or

(b) that ASIC maintains under subsection 1274(1);

are not correct.

## 132 Subsection 348A(2)

Repeal the subsection, substitute:

(2) Subsection (2A) applies if an agreement or approval under subsection 352(1) covers the lodgment of a response to a return of particulars for a company, registered scheme or notified foreign passport fund.

(2A) ASIC may satisfy subsection (1) or (1A) by making the return of particulars available by electronic means to:

(a) the company, the responsible entity of the scheme or the operator of the fund; or

(b) an agent of the company, the responsible entity or the operator.

## 133 Section 348B

Repeal the section, substitute:

### 348B ASIC may ask questions

ASIC may include, in a return of particulars for a company, a registered scheme or a notified foreign passport fund a requirement that the company, responsible entity of the scheme or operator of the fund provide a particular prescribed by the regulations for the purposes of this section.



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## 134 Subsection 348D(1)

Omit "or responsible entity of a registered scheme,", substitute "responsible entity of a registered scheme or operator of a notified foreign passport fund".

## 135 Subsection 348D(2)

Omit "or by the responsible entity of a registered scheme", substitute "the responsible entity of a registered scheme or the operator of a notified foreign passport fund".

## 136 Paragraph 348D(2)(e)

Omit "or responsible entity of the scheme", substitute ", responsible entity of the scheme or operator of the fund".

## 137 After subsection 351(1)

Insert:

(1A) A document lodged with ASIC in writing by, or on behalf of, a notified foreign passport fund or its operator, must be signed by:

(a) a director or secretary of the operator of the fund; or

(b) the local agent for the operator of the fund; or

(c) if the local agent is a company—a director or secretary of that company.

Subsection (1) does not apply in relation to documents lodged with ASIC in writing by, or on behalf of, a notified foreign passport fund or its operator.

## 138 Subsection 354(2)

After "the company's", insert "or the scheme's".

## 139 Subsection 601ED(1)

Omit "Subject to subsection (2)", substitute "Subject to subsections (2) and (2A)".

## 140 After subsection 601ED(2)

Insert:

(2A) A notified foreign passport fund does not have to be registered.



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### 141 Subparagraphs 601HG(10)(b)(i) and (ii)

After “registered scheme”, insert “, notified foreign passport fund”.

### 142 Paragraph 601JB(4)(b)

Omit “registered managed investment scheme”, substitute “registered scheme”.

### 143 Part 5C.10 (after the heading)

Insert:

## Division 1—Registered schemes that are not Australian passport funds

### 601PAA Application of this Division

This Division applies to a registered scheme that is not an Australian passport fund.

### 144 Subsection 601PA(1)

Omit “a registered scheme”, substitute “the registered scheme”.

### 145 Subsection 601PB(1)

Omit “a registered scheme”, substitute “the registered scheme”.

### 146 After section 601PB

Insert:

## Division 2—Registered schemes that are Australian passport funds

### 601PBA Application of this Division

This Division applies to a registered scheme that is an Australian passport fund (the ***fund***).



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## 601PBB Deregistration—voluntary

*Application*

(1) The operator of the fund may lodge an application with ASIC for deregistration of the fund as a registered scheme.

Note: The responsible entity of a registered scheme that is an Australian passport fund is also the operator of the fund. In this Division, the responsible entity is referred to as the operator.

(2) The application must be in the prescribed form.

*ASIC to deregister*

(3) On an application under subsection (1), ASIC must deregister the fund as a registered scheme if:
   (a) the fund satisfies one of the criteria mentioned in paragraphs 601PA(2)(a), (b) and (c) (usual grounds on which a registered scheme can be voluntarily deregistered); and
   (b) there are no members of the fund who became members (whether in this jurisdiction or any host economy for the fund) after the fund became an Australian passport fund; and
   (c) there are no members of the fund who became members (whether in this jurisdiction or any host economy for the fund) on the expectation that the fund would become an Australian passport fund.

(4) For the purposes of subsection (3), ignore any member of the fund that:
   (a) is, or has at any time been, the operator of the fund; or
   (b) is a related party of an entity that is, or has at any time been, the operator of the fund.

Note: See section 1216B for the circumstances in which a person becomes a member of a fund on the expectation that it would become an Australian passport fund.

## 601PBC Deregistration—initiated by ASIC

(1) ASIC may decide to deregister the fund as a registered scheme if:
   (a) the fund does not have a responsible entity that meets the requirements of section 601FA; or



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(b) the fund does not have a constitution that meets the requirements of sections 601GA and 601GB; or

(c) the fund does not have a compliance plan that meets the requirements of section 601HA; or

(d) the fund's property is not being:

(i) clearly identified as the fund's property; and

(ii) held separately from property of the operator and property of any other scheme;

in accordance with the fund's compliance plan; or

(e) the following conditions are satisfied:

(i) the response to a return of particulars given to the operator of the fund is at least 6 months late;

(ii) no other documents have been lodged by or on behalf of the fund in the last 18 months;

(iii) ASIC has no reason to believe that the fund is being operated; or

(f) the fund's review fee in respect of a review date has not been paid in full at least 12 months after the due date for payment; or

(g) the fund has been wound up.

(2) However, ASIC must not decide to deregister an Australian passport fund if ASIC is of the opinion that to do so would not be in the interests of:

(a) members of the fund who became members (whether in this jurisdiction or any host economy for the fund) after the fund became an Australian passport fund; and

(b) members of the fund who became members (whether in this jurisdiction or any host economy for the fund) on the expectation that the fund would become an Australian passport fund.

(3) For the purposes of subsection (2), ignore any member of the fund that:

(a) is, or has at any time been, the operator of the fund; or

(b) is a related party of an entity that is, or has at any time been, the operator of the fund.

Note: See section 1216B for the circumstances in which a person becomes a member of a fund on the expectation that it would become an Australian passport fund.



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(4) Before deciding to deregister the fund as a registered scheme, ASIC must give the operator written notice that requires the operator to show cause, at a hearing before a specified person, why the fund should not be deregistered as a registered scheme.

(5) The notice must specify:
  (a) the grounds on which it is proposed to deregister the fund as a registered scheme; and
  (b) a reasonable time and place at which the hearing is to be held.

However, if the operator consents, the person conducting the hearing may fix a different time or place.

(6) The person conducting the hearing must:
  (a) give the operator an opportunity to be heard at the hearing; and
  (b) give ASIC:
    (i) a report about the hearing; and
    (ii) a recommendation about the grounds in the notice on which it is proposed to deregister the fund as a registered scheme.

(7) After considering the report and recommendation, ASIC may:
  (a) decide to take no further action in relation to the matter and give written advice of that decision to the operator; or
  (b) deregister the fund as a registered scheme.

(8) Neither of the following is a legislative instrument:
  (a) a notice under subsection (4);
  (b) a report under subsection (6) (if it is in writing).

## 601PBD Notices relating to deregistration process

*Notice before deregistration*

(1) If ASIC proposes to deregister a registered scheme that is an Australian passport fund under subsection 601PBB(3) or paragraph 601PBC(7)(b), ASIC must give written notice setting out the date on which ASIC proposes to deregister the registered scheme:
  (a) to the operator; and



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(b) to each host regulator for the Australian passport fund.

(2) The notice must be given at least 5 business days before the fund is deregistered as a registered scheme.

*Notice of deregistration*

(3) If ASIC deregisters a registered scheme that is an Australian passport fund under subsection 601PBB(3) or paragraph 601PBC(7)(b), ASIC must give written notice that the fund has been deregistered as a registered scheme and the date on which it has been deregistered:

(a) to the operator; and

(b) to each host regulator for the Australian passport fund.

