

EXPOSURE DRAFT

EXPOSURE DRAFT (14/02/2018)

1
2
3
4
5

Inserts for

Corporations Amendment (Asia Region Funds Passport) Bill 2018: Chapter 8A

1

EXPOSURE DRAFT

EXPOSURE DRAFT

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.

EXPOSURE DRAFT

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

- 3 (a) the participating economy is not the home economy for the
4 fund; and
5 (b) either:
6 (i) it is permitted under the law of the participating
7 economy to offer interests in the fund in that economy,
8 on the basis that the fund is a passport fund; or
9 (ii) an application has been made under the law of the
10 participating economy for permission to offer interests
11 in the fund in that economy, on the basis that the fund is
12 a passport fund.

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

16 **Memorandum of Cooperation** means the Memorandum of
17 Cooperation on the Establishment and Implementation of the Asia
18 Region Funds Passport signed on behalf of Australia on 28 April
19 2016, as it applies in relation to Australia from time to time.

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

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

- 25 (a) the Asia Region Funds Passport Joint Committee established
26 under the Memorandum of Cooperation has published
27 notification on the Passport website under subparagraph 5.6
28 of the Memorandum, at or before that time, that the
29 Participant has effected implementation; and
30 (b) at that time:
31 (i) the Memorandum of Cooperation has not been
32 terminated; and
33 (ii) the Participant has not withdrawn from the
34 Memorandum of Cooperation.

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

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

EXPOSURE DRAFT

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

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

5 **1210A List of participating economies**

- 6 (1) The Minister must, by notifiable instrument, publish a list of
7 participating economies.
- 8 (2) The Minister must:
- 9 (a) include in the instrument the date on which each Participant,
10 within the meaning of the Memorandum of Cooperation,
11 became a participating economy; and
 - 12 (b) if a Participant, within the meaning of the Memorandum of
13 Cooperation, ceases to be a participating economy—include
14 in the instrument the date on which that Participant ceases to
15 be a participating economy; and
 - 16 (c) ensure that the instrument is updated as soon as is reasonably
17 practicable after a Participant, within the meaning of the
18 Memorandum of Cooperation, becomes, or ceases to be, a
19 participating economy.

20 **1210B Minister may determine that funds not to offer interests in** 21 **this jurisdiction**

- 22 (1) The Minister may, by legislative instrument, determine that the
23 operators of passport funds, or a class of passport funds, the home
24 economy for which is specified in the determination, must not offer
25 interests in the funds in this jurisdiction.
- 26 (2) The Minister may only make a determination under subsection (1),
27 if:
- 28 (a) the Minister is satisfied that:
 - 29 (i) under the Memorandum of Cooperation, there are
30 grounds for requiring the operators of the funds to
31 which the determination applies not to offer interests in
32 the funds in this jurisdiction; and
 - 33 (ii) the processes that, under the Memorandum of
34 Cooperation, are to be followed before requiring the
35 operators of the funds to which the determination

EXPOSURE DRAFT

-
- 1 applies not to offer interests in the funds in this
2 jurisdiction, have been complied with; or
3 (b) the Memorandum of Cooperation has been terminated; or
4 (c) Australia or the home economy for the funds to which the
5 determination applies withdraws from the Memorandum of
6 Cooperation.
- 7 (3) If the Minister makes a determination under this section, the
8 regulations may deal with matters of a transitional nature relating
9 to the movement of funds to which the determination applies from
10 participation in this jurisdiction under this Chapter to participation
11 in this jurisdiction under the other provisions of the Corporations
12 legislation dealing with managed investment schemes.

EXPOSURE DRAFT

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.

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.

1211C 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

EXPOSURE DRAFT

-
- 1 (c) the failure to comply results, or is likely to result, in a person
2 in this jurisdiction who holds an interest in the fund suffering
3 financial or other disadvantage.
- 4 (3) A person commits an offence if the person contravenes
5 subsection (1) or (2).
- 6 Penalty: 2,000 penalty units or imprisonment for 5 years, or both.
- 7 (4) A person commits an offence of strict liability if the person
8 contravenes subsection (1) or (2).
- 9 Penalty: 60 penalty units.
- 10 (5) Section 15.1 of the *Criminal Code* (extended geographical
11 jurisdiction—category A) applies to an offence against
12 subsection (3) or (4).

EXPOSURE DRAFT

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.