(4) The notice must be given within 5 business days after the fund is deregistered as a registered scheme.

### 601PBE Consequences of deregistration on status as an Australian passport fund

(1) A scheme ceases to be an Australian passport fund at the same time as it ceases to be a registered scheme.

(2) ASIC must annotate the Register of Passport Funds to indicate that the scheme is no longer a registered scheme or an Australian passport fund, or cause that annotation to be made on the Register.

## 147 At the end of section 601PC

Insert:

(5) The reinstatement of the registration of a managed investment scheme as a registered scheme does not result in the scheme becoming an Australian passport fund, even if the scheme was an Australian passport fund immediately before its deregistration.

## 148 Subparagraph 602(a)(ii)

After “listed body”, insert “(other than a notified foreign passport fund)”.



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## 149 Subparagraph 602(a)(iii)

Omit “listed managed investment scheme”, substitute “listed registered scheme”.

## 150 Subsections 602A(1) and (3)

Omit “listed body or listed managed investment scheme”, substitute “listed body (other than a notified foreign passport fund) or listed registered scheme”.

## 151 Section 604 (heading)

Repeal the heading, substitute:

**604 Chapter extends to listed registered schemes**

## 152 Subsection 604(2)

Omit “listed managed investment schemes”, substitute “listed registered schemes”.

## 153 At the end of section 608

Add:

*Extension to interests in listed notified foreign passport funds*

(10) To avoid doubt, for the purposes of Chapter 6C, a person has a relevant interest in securities if the person would have a relevant interest in the securities if securities had the same meaning in this Chapter as it has in Chapter 6C.

## 154 Paragraph 636(1)(d)

Omit “managed investment scheme”, substitute “registered scheme”.

## 155 Subparagraphs 636(1)(ga)(i) and (ii)

Omit “managed investment scheme”, substitute “registered scheme”.

## 156 Paragraph 637(1)(a)

After “body corporate”, insert “(other than a notified foreign passport fund)”.



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### 157 Paragraphs 650D(3)(b) and (c)

After "body corporate", insert "(other than a notified foreign passport fund)".

### 158 Paragraph 658C(5)(b)

After "body corporate", insert "(other than a notified foreign passport fund)".

### 159 After paragraph 658C(5)(b)

Insert:

; or (c) if that person is a notified foreign passport fund—the directors of the operator of the fund.

### 160 Section 660B (heading)

Repeal the heading, substitute:

**660B Chapter extends to listed registered schemes**

### 161 Subsection 660B(4)

Omit "listed managed investment schemes", substitute "listed registered schemes".

### 162 Subsection 670B(1) (table item 3, column headed "*For these documents* these people…")

After "body" insert "(other than a notified foreign passport fund)".

### 163 Subsection 670B(1) (table item 9, column headed "*For these documents* these people…")

After "body corporate", insert "(other than a notified foreign passport fund)".

### 164 Subsection 670B(1) (after table item 9)

Insert:



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| | | |
|---|---|---|
| 9A | if a notified foreign passport fund is giving the notice, a director of the operator of the fund unless the director proves that they:<br>(a) were not present when the directors resolved to give the notice; or<br>(b) voted against the resolution | any contravention of subsection 670A(1) in relation to the document<br><br>See also items 10 and 11. |

### 165 Chapter 6C (heading)

Repeal the heading, substitute:

# Chapter 6C—Information about ownership of listed companies, listed registered schemes and listed notified foreign passport funds

### 166 Section 671B (heading)

After "**responsible entity**", insert ", **fund operator**".

### 167 Subsection 671B(1)

Omit "listed registered managed investment scheme", substitute "listed registered scheme, or the operator of a listed notified foreign passport fund".

### 168 Paragraphs 671B(1)(a) and (b)

Omit "or scheme", substitute ", scheme or fund".

### 169 At the end of subsection 671B(1)

Add:

Note 3: Paragraph (c) does not apply in relation to a notified foreign passport fund.

### 170 Subsection 671B(2)

Repeal the subsection, substitute:

(2) For the purposes of this section, there is a ***movement of at least 1%*** in a person's holding if the percentage worked out using the



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following formula increases or decreases by 1 or more percentage points from the percentage they last disclosed under this Part in relation to the company, scheme or fund:

$$\frac{\text{Person's and associates' votes}}{\text{Total votes in company, scheme or fund}} \times 100$$

where:

***person's and associates' votes*** is the total number of votes attached to all the voting shares in the company, interests in the scheme or interests in the fund (if any) that the person or an associate has a relevant interest in.

***total votes in company, scheme or fund*** is the total number of votes attached to all voting shares in the company, interests in the scheme or interests in the fund.

Note: Subsection (7) expands the normal concept of relevant interest to take account of market traded options and conditional agreements.

## 171 Paragraphs 671B(3)(b) and (c)

Repeal the paragraphs, substitute:

(b) details of their relevant interest in:
  (i) voting shares in the company; or
  (ii) interests in the scheme; or
  (iii) interests in the fund; and

(c) details of any relevant agreement through which they would have a relevant interest in:
  (i) voting shares in the company; or
  (ii) interests in the scheme; or
  (iii) interests in the fund; and

## 172 Paragraph 671B(3)(d)

Omit "or interests in the scheme", substitute ", interests in the scheme or interests in the fund".

## 173 Subsection 672A(1)

Repeal the subsection, substitute:



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(1) ASIC, a listed company, the responsible entity for a listed registered scheme or the operator of a listed notified foreign passport fund may direct:

(a) a member of the company, scheme or fund; or

(b) a person named in a previous disclosure under section 672B as having a relevant interest in, or having given instructions about, voting shares in the company, interests in the scheme or interests in the fund;

to make the disclosure required by section 672B.

## 174 Subsection 672A(2)

Omit "or scheme", substitute ", scheme or fund".

## 175 Paragraph 672B(1)(a)

Omit "or interests in the scheme", substitute ", interests in the scheme or interests in the fund".

## 176 Paragraph 672B(2)(c)

Repeal the paragraph, substitute:

(c) if the direction is given by a listed company, the responsible entity of a listed registered scheme or the operator of a listed notified foreign passport fund—the company, responsible entity or operator pays any fee payable under the regulations made for the purposes of section 672D.

## 177 Subsection 672B(3)

Omit "or the responsible entity", substitute ", responsible entity or operator".

## 178 Section 672C

Omit "or interests in a listed managed investment scheme", substitute ", interests in a listed registered scheme or interests in a listed notified foreign passport fund".

## 179 Paragraph 672C(a)

Omit "or the responsible entity for the scheme", substitute ", the responsible entity for the scheme or the operator of the fund".



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## 180 Section 672D (heading)

Repeal the heading, substitute:

### 672D Fee for complying with a direction given by a company, scheme or fund under this Part

## 181 Subsection 672D(1)

Omit "companies and responsible entities", substitute "listed companies, responsible entities of listed registered schemes and operators of listed notified foreign passport funds".

## 182 Subsection 672D(2)

Omit "or responsible entity", substitute ", responsible entity or operator".

## 183 Section 672DA (heading)

Repeal the heading, substitute:

### 672DA Register of information about relevant interests in listed company, listed registered scheme or listed notified foreign passport fund

## 184 Subsection 672DA(1)

Repeal the subsection, substitute:

(1) A listed company, the responsible entity for a listed registered scheme or the operator of a listed notified foreign passport fund, must keep a register of the following information that it receives under this Part on or after 1 January 2005 (whether the information is received pursuant to a direction the company, the responsible entity or the operator itself gives under section 672A or is received from ASIC under section 672C):

(a) details of the nature and extent of a person's relevant interest in shares in the company, interests in the scheme or interests in the fund;

(b) details of the circumstances that give rise to a person's relevant interest in shares in the company, interests in the scheme or interests in the fund;



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(c) the name and address of a person who has a relevant interest in shares in the company, interests in the scheme or interests in the fund;

(d) details of instructions that a person has given about:

(i) the acquisition or disposal of shares in the company, interests in the scheme or interests in the fund; or

(ii) the exercise of any voting or other rights attached to shares in the company, interests in the scheme or interests in the fund; or

(iii) any other matter relating to shares in the company, interests in the scheme or interests in the fund;

(e) the name and address of a person who has given instructions of the kind referred to in paragraph (d).

The register must be kept in accordance with this section.

## 185 Subsection 672DA(3)

Omit "listed managed investment scheme", substitute "listed registered scheme".

## 186 After subsection 672DA(3)

Insert:

(3A) A register kept under this section by the operator of a listed notified foreign passport fund must be kept at:

(a) the operator's registered office; or

(b) the operator's principal place of business in this jurisdiction; or

(c) a place in this jurisdiction (whether or not an office of the operator) where the work involved in maintaining the register is done; or

(d) another place in this jurisdiction approved by ASIC.

## 187 Subsection 672DA(4)

Repeal the subsection, substitute:

(4) The company, responsible entity or operator must lodge with ASIC a notice of the address at which the register is kept within 7 days after the register is:

(a) established at a place that:



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(i) is not the registered office of the company, responsible entity or operator; and

(ii) is not at the principal place of business of the company, responsible entity or operator in this jurisdiction; or

(b) moved from one place to another.

Notice is not required for moving the register between the registered office and the principal place of business in this jurisdiction.

Note: The obligation to notify ASIC under this subsection is a continuing obligation and the company, responsible entity or operator is guilty of an offence for each day, after the 7 day period, until ASIC is notified (see section 4K of the *Crimes Act 1914*).

## 188 Subsection 672DA(5)

After "(3)", insert ", (3A)".

## 189 Paragraph 672DA(6)(a)

Omit "or interests in the scheme,", substitute "interests in the scheme or interests in the fund".

## 190 Subparagraphs 672DA(6)(b)(i) and (ii)

Omit "or the responsible entity,", substitute "responsible entity or operator".

## 191 Paragraph 672DA(7)(a)

Omit "or scheme", substitute ", scheme or fund".

## 192 Subsection 672DA(7)

Omit "or the responsible entity," (wherever occurring), substitute "responsible entity or operator".

## 193 Subsection 672DA(8)

Repeal the subsection, substitute:

(8) A person may request the company, responsible entity or operator to give to the person a copy of the register (or any part of the register) and, if such a request is made, the company, responsible entity or operator must give the person the copy:

(a) if the company, responsible entity or operator requires payment of a fee for the copy:



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(i) before the end of 21 days after the day on which the payment of the fee is received by the company, responsible entity or operator; or

(ii) within such longer period as ASIC approves in writing; or

(b) if the company, responsible entity or operator does not require payment of a fee for the copy:

(i) before the end of 21 days after the day on which the request is made; or

(ii) within such longer period as ASIC approves in writing.

The amount of the fee required by the company, responsible entity or operator under paragraph (a) must not exceed the amount prescribed by the regulations for the purposes of this subsection.

Note: The obligation to give the copy under this subsection is a continuing obligation and the company, responsible entity or operator is guilty of an offence for each day, after the period referred to in paragraph (a) or (b), until the copy is given (see section 4K of the *Crimes Act 1914*).

## 194 Subsection 672DA(9)

Omit "or the responsible entity," (wherever occurring), substitute "responsible entity or operator".

## 195 Subsection 672DA(9) (note)

Omit "or responsible entity", substitute ", responsible entity or operator".

## 196 Section 672E

Omit "or responsible entity", substitute ", responsible entity or operator".

## 197 Section 672E

Omit "or an interest in the listed managed investment scheme", substitute ", an interest in the listed registered scheme or an interest in the listed notified foreign passport fund".

## 198 After subsection 674(3)

Insert:

(3A) For the purposes of the application of subsection (2) to a listed disclosing entity that is an undertaking to which interests in a



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notified foreign passport fund relate, the obligation of the entity to notify the market operator of information is an obligation of the operator of the fund.

## 199 After paragraph 674(5)(b)

Insert:

; or (c) if the entity is an undertaking to which interests in a notified foreign passport fund relate—the operator of the fund.

## 200 Subparagraphs 675(2)(c)(i) and (ii)

After "managed investment products", insert "or foreign passport fund products".

## 201 At the end of section 675

Add:

(4) For the purposes of the application of this section to a disclosing entity that is an undertaking to which interests in a notified foreign passport fund relate:

(a) the entity is aware of information if, and only if, the operator of the fund is aware of the information; and

(b) the obligation of the entity to lodge a document under subsection (2) is an obligation of the operator of the fund.

## 202 Section 761A (paragraph (a) of the definition of *financial services law*)

Omit "or 6D", substitute ", 6D or 8A".

## 203 Section 761A (after paragraph (b) of the definition of *financial services law*)

Insert:

(ba) a provision of the Passport Rules for this jurisdiction; or

## 204 Section 761A

Insert:

***foreign passport fund product*** means a financial product described in paragraph 764A(1)(bb).



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## 205 Section 761A (subparagraph (e)(ii) of the definition of *security*)

Omit "or (ba)", substitute ", (ba) or (bb)".

## 206 Section 761A (definition of *security*)

Omit "but does not include an excluded security. In Part 7.11, it also includes a managed investment product", substitute "but does not include an excluded security or a foreign passport fund product. In Part 7.11, it also includes a managed investment product and a foreign passport fund product".

## 207 After subsection 761E(4)

Insert:

(4A) For the purposes of subsection (4), if the financial product issued to the client is an interest in a notified foreign passport fund, the operator of the fund is the person responsible for the obligations mentioned in that subsection that are owed under the terms of the facility that is the product.

## 208 After paragraph 764A(1)(ba)

Insert:

(bb) any of the following in relation to a notified foreign passport fund:

(i) an interest in the fund;

(ii) a legal or equitable right or interest in an interest covered by subparagraph (i);

(iii) an option to acquire, by way of issue, an interest or right covered by subparagraph (i) or (ii);

## 209 Paragraph 765A(1)(s)

After "that is not a registered scheme", insert "or a notified foreign passport fund".

## 210 Paragraph 766C(1)(c)

Repeal the paragraph, substitute:

(c) in relation to securities and interests in managed investment schemes—underwriting the securities or interests;



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## 211 Paragraph 766D(2)(b)

Repeal the paragraph, substitute:

(b) the products are:

(i) superannuation products; or

(ii) managed investment products; or

(iii) financial products referred to in paragraph 764A(1)(ba) (which relates to certain managed investment schemes that are not registered schemes); or

(iv) foreign passport fund products.

## 212 After paragraph 766E(3)(b)

Insert:

(ba) the operation of a notified foreign passport fund;

(bb) the holding of the assets of a notified foreign passport fund;

## 213 Paragraph 793C(2)(b)

After “a body corporate”, insert “(other than a notified foreign passport fund)”.