[Note: The provisions currently allow for registered schemes to be registered as Australian passport funds. It is intended that corporate collective investment vehicles will be given the same option.]

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:

EXPOSURE DRAFT

-
- 1 (a) the responsible entity for the scheme is an eligible entity,
2 within the meaning of section 3 of Annex 2 of the
3 Memorandum of Cooperation; and
4 (b) each of the following is likely to be complied with in relation
5 to the scheme:
6 (i) this Act (including the Passport Rules for this
7 jurisdiction);
8 (ii) the ASIC Act.
- 9 (2) A registered scheme is registered as a passport fund by ASIC:
10 (a) assigning a unique number to the passport fund (the
11 *Australian Passport Fund Registration Number* or *APFRN*
12 for the passport fund); and
13 (b) ensuring that details of the fund are entered on the Register of
14 Passport Funds.

15 **1212B All documents etc. lodged with ASIC to bear APFRN**

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

19 **1212C Notifying ASIC if offering interests in another participating** 20 **economy in another name**

- 21 (1) The operator of an Australian passport fund must notify ASIC in
22 accordance with this section if:
23 (a) the operator of the fund offers interests in the fund in a
24 participating economy other than Australia; and
25 (b) the name of the fund in the other participating economy is not
26 the same as the name of the Australian passport fund.

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

- 29 (2) The notice must be given:
30 (a) in writing; and
31 (b) within 7 days after interests in the fund begin to be offered
32 under that name.

EXPOSURE DRAFT

1 **Part 8A.4—Notified foreign passport funds**

2 **Division 1—Becoming a notified foreign passport fund**

3 **1213 Notice of intention to offer interests in a foreign passport fund**

- 4 (1) The operator of a foreign passport fund may lodge with ASIC a
5 notice of intention to offer interests in the fund to persons in this
6 jurisdiction, provided the operator is a registered foreign company.
- 7 (2) The notice must:
- 8 (a) be in the prescribed form; and
- 9 (b) include a copy of the Product Disclosure Statement that the
10 operator of the foreign passport fund would be required to
11 prepare if:
- 12 (i) the operator were a regulated person required to give a
13 Product Disclosure Statement to a retail client under
14 subsection 1012B(3); and
- 15 (ii) the fund were a notified foreign passport fund.
- 16 (3) The operator of the foreign passport fund may withdraw the notice
17 of intention by notice lodged in the prescribed form at any time
18 during the consideration period for the notice.
- 19 (4) ASIC may, by legislative instrument, determine that information
20 that is lodged with ASIC under this section will not be available for
21 inspection or copying from ASIC if it is of a kind specified in the
22 determination.

23 **1213A ASIC may notify operator that notice of intention lacks** 24 **information required**

- 25 (1) ASIC may, within the consideration period for the notice of
26 intention, notify the operator of the foreign passport fund that
27 ASIC is of the opinion that information required under the
28 prescribed form has not been provided.
- 29 (2) ASIC's notification must be given in writing.

EXPOSURE DRAFT

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.

EXPOSURE DRAFT

-
- 1 (3) In paragraph (1)(b), *public interest* does not include any benefit in
2 this jurisdiction that may arise from limiting competition for
3 managed investment schemes operating principally in this
4 jurisdiction.
- 5 (4) Nothing in this section requires ASIC to conduct an assessment of
6 the public interest in this jurisdiction in each case.
- 7 (5) A name is not available to a foreign passport fund in this
8 jurisdiction for the purposes of paragraph (1)(d) if:
9 (a) the name is:
10 (i) identical (under rules set out in the regulations) to a
11 name that is reserved or registered under this Act for
12 another body; or
13 (ii) identical (under rules set out in the regulations) to a
14 name of a managed investment scheme that is the
15 subject of an application for registration that has been
16 lodged under section 601EA but not yet determined; or
17 (iii) identical (under rules set out in the regulations) to a
18 name of a foreign passport fund in relation to which a
19 notice of intention under section 1213 has already been
20 lodged; or
21 (iv) identical (under rules set out in the regulations) to a
22 name that is held or registered on the Business Names
23 Register in respect of another individual or body who is
24 not the operator; or
25 (v) unacceptable for registration under the regulations; and
26 (b) the operator of the fund has not notified ASIC and the home
27 regulator for the fund in writing that it will adopt an available
28 alternative name for the fund in this jurisdiction.
- 29 (6) The Minister may consent in writing to a name being available to a
30 foreign passport fund in this jurisdiction even if the name would
31 not otherwise be available because of paragraph (5)(a).
- 32 (7) The Minister's consent may be given subject to conditions.
- 33 *Circumstances in which ASIC must reject a notice of intention*
- 34 (8) ASIC must, within the consideration period for the notice of
35 intention, reject the notice if:
36 (a) the Minister has made a determination under
37 subsection 1210B(1) that the operators of passport funds, or a
-

EXPOSURE DRAFT

1 class of passport funds, the home economy for which is
2 specified in the determination, must not offer interests in the
3 fund in this jurisdiction; and

4 (b) the determination applies to the passport fund.