## 214 Subsection 793C(3)

After “a body corporate” (first occurring), insert “(other than a notified foreign passport fund)”.

## 215 Subsection 793C(3)

Omit “with its acquiescence”, substitute “with its agreement, consent or acquiescence”.

## 216 Subsection 793C(4)

Omit “with the responsible entity’s acquiescence”, substitute “with the responsible entity’s agreement, consent or acquiescence”.

## 217 After subsection 793C(4)

Insert:

(4A) For the purposes of this section, if a disclosing entity that is an undertaking to which interests in a notified foreign passport fund relate is, with the agreement, consent or acquiescence of the operator of the fund, included in the official list of a licensed market, the operator of the fund, or an associate of the operator, is



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taken to be under an obligation to comply with the operating rules of that market to the extent to which those rules purport to apply to the operator or associate.

### 218 Subsection 798C(1)

Omit "or scheme" (first occurring), substitute ", scheme or fund".

### 219 Paragraph 798C(1)(c)

Omit "managed investment scheme", substitute "registered scheme".

### 220 After paragraph 798C(1)(c)

Insert:

(ca) a notified foreign passport fund whose operator is a related body corporate of the market licensee;

### 221 Subsection 798C(1) (note)

Omit "or scheme", substitute ", scheme or fund".

### 222 Subsection 798C(6)

Omit "or scheme", substitute ", scheme or fund".

### 223 Paragraphs 798D(1)(a) and (b)

Omit "or scheme", substitute ", scheme or fund".

### 224 Subsections 798D(4) and (5)

Omit "or scheme", substitute ", scheme or fund".

### 225 After paragraph 911A(2)(eg)

Insert:

(eh) the service is the acquisition of a financial product as an investment of the assets of a notified foreign passport fund by:

(i) the operator of the fund; or

(ii) another person acting on the direction of the operator of the fund, or the direction of an agent of the operator of the fund;

(ei) the service is the disposal of a financial product that was acquired as an investment of the assets of a notified foreign passport fund by:



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(i) the operator of the fund; or

(ii) another person acting on the direction of the operator of the fund, or the direction of an agent of the operator of the fund;

(ej) the service is the issuing, acquisition or disposal of a derivative or foreign exchange contract by:

(i) the operator of a notified foreign passport fund; or

(ii) another person acting on the direction of the operator of a notified foreign passport fund, or the direction of an agent of the operator of a notified foreign passport fund;

for the purposes of managing the financial consequences to the fund of particular circumstances happening, or avoiding or limiting the financial consequences of fluctuations in, or in the value of, receipts or costs (including prices or interest rates);

## 226 After paragraph 912A(1)(ca)

Insert:

(cb) if the licensee is the operator of an Australian passport fund, or a person with responsibilities in relation to an Australian passport fund, comply with the law of each host economy for the fund; and

## 227 Subsection 912A(6)

Omit "In subsections (4) and (5)", substitute "In this section".

## 228 Subsection 912A(6)

Insert:

***person with responsibilities in relation to an Australian passport fund*** means a person (other than a regulator) who has functions or duties in relation to the fund under the Passport Rules for this jurisdiction.

## 229 Subparagraph 912D(1)(a)(ii)

Omit "paragraphs (a), (b) and (c)", substitute "paragraphs (a), (b), (ba) and (c)".



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## 230 After paragraph 915B(3)(c)

Insert:

(caa) is an operator of a notified foreign passport fund whose members have suffered, or are likely to suffer, loss or damage because the body has breached this Act; or

## 231 At the end of subsection 915C(1)

Add:

; (e) the licensee is the operator of an Australian passport fund, or a person with responsibilities in relation to an Australian passport fund, and each of the following is satisfied:

(i) a host regulator for the fund has notified ASIC in writing that it is of the opinion that the person or the fund has not complied, is not complying or is not likely to comply with the law of that host economy to the extent that the law is administered by the host regulator for the fund (including the Passport Rules for the host economy for the fund);

(ii) ASIC is of the opinion that it should suspend or cancel the licence, given the potential impact of the failure, or potential failure, to comply on members or potential members of the fund.

## 232 At the end of section 915C

Add:

(5) In this section:

***person with responsibilities in relation to an Australian passport fund*** means a person (other than a regulator) who has functions or duties in relation to the fund under the Passport Rules for this jurisdiction.

## 233 At the end of subsection 920A(1)

Add:

; or (i) the person is the operator of, or another person connected with, an Australian passport fund, and each of the following is satisfied:

(i) a host regulator for the fund has notified ASIC in writing that it is of the opinion that the person or the



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fund has not complied, is not complying or is not likely to comply with the law of that host economy to the extent that the law is administered by the host regulator for the fund (including the Passport Rules for the host economy for the fund);

(ii) ASIC is of the opinion that it should make the banning order, given the potential impact of the failure, or potential failure, to comply on members or potential members of the fund.

## 234 After subsection 941C(3)

Insert:

*Providing entity is merely operating a notified foreign passport fund*

(3A) The providing entity does not have to give the client a Financial Services Guide if:

(a) the providing entity is the operator of a notified foreign passport fund; and

(b) the financial service consists only of the operation of that fund by the operator.

## 235 Paragraph 946B(1)(c)

After “managed investment products”, insert “, foreign passport fund products”.

## 236 Subsection 946B(2) (paragraph (a) of the definition of *able to be traded on a licensed market*)

Omit “or managed investment products”, substitute “, managed investment products or foreign passport fund products”.

## 237 Subsection 946B(2) (paragraph (a) of the definition of *cash management facility*)

After “a registered scheme”, insert “or a notified foreign passport fund”.

## 238 Subsection 946B(2) (definition of *cash management facility advice*)

After “managed investment products”, insert “, foreign passport fund products”.



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### 239 Subsection 952C(1) (note)

Omit "(2) and (3)", substitute "(2), (3) and (3A)".

### 240 Subsection 952C(3) (note)

Omit "(2) and (3)", substitute "(2), (3) and (3A)".

### 241 Subsection 952D(1) (note)

Omit "(2) and (3)", substitute "(2), (3) and (3A)".

### 242 Subsection 952D(2) (note)

Omit "(2) and (3)", substitute "(2), (3) and (3A)".

### 243 Subsection 952E(1) (note)

Omit "(2) and (3)", substitute "(2), (3) and (3A)".

### 244 Subsection 952E(3) (note)

Omit "(2) and (3)", substitute "(2), (3) and (3A)".

### 245 Subsection 952I(1) (note)

Omit "(2) and (3)", substitute "(2), (3) and (3A)".

### 246 Subsection 952I(3) (note)

Omit "(2) and (3)", substitute "(2), (3) and (3A)".

### 247 Subsection 952J(1) (note)

Omit "(2) and (3)", substitute "(2), (3) and (3A)".

### 248 Section 952K (note)

Omit "(2) and (3)", substitute "(2), (3) and (3A)".

### 249 Paragraph 964(1)(b)

Omit "or an RSE licensee", substitute ", RSE licensee or the operator of a notified foreign passport fund".

### 250 Paragraphs 988E(e) and (f)

Omit "or managed investment products", substitute ", managed investment products or foreign passport fund products".



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## 251 Subsection 992A(2)

Omit “, or to offering of managed investment products,”, substitute “, or to offering interests in managed investment schemes,”.