5 *ASIC must notify operator of decision to reject*

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

8 **1213C Notified foreign passport funds—authority to offer interests** 9 **in this jurisdiction**

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

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

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

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

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

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

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

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

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

32 **1213D Definition of *consideration period***

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

EXPOSURE DRAFT

-
- 1 (a) a period of 15 business days beginning on the day after the
2 notice is lodged with ASIC; or
3 (b) if ASIC and the operator agree that the period is to be
4 extended under subsection (2)—the extended period.
- 5 (2) ASIC and the operator of the foreign passport fund may agree, in
6 writing, to one or more extensions of the consideration period.
7 However, each extension must be for no more than 5 business
8 days.

EXPOSURE DRAFT

1 **Division 2—Treatment of notified foreign passport funds**

2 **1213E Notified foreign passport funds to be treated as managed** 3 **investment schemes**

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

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

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

15 **1213EA Operators and notified foreign passport funds not to be** 16 **treated as companies etc.**

17 To avoid doubt:

- 18 (a) neither the operator of a notified foreign passport fund nor
19 the fund is to be treated as a company for the purposes of the
20 corporations legislation, merely because the operator or the
21 fund is registered as a foreign company under Division 2 of
22 Part 5B.2; and
23 (b) a reference in the corporations legislation to a share does not
24 include an interest in a notified foreign passport fund unless
25 the fund is also a company.

26 **1213EAA Offences relating to the operation of notified foreign** 27 **passport funds**

- 28 (1) This section applies if:
29 (a) one of the following persons engages in conduct that
30 constitutes an alleged offence against this Act or the ASIC
31 Act:
32 (i) a notified foreign passport fund;
33 (ii) the operator of a notified foreign passport fund;
-

EXPOSURE DRAFT

-
- 1 (iii) a person with responsibilities in relation to a notified
2 foreign passport fund; and
3 (b) the conduct occurs in relation to the operation of the fund;
4 and
5 (c) the conduct occurs wholly in a foreign country; and
6 (d) the person who engages in the conduct is not:
7 (i) an Australian citizen; or
8 (ii) a body corporate incorporated by or under a law of the
9 Commonwealth or of a State or Territory; and
10 (e) it is not otherwise a physical element of the offence that the
11 conduct results, or is likely to result, in a person in this
12 jurisdiction who has an interest in the fund suffering financial
13 or other disadvantage.
- 14 (2) It is a physical element of the offence that the conduct results, or is
15 likely to result, in a person in this jurisdiction who has an interest
16 in the fund suffering financial or other disadvantage.
- 17 (3) In this section:
- 18 *person with responsibilities in relation to a notified foreign*
19 *passport fund* means a person (other than a regulator) who has
20 functions or duties in relation to the fund under the Passport Rules
21 for this jurisdiction.

EXPOSURE DRAFT

1 **Division 2A—Conduct of notified foreign passport funds in**
2 **this jurisdiction**

3 **1213EB Notified foreign passport funds must not issue debentures in**
4 **this jurisdiction**

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

- 7 (a) makes an offer to issue a debenture in this jurisdiction; or
8 (b) issues a debenture in this jurisdiction.

9 Penalty: 60 penalty units.

EXPOSURE DRAFT

1 **Division 3—Providing key information in relation to**
2 **notified foreign passport funds**

3 **Subdivision A—Obligations to provide information to members**
4 **in this jurisdiction**

5 **1213F Constitution—right to obtain a copy**

6 *Right to a copy of the consolidated constitution*

- 7 (1) The operator of a notified foreign passport fund commits an
8 offence of strict liability if:
- 9 (a) a person makes an application to the operator in accordance
10 with subsection (2) for a copy of the consolidated
11 constitution of the fund; and
 - 12 (b) the person is:
 - 13 (i) an Australian member of the fund; or
 - 14 (ii) a former member of the fund who acquired an interest in
15 the fund in this jurisdiction, or is ordinarily resident in
16 this jurisdiction; and
 - 17 (c) the person pays the reasonable costs of the operator, up to a
18 prescribed amount, in providing a copy of the consolidated
19 constitution; and
 - 20 (d) the operator fails, or refuses, to give the person a copy of the
21 consolidated constitution in accordance with this section; and
 - 22 (e) as a result, the person does not obtain a copy of the
23 consolidated constitution of the fund in accordance with this
24 section.