## 252 Section 992AA (heading)

Repeal the heading, substitute:

### 992AA Prohibition on hawking of interests in managed investment schemes

## 253 After paragraph 1010B(2)(a)

Insert:

(aa) any foreign passport fund product; or

## 254 After subparagraph 1012D(5)(b)(i)

Insert:

(ia) a foreign passport fund product; or

## 255 After subparagraph 1012D(7)(a)(i)

Insert:

(ia) a foreign passport fund product; or

## 256 After subsection 1012D(9B)

Insert:

*Recommendation, issue or sale situation—client is associated with a notified foreign passport fund*

(9C) In a recommendation situation, an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement if:

(a) the financial product is a foreign passport fund product; and

(b) the client is associated (within the meaning of subsection (9D)) with the fund’s operator.

(9D) For the purposes of subsection (9C), the client is associated with the fund’s operator if the client is:

(a) a senior manager of the operator or of a related body corporate; or



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(b) a spouse, parent, child, brother or sister of a person who is a senior manager of the operator or a related body corporate; or

(c) a body corporate controlled by a person referred to in paragraph (a) or (b).

## 257 Paragraph 1012D(10)(a)

After "managed investment product", insert ", a foreign passport fund product".

## 258 Paragraph 1012D(10)(b)

Omit "a managed investment product, or a superannuation product,", substitute "a managed investment product, a foreign passport fund product or a superannuation product".

## 259 Paragraph 1012DAA(2)(e)

Omit "section 340 or 341", substitute "section 340, 340A, 341 or 341A".

## 260 After paragraph 1012DAA(3)(a)

Insert:

(aa) the provisions of Chapter 2M as they apply to the notified foreign passport fund in which the relevant product is an interest;

## 261 After paragraph 1012DAA(3)(b)

Insert:

(ba) section 674 or 675 as it applies to the notified foreign passport fund in which the relevant product is an interest;

## 262 Paragraph 1012DAA(7)(d)

Before "states that", insert "if the relevant product is a managed investment product—".

## 263 After paragraph 1012DAA(7)(d)

Insert:

(da) if the relevant product is a foreign passport fund product—states that, as at the date of the notice, the issuer of the relevant product has complied with:



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(i) the provisions of Chapter 2M as they apply to the fund in which the relevant product is an interest; and

(ii) section 674 as it applies to that fund; and

## 264 Paragraph 1012DA(2)(a)

Repeal the paragraph, substitute:

(a) the provisions of Chapter 2M as they apply to:

(i) the issuer; or

(ii) if the relevant product is an interest in a registered scheme—the scheme; or

(iii) if the relevant product is an interest in a notified foreign passport fund—the fund;

## 265 Paragraph 1012DA(2)(b)

Repeal the paragraph, substitute:

(b) section 674 or 675 as it applies to:

(i) the issuer; or

(ii) if the relevant product is an interest in a registered scheme—the scheme; or

(iii) if the relevant product is an interest in a notified foreign passport fund—the fund;

## 266 Paragraph 1012DA(5)(d)

Omit "section 340 or 341", substitute "section 340, 340A, 341 or 341A".

## 267 Paragraph 1012DA(6)(e)

Repeal the paragraph, substitute:

(e) states that, as at the date of the notice, the issuer of the relevant product has complied with the provisions of Chapter 2M, and of section 674, as those provisions apply to:

(i) the issuer; or

(ii) if the relevant product is an interest in a registered scheme—the scheme; or

(iii) if the relevant product is an interest is a notified foreign passport fund—the fund; and



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## 268 Subsection 1013A(3)

Omit “The person who”, substitute “The person by whom”.

## 269 Subsection 1013D(2A)

After “managed investment products”, insert “, foreign passport fund products”.

## 270 Paragraph 1013FA(2)(a)

Before “the information”, insert “for a continuously quoted security that is not a security of a notified foreign passport fund—”.

## 271 After paragraph 1013FA(2)(a)

Insert:

(aa) for a continuously quoted security of a notified foreign passport fund—the information is included in any of the following documents:

(i) a copy of a report for the fund for the most recent financial year for the fund, prepared in accordance with the financial reporting requirements applying to the fund under the Passport Rules for the home economy for the fund;

(ii) a copy of an auditor’s report that relates to the report mentioned in subparagraph (i);

(iii) any continuous disclosure notices given by the issuer of the product after the lodgment of the report mentioned in subparagraph (i) and before the date of the Product Disclosure Statement; and

## 272 Subparagraph 1013FA(2)(b)(ii)

After “paragraph (a)”, insert “or (aa) (as the case requires)”.

## 273 After section 1013G

Insert:

### 1013GA Extra requirements if Product Disclosure Statement relates to foreign passport fund products

(1) This section applies to a Product Disclosure Statement that relates to foreign passport fund products.



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(2) The Product Disclosure Statement must:

(a) identify the home economy for the notified foreign passport fund to which the foreign passport fund products relate; and

(b) include a statement that:

(i) the operation of the fund is regulated by the law of the home economy for the fund; and

(ii) the operator of the fund and the custodian of the assets of the fund are regulated under the law of the home economy for the fund; and

(iii) the rights and remedies available to a person who acquires the foreign passport fund product may differ from the rights and remedies available in relation to a registered scheme; and

(iv) information made available to members of the fund in the home economy will from time to time be made available to Australian members of the fund by posting the information on the fund's website; and

(c) include an outline of the main rights and remedies available under the law of the home economy for the fund to persons who acquire the foreign passport fund product in this jurisdiction; and

(d) include an outline of how information mentioned in subparagraph (b)(iv) may be accessed by Australian members of the fund; and

(e) include a statement that the rights of a member of the fund on the fund being wound up are mainly determined under the constitution for the fund and the law of the home economy for the fund.

## 274 After section 1013I

Insert:

### 1013IA Extra requirements if Product Disclosure Statement relates to foreign passport fund products that are ED securities

(1) This section applies to a Product Disclosure Statement that relates to foreign passport fund products that are ED securities.

(2) The Product Disclosure Statement must include a statement that:



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(a) as a disclosing entity, the fund is subject to regular reporting and disclosure obligations; and

(b) copies of documents lodged with ASIC in relation to the fund may be obtained from, or inspected at, an ASIC office.

(3) The Product Disclosure Statement must either:

(a) inform people of their right to obtain a copy of the following documents:

(i) a copy of a report for the most recent financial year for the fund, prepared in accordance with the financial reporting requirements applying to the fund under the Passport Rules for the home economy for the fund;

(ii) a copy of each auditor's report that relates to the report mentioned in subparagraph (i); or

(b) include, or be accompanied by, a copy of that document or those documents.

(4) Subsections (5) and (6) apply if:

(a) the Product Disclosure Statement informs people of their right to obtain a copy of a document referred to in subsection (3); and

(b) a person asks the issuer (in the case of an issue Statement) or the seller (in the case of a sale Statement) for a copy of the document.

(5) The issuer or seller must give (see subsection (6)) the person a copy of the document:

(a) free of charge; and

(b) as soon as practicable, and in any event within 5 days, after receiving the person's request; and

(c) if the person asks the issuer or seller for a copy of the document in English—in English.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(6) In subsection (5), ***give*** means give in a way that would satisfy requirements of section 1015C if the copy of the document were a Statement to which that section applied.

## 275 After paragraph 1015B(1)(b)

Insert:



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(ba) the financial product is:

(i) a managed investment product of an Australian passport fund; or

(ii) a foreign passport fund product; or

## 276 Subsection 1015B(2)

After "The lodgment of a Statement", insert "in relation to a managed investment product".

## 277 At the end of section 1015B

Add:

(3) The lodgment of a Statement in relation to a foreign passport fund product with ASIC requires the consent of:

(a) if the operator of the fund is a body corporate—every director of the operator; or

(b) otherwise—the responsible person.