25 Penalty: 60 penalty units.

26 *Application for a copy of the consolidated constitution*

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

29 *Manner in which the consolidated constitution must be provided*

- 30 (3) If, in the application, the applicant requests a paper copy of the
31 consolidated constitution, the operator must post the applicant a

EXPOSURE DRAFT

1 copy of the consolidated constitution within 7 days after the
2 application is made.

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

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

8 *Language in which consolidated constitution must be provided*

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

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

16 *Geographical jurisdiction*

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

20 **1213G Register of members—right to obtain a copy**

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

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

24 (a) a person makes an application to the operator in accordance
25 with subsection (2) for a copy of the register of members for
26 the fund; and

27 (b) the person is:

28 (i) in this jurisdiction; or

29 (ii) an Australian member of the fund; or

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

EXPOSURE DRAFT

-
- 1 (c) the person pays the reasonable costs of the operator, up to a
2 prescribed amount, in providing a copy of the register; and
3 (d) the operator fails, or refuses, to give the person a copy of the
4 register in accordance with this section; and
5 (e) as a result, the person does not obtain a copy of the register
6 of the fund in accordance with this section.

7 Penalty: 60 penalty units.

8 *Application for a copy of the register*

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

15 *Manner in which register must be provided*

- 16 (3) If, in the application, the applicant requests a paper copy of the
17 register, the operator must post the applicant a copy of the register
18 within 7 days after the application is made.
- 19 (4) Otherwise, the operator must give the applicant a copy of the
20 register electronically, within 7 days after the application is made.
- 21 (5) ASIC may allow a longer period for the operator to give the
22 applicant a copy of the register.

23 *Language in which register must be provided*

- 24 (6) If, in the application, the applicant requests that the copy of the
25 register be in an official language of the home economy of the fund
26 (other than English), the copy of the register given to the applicant
27 must be in that language.
- 28 (7) Otherwise, the copy of the register given to the applicant must be
29 in English.

EXPOSURE DRAFT

Geographical jurisdiction

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

5 **1213H Use of information on register of members**

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

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

15 Penalty: 60 penalty units.

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

19 *Exception*

- 20 (2) Subsection (1) does not apply if the use or disclosure of the
21 information is:
22 (a) relevant to the holding of the interests recorded in the register
23 or the exercise of the rights attaching to them; or
24 (b) approved by the operator of the fund.

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

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

- 29 (3) A person who obtains a copy of a register of members of a notified
30 foreign passport fund under section 1213G must not:
31 (a) use information obtained from the register for any purpose
32 prescribed by regulations made for the purposes of
33 paragraph 1213G(2)(c); or

EXPOSURE DRAFT

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

3 Penalty: 60 penalty units.

4 *Strict liability*

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

7 *Geographical jurisdiction*

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

11 *Liability to pay compensation*

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

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

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

19 (8) If a person owes a debt under subsection (7) to the fund:

20 (a) the debt may be recovered by the operator of the fund as a
21 debt due to it; and

22 (b) any amount paid or recovered in respect of the debt forms
23 part of the property of the fund.

24 **1213HA Reports required under the law of the home economy**

25 *Right to a copy of reports*

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

28 (a) the operator or the fund is required under the law of the home
29 economy for the fund to prepare a report (however described)
30 in relation to the fund; and

EXPOSURE DRAFT

-
- 1 (b) the operator or the fund makes the report available to
2 members of the fund in the home economy without charge;
3 and
4 (c) the operator does not give Australian members of the fund, in
5 accordance with this section:
6 (i) a copy of the report; and
7 (ii) if a summary in English of all or part of the report is
8 required under subsection (5)—a summary in English of
9 all or that part of the report.