## 278 Subsection 1016A(1) (after paragraph (a) of the definition of *relevant financial product*)

Insert:

(aa) a foreign passport fund product; or

## 279 At the end of section 1016B

Add:

(3) This section does not apply if the financial product to which the Product Disclosure Statement relates is:

(a) a managed investment product of an Australian passport fund; or

(b) a foreign passport fund product.

## 280 Subparagraph 1017A(4)(a)(i)

After "at a suitable place", insert "in this jurisdiction".

## 281 Subsection 1017B(2)

After "managed investment product", insert "or foreign passport fund product".



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## 282 Subsection 1017B(2) (note 1)

After "managed investment products", insert "and foreign passport fund products".

## 283 After subparagraph 1017D(1)(b)(i)

Insert:

(ia) a foreign passport fund product; or

## 284 After subsection 1017E(1)

Insert:

(1A) However, this section does not apply in relation to money paid to an issuer (the ***product provider***) of foreign passport fund products if the money is paid to acquire, or acquire an increased interest in, one or more of those foreign passport fund products from the product provider (whether or not the acquisition would be by a person as a retail client).

## 285 Subparagraphs 1017G(2)(a)(ii) and (b)(ii)

After "financial services provided in relation to any of those products", insert "or, if any of those products are foreign passport fund products, the operation of the relevant notified foreign passport fund".

## 286 After subparagraph 1019A(1)(a)(iii)

Insert:

(iiia) foreign passport fund products;

## 287 Subsection 1020AA(1) (subparagraph (a)(i) of the definition of *securities lending arrangement*)

After "managed investment products", insert ", foreign passport fund products".

## 288 After section 1020A

Insert:



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### 1020BAA Offers etc. relating to foreign passport funds not to be made in certain circumstances

(1) A person must not engage in conduct of a kind referred to in subsection (2) in relation to an interest in a foreign passport fund if the fund is not:

(a) a notified foreign passport fund; or

(b) a registered scheme.

This is so even if it is proposed that the fund will become a notified foreign passport fund or a registered scheme.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(2) Subject to subsection (3), the kinds of conduct that must not be engaged in in relation to an interest in such a foreign passport fund are as follows:

(a) making a recommendation, as described in subsection 1012A(3), that is received in this jurisdiction;

(b) making an offer, as described in subsection 1012B(3) or 1012C(3), that is received in this jurisdiction;

(c) accepting an offer, made as described in subsection 1012B(3) or (4), that was received in this jurisdiction.

(3) Subsection (2) does not apply to:

(a) a recommendation or offer made in a situation to which a subsection of section 1012D, other than subsection 1012D(1), applies; or

(b) a recognised offer.

## 289 Section 1020B (heading)

Repeal the heading, substitute:

### 1020B Prohibition of certain short sales of securities, managed investment products, foreign passport fund products and certain other financial products

## 290 Subsection 1020B(1) (after paragraph (b) of the definition of *section 1020B products*)

Insert:

(ba) foreign passport fund products; or



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## 291 Section 1043B (heading)

Repeal the heading, substitute:

### 1043B Exception for withdrawal from registered scheme or notified foreign passport fund

## 292 Section 1043B

After "a registered scheme", insert "or a notified foreign passport fund".

## 293 Paragraphs 1043C(1)(a) and (c)

Omit "or managed investment products", substitute ", managed investment products or foreign passport fund products".

## 294 Paragraphs 1043C(2)(a) and (b)

Omit "or managed investment products" (wherever occurring), substitute ", managed investment products or foreign passport fund products".

## 295 Subsection 1043L(8) (heading)

Repeal the heading, substitute:

*Special provision for registered schemes and notified foreign passport funds—treatment of amount recovered in respect of subsection (2) loss*

## 296 Paragraphs 1043L(8)(a) and (b)

After "the responsible entity for a registered scheme", insert "or the operator of a notified foreign passport fund".

## 297 Subsection 1043L(8)

After "any interests in the scheme", insert "or fund".

## 298 Paragraph 1043L(8)(c)

Repeal the paragraph, substitute:

(c) is to be held:

(i) in the case of a registered scheme other than an Australian passport fund—by the responsible entity; and



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(ii) in the case of an Australian passport fund or a notified foreign passport fund—by the responsible holding party for the fund;

on behalf of the persons who, at the time of the subscription or agreement, had rights or interests in the relevant financial or business undertaking or scheme, common enterprise, investment contract or time-sharing scheme; and

## 299 Subsection 1043L(9) (heading)

Repeal the heading, substitute:

*Special provision for registered schemes and notified foreign passport funds—treatment of amount recovered in respect of subsection (5) loss*

## 300 Paragraphs 1043L(9)(a) and (b)

After "the responsible entity for a registered scheme", insert "or the operator of a notified foreign passport fund".

## 301 Subsection 1043L(9)

After "interests in the scheme", insert "or fund".

## 302 Paragraph 1043L(9)(c)

Repeal the paragraph, substitute:

(c) is to be held:

(i) in the case of a registered scheme other than an Australian passport fund—by the responsible entity; and

(ii) in the case of an Australian passport fund or a notified foreign passport fund—by the responsible holding party for the fund;

on behalf of the persons who, at the time of the disposal, acquisition or agreement, had rights or interests in the relevant financial or business undertaking or scheme, common enterprise, investment contract or time-sharing scheme; and

## 303 After subparagraph 1274(2)(a)(iaa)

Insert:



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(iab) information of the kind specified under subsection 1212(4) or 1213(4) (information included in, or accompanying, applications in relation to passport funds); or

## 304 At the end of section 1300

Add:

*Books relating to notified foreign passport funds*

(5) Subsection (1) does not apply in relation to the books of the operator of a notified foreign passport fund that relate to the fund, or the books of a notified foreign passport fund.

(6) If a book of that kind is by this Act required to be available for inspection, it must, subject to and in accordance with this Act, be available for inspection:

(a) at the registered office in this jurisdiction of the operator of the fund; and

(b) at all times when that office is open to the public.

## 305 After paragraph 1311(1A)(dc)

Insert:

(dd) Chapter 8A;

## 306 Subsection 1313(8) (after paragraph (a) of the definition of *prescribed offence*)

Insert:

(aa) a strict liability offence under one of the following provisions:

(i) subsection 1211B(1) or (2);

(ii) subsection 1213J(1);

(iii) subsection 1213K(1);

(iv) subsection 1213L(1) or (3);

(v) subsection 1213M(1);

(vi) subsection 1213P(1); or

## 307 After paragraph 1317C(ge)

Insert:



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(gf) a decision of ASIC to give, withdraw or not withdraw a notice under subsection 1313(1); or

## 308 Subsection 1317DAA(1) (paragraph (a) of the definition of *compensation proceedings*)

Repeal the paragraph, substitute:

(a) proceedings under section 1317H, 1317HA, 1317HB, 1317HC or 1317HE; and

## 309 Paragraph 1317DAA(2)(f)

After "93AA", insert "or 93A".

## 310 At the end of section 1317DAA

Add:

(3) For the purposes of applying this Part to a disclosing entity that is an undertaking to which interests in a notified foreign passport fund relate:

(a) references to the disclosing entity are taken to be references to the operator of the fund; and

(b) references to a financial report for a financial year being lodged by a disclosing entity are taken to be references to a copy of a report for the fund for the financial year, prepared in accordance with the financial reporting requirements applying to the fund under the Passport Rules for the home economy for the fund, being lodged by the operator of the fund; and

(c) references to securities of a disclosing entity are taken to be references to interests in the fund; and

(d) references to a disclosing entity being convicted of an offence based on subsection 674(2) or 675(2) are taken to be references to the operator of the fund being convicted of such an offence in relation to the fund; and

(e) references to a civil penalty order under Part 9.4B being made against a disclosing entity in relation to a contravention of subsection 674(2) or 675(2) are taken to be references to such an order being made against the operator of the fund in relation to the fund; and

(f) references to a disclosing entity having breached an enforceable undertaking given to ASIC under section 93AA



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or 93B of the ASIC Act in relation to the requirements of subsection 674(2) or 675(2) are taken to be references to the operator of the fund having breached such an undertaking given in relation to the fund.

## 311 Paragraphs 1317DAE(3)(e) and (5)(c)

After "93AA", insert ", 93A or 93B".

## 312 Paragraph 1317DAG(5)(c)

After "93AA", insert ", 93A or 93B".

## 313 Subsection 1317E(1) (table item 5, column 1)

Omit "subsection 344(1)", substitute "subsections 344(1) and (1A)".

## 314 Subsection 1317E(1) (after table item 45)

Insert:

| | | |
|---|---|---|
| 45A | subsections 1211B(1) and (2) | contravening the Passport Rules |

## 315 Paragraph 1317E(2)(e)

Omit "the corporation or registered scheme", substitute "the corporation, registered scheme or notified foreign passport fund".

## 316 At the end of subsection 1317E(2)

Add:

; (f) if the contravention is of subsection 1211B(1) or (2) (complying with the Passport Rules for this jurisdiction)—the passport fund in relation to which the obligation was imposed on the person.

## 317 Subparagraph 1317G(1)(b)(i)

Omit "the corporation or scheme", substitute "the corporation, scheme or fund".

## 318 Subparagraph 1317G(1A)(c)(ii)

Omit "if the issuer is a corporation or scheme, the members of that corporation or scheme", substitute "if the issuer is a corporation, scheme or fund, the members of that corporation, scheme or fund".



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## 319 Subsection 1317G(1B)

Omit "The relevant maximum amount", substitute "For the purposes of subsection (1A), the relevant maximum amount".

## 320 After subsection 1317G(1G)

Insert:

*Passport Rules for this jurisdiction*

(1H) A Court may order a person to pay the Commonwealth a pecuniary penalty of the relevant maximum amount if:

(a) a declaration of contravention by the person has been made under section 1317E; and

(b) the contravention is of subsection 1211B(1) or (2) (complying with the Passport Rules for this jurisdiction); and

(c) the contravention:

(i) materially prejudices the interests of the passport fund or its members; or

(ii) is serious.

(1J) For the purposes of subsection (1H), the relevant maximum amount is:

(a) $200,000 for an individual; or

(b) $1 million for a body corporate.

## 321 Subsection 1317H(1)

Omit "compensate a corporation or registered scheme", substitute "compensate a corporation, registered scheme or notified foreign passport fund".

## 322 Subsection 1317H(1)

Omit "corporation or scheme" (wherever occurring), substitute "corporation, scheme or fund".

## 323 Subsection 1317H(2)

Omit "corporation or scheme", substitute "corporation, scheme or fund".



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## 324 Subsection 1317H(3) (heading)

Repeal the heading, substitute:

*Damage includes diminution of value of scheme or fund property*

## 325 Subsection 1317H(3)

After "the scheme" (wherever occurring), insert "or fund".

## 326 After subsection 1317H(4)

Insert:

(4A) If the operator of a notified foreign passport fund is ordered to compensate the fund, the operator must transfer the amount of the compensation to the fund property. If anyone else is ordered to compensate the fund, the operator may recover the compensation on behalf of the fund.

## 327 Subsection 1317HA(1)

Omit ", or a registered scheme, for damaged suffered by the person or scheme", substitute ", registered scheme or notified foreign passport fund for damage suffered by the person, scheme or fund".

## 328 Subsection 1317HA(2)

Omit "person or scheme", substitute "person, scheme or fund".

## 329 Subsection 1317HA(3) (heading)

Repeal the heading, substitute:

*Damage includes diminution of value of scheme or fund property*

## 330 Subsection 1317HA(3)

After "a registered scheme", insert "or notified foreign passport fund".

## 331 Subsection 1317HA(3)

After "the scheme", insert "or fund".

## 332 After subsection 1317HA(4)

Insert:



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(4A) If the operator of a notified foreign passport fund is ordered to compensate the fund, the operator must transfer the amount of the compensation to the fund property. If anyone else is ordered to compensate the fund, the operator may recover the compensation on behalf of the fund.

## 333 Subsection 1317HB(1)

Omit “, or a registered scheme, for damage suffered by the person or scheme”, substitute “, a registered scheme or a notified foreign passport fund for damage suffered by the person, scheme or fund”.

## 334 Subsection 1317HB(3)

Omit “by a person or scheme”, substitute “by a person, scheme or fund”.

## 335 Subsection 1317HB(4) (heading)

Repeal the heading, substitute:

*Damage includes diminution of value of scheme or fund property*

## 336 Subsection 1317HB(4)

After “a registered scheme”, insert “or a notified foreign passport fund”.

## 337 Subsection 1317HB(4)

After “the scheme”, insert “or the fund”.

## 338 After subsection 1317HB(4)

Insert:

(4A) If the responsible entity for a registered scheme is ordered to compensate the scheme, the responsible entity must transfer the amount of the compensation to the scheme property. If anyone else is ordered to compensate the scheme, the responsible entity may recover the compensation on behalf of the scheme.

(4B) If the operator of a notified foreign passport fund is ordered to compensate the fund, the operator must transfer the amount of the compensation to the fund property. If anyone else is ordered to compensate the fund, the operator may recover the compensation on behalf of the fund.



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## 339 After section 1317HC

Insert:

### 1317HE Compensation orders—Passport Rules

(1) A Court may order a person (the ***liable person***) to compensate another person (other than a passport fund) for damage suffered by the other person if:

(a) the liable person has contravened subsection 1211B(1) or (2) (failure to comply with the Passport Rules for this jurisdiction); and

(b) the damage resulted from the contravention.

The order must specify the amount of compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

(2) A Court may order a person to compensate a passport fund for damage suffered by the fund if:

(a) the person has contravened subsection 1211B(1) or (2) (failure to comply with the Passport Rules for this jurisdiction); and

(b) the damage resulted from the contravention.

The order must specify the amount of compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

(3) In determining the damage suffered by a person or passport fund for the purposes of making a compensation order, include profits made by any person resulting from the contravention.

(4) In determining the damage suffered by a passport fund for the purposes of making a compensation order, include any diminution in value of the property of the fund.

(5) If the operator of a passport fund is ordered to compensate the fund, the operator must transfer the amount of the compensation to the fund property. If anyone else is ordered to compensate the fund, the operator may recover the compensation on behalf of the fund.



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(6) A compensation order may be enforced as if it were a judgment of the Court.

## 340 Subsection 1317J(2)

Omit "or the responsible entity for the registered scheme,", substitute "the responsible entity for the registered scheme or the operator of the notified foreign passport fund".

## 341 Subsection 1317J(3)

Repeal the subsection, substitute:

(3) The corporation, the responsible entity for the registered scheme or the operator of the notified foreign passport fund may intervene in an application for a declaration of contravention or a pecuniary penalty order in relation to the corporation, scheme or fund. The corporation, responsible entity or operator is entitled to be heard on all matters other than whether the declaration or order should be made.

## 342 After subsection 1317J(3A)

Insert:

*Compensation order relating to the Passport Rules for this jurisdiction—any other person who suffers damage may apply*

(3AA) Any other person who suffers damage in relation to a contravention, or alleged contravention, of subsection 1211B(1) or (2) may apply for a compensation order under section 1317HE.

Note: An application for a compensation order may be made whether or not a declaration of contravention has been made under section 1317E.

## 343 Subsection 1317S(1) (paragraphs (a) and (b) of the definition of *eligible proceedings*)

Omit "or 1317HC", substitute ", 1317HC or 1317HE".

## 344 Subsection 1325(1)

Omit "subsection 201P(1), Chapter 5C, 6CA or 6D, subsection 798H(1) or 908CF(1) or Part 7.10," (wherever occurring), substitute "a section 1325 order provision".



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## 345 Subsection 1325(2)

Omit "subsection 201P(1), Chapter 5C, 6CA or 6D, subsection 798H(1) or 908CF(1) or Part 7.10", substitute "a section 1325 order provision".

## 346 Subsection 1325(3)

Omit "subsection 201P(1), Chapter 5C, 6CA or 6D, subsection 798H(1) or 908CF(1) or Part 7.10" (wherever occurring), substitute "a section 1325 order provision".

## 347 At the end of section 1325

Add:

(7) In this section:

***section 1325 order provision*** means:

(a) subsection 201P(1); and
(b) a provision of Chapter 5C; and
(c) a provision of Chapter 6CA; and
(d) a provision of Chapter 6D; and
(e) subsection 798H(1); and
(f) subsection 908CF(1); and
(g) a provision of Part 7.10; and
(h) a provision of Chapter 8A; and
(i) a provision of the Passport Rules for this jurisdiction.

## 348 Subsection 1345A(1A)

Omit "or 601DC(2)", substitute ", 601DC(2) or 1213B(6)".

## 349 Paragraph 1345A(1A)(b)

Repeal the paragraph, substitute:

(b) a staff member of ASIC who holds, or performs the duties of, a position not below an Executive Level 1 position or an equivalent position.

## 349A Subsection 1351(3) (after table item 2)

Insert:

| | | |
|---|---|---|
| 2A | a notified foreign | 2 months after the review date to |



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| | |
|---|---|
| passport fund | which the fee relates |

## 349B Paragraph 1351(4)(b)

After "a registered scheme", insert ", a notified foreign passport fund".

## 349C Paragraph 1351(4)(b)

Omit "the company, scheme or body", substitute "the company, scheme, fund or body".

## 350 Subsection 1378(1) (note)

Omit "registered managed investment schemes", substitute "registered schemes".

## 351 Schedule 3 (after table item 108)

Insert:

| | | |
|---|---|---|
| 108A | Subsection 314A(1), (3) or (7) | 10 penalty units or imprisonment for 3 months, or both. |

## 352 Schedule 3 (table item 112, column headed "Provision")

Omit "Subsection 319(1)", substitute "Subsections 319(1) and (1AA)".

## 353 Schedule 3 (cell at table item 229AA, column headed "Provision")

Repeal the cell, substitute:

Subsections 672DA(1), (2), (3), (3A), (4), (6), (7), (8) and (9)

## 354 Schedule 3 (after table item 291B)

Insert:

| | | |
|---|---|---|
| 291BA | Subsection 1013IA(5) | 100 penalty units or imprisonment for 2 years, or both. |

## 355 Schedule 3 (after table item 300B)

Insert:

| | | |
|---|---|---|
| 300BA | Subsection 1020BAA(1) | 200 penalty units or imprisonment for 5 years, |



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| | | |
|---|---|---|
| | | or both. |

## 356 Schedule 3 (after table item 328)

Insert:

| | | |
|---|---|---|
| 328A | Subsection 1212C(1) | 60 penalty units. |
| 328B | Subsection 1215D(2) | 100 penalty units or imprisonment for 2 years, or both. |
| 328C | Subsection 1215D(3) | 100 penalty units or imprisonment for 2 years, or both. |
| 328D | Subsection 1215D(4) | 100 penalty units or imprisonment for 2 years, or both. |



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# Schedule 2A—Further amendments consequential on Chapter 8A

## *Competition and Consumer Act 2010*

### 1 Section 95 of Schedule 2 (note)

Omit "managed investment products", substitute "interests in managed investment schemes (which for the purposes of that Act include interests in notified foreign passport funds)".

### 2 Section 187 of Schedule 2 (note)

Omit "managed investment products", substitute "interests in managed investment schemes (which for the purposes of that Act include interests in notified foreign passport funds)".

## *Financial Sector (Collection of Data) Act 2001*

### 3 Paragraph 13(4A)(c)

After "managed investment scheme", insert "(within the meaning of the *Corporations Act 2001*)".

## *Foreign Acquisitions and Takeovers Act 1975*

### 4 Paragraph 6(3)(f)

Omit "managed investment scheme", substitute "registered scheme".

### 5 Paragraph 6(3)(f)

After "the responsible entity of the scheme", insert "(within the meaning of that Act)".

### 6 After paragraph 6(3)(f)

Insert:

(fa) one holds a substantial interest in a notified foreign passport fund (within the meaning of the *Corporations Act 2001*) and the other is the operator of the fund (within the meaning of that Act); or



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## *Income Tax Assessment Act 1936*

### 7 Subparagraph 128AE(2)(e)(iii)

After "as defined by subsection 92(3) of the *Corporations Act 2001*", insert "for the purposes of Chapters 6 to 6CA, disregarding Chapter 6C, of that Act".

## *Insurance Act 1973*

### 8 Subsection 3(1) (definition of *financial year*)

After "*Corporations Act 2001*", insert "(disregarding Schedule 2 of that Act)".

## *Payment Systems and Netting Act 1998*

### 9 Section 5 (paragraph (a) of the definition of *financial property*)

Omit "subsections 92(3) and (4)", substitute "subsections 92(2A), (3) and (4)".

## *Pooled Development Funds Act 1992*

### 10 Paragraph 30(1)(e)

After "managed investment scheme", insert "(including a notified foreign passport fund)".



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# Schedule 3—Transitional provisions

## *Corporations Act 2001*

### 1 In the appropriate position in Chapter 10

Insert:

## Part 10.33—Transitional provisions relating to the Corporations Amendment (Asia Region Funds Passport) Act 2018

### 1 Saving delegations

(1) A delegation of functions or powers by the Minister in force under paragraph 1345A(1A)(b) of this Act immediately before the commencement of item 349 of Schedule 2 to the *Corporations Amendment (Asia Region Funds Passport) Act 2018* continues in force on and after that commencement.

(2) Subsection (1) does not prevent an amendment or revocation of the delegation on or after commencement of item 349 of Schedule 2 to the *Corporations Amendment (Asia Region Funds Passport) Act 2018* as if it were a delegation under that paragraph as amended by that item.

### 2 Decisions to give, withdraw or not withdraw a notice under subsection 1313(1)

The amendment made by item 307 of Schedule 2 to the *Corporations Amendment (Asia Region Funds Passport) Act 2018* applies in relation to decisions of ASIC to give, withdraw or not withdraw a notice under subsection 1313(1) that are made on or after the commencement of that item.



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[*Minister's second reading speech made in—*
*House of Representatives on 28 March 2018*
*Senate on 27 June 2018*]

(67/18)



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