10 Penalty: 60 penalty units.

11 *Manner in which report must be made available*

- 12 (2) The report must be given to Australian members of the fund within
13 7 days after the first day on which the report is made available to a
14 member of the fund in the home economy without charge.
- 15 (3) The report may be given to Australian members of the fund by:
16 (a) putting the report on the fund's website so that it is accessible
17 to Australian members of the fund; and
18 (b) if members of the fund in the home economy are notified that
19 the report is available on the fund's website, or notified how
20 those members may access it—giving equivalent notice to
21 Australian members of the fund.
- 22 (4) The report must be given without charge.

23 *English summary of the report*

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

28 *Exception*

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

EXPOSURE DRAFT

Geographical jurisdiction

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

5 **1213HB Order for copies of books of a notified foreign passport**
6 **fund**

- 7 (1) A person may apply to the Court for an order under subsection (2)
8 if the person is:
9 (a) an Australian member of the fund; or
10 (b) a former member of the fund who acquired an interest in the
11 fund in this jurisdiction, or is ordinarily resident in this
12 jurisdiction.
- 13 (2) On application by the member or former member, the Court may
14 order the operator of the fund to give the member or former
15 member an electronic copy of any or all of the following:
16 (a) all or a specified part of the books of the operator that relate
17 to the fund;
18 (b) all or a specified part of the books of the fund;
19 (c) an English translation of all or a specified part of the books
20 of the operator that relate to the fund;
21 (d) an English translation of all or a specified part of the books
22 of the fund.
- 23 (3) The Court may make the order only if it is satisfied that:
24 (a) the applicant is acting in good faith; and
25 (b) the books, or the specified part of the books, are to be
26 obtained for a proper purpose.
- 27 (4) The member or former member may make copies of the books, or
28 the specified part of the books, unless the Court orders otherwise.

29 **Subdivision B—Obligations to provide information to ASIC**

30 **1213J Register of members—ASIC may require lodgment**

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

EXPOSURE DRAFT

-
- 1 (a) ASIC requires the operator of the fund to lodge a copy of the
2 whole or a specified part of the register of members of the
3 fund, in accordance with subsections (2) and (3); and
4 (b) the operator fails, or refuses, to lodge a copy of the register in
5 accordance with this section.

6 Penalty: 60 penalty units.

7 *Notice requiring operator to lodge register of members*

- 8 (2) ASIC may, by written notice given to the operator of a notified
9 foreign passport fund, require the operator to lodge a copy of the
10 whole or a specified part of the register of members of the fund.
- 11 (3) ASIC may, in the notice, require the copy of the whole or the
12 specified part of the register to be lodged in English.

13 *Manner in which register must be lodged*

- 14 (4) The operator must lodge a copy of the register with ASIC
15 electronically, within 7 days after being given notice to do so in
16 accordance with subsections (2) and (3).
- 17 (5) ASIC may allow a longer period for the operator to lodge a copy of
18 the register.

19 *Language in which register must be provided*

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

23 *Geographical jurisdiction*

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

27 **1213K Destruction of records by ASIC**

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

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

EXPOSURE DRAFT

1
2
3

(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.

EXPOSURE DRAFT

Part 8A.5—Register of Passport Funds

1
2

1214 Register of Passport Funds

4

(1) ASIC must either:

5

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

6

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

7

8

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

9

10

11

(3) The Register of Passport Funds:

12

(a) must include the prescribed details of Australian passport funds and notified foreign passport funds; and

13

14

(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

15

16

17

(c) may include details of other passport funds.

18

(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).

19

20

21

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:
- (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.

EXPOSURE DRAFT

Hearing before stop order made

- 1
- 2 (4) Before making a stop order, ASIC must:
- 3 (a) hold a hearing; and
- 4 (b) give a reasonable opportunity to any interested people to
- 5 make oral or written submissions to ASIC on whether an
- 6 order should be made.

7 *ASIC must give notice if stop order made*

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

11 **1215A Stop order—notified foreign passport fund**

12 *ASIC may make stop orders*

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

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

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

24 *Basis on which stop orders may be made*

- 25 (3) However, ASIC may only make a stop order under this section if:
- 26 (a) subsections (4) and (6) are satisfied; or
- 27 (b) the operator of the fund has ceased to be a registered foreign
- 28 company; or
- 29 (c) the operator of the fund has not had a local agent for more
- 30 than 21 days; or
- 31 (d) both of the following are satisfied:
- 32 (i) the Minister has made a determination under
- 33 subsection 1210B(1) that the operators of passport

EXPOSURE DRAFT

-
- 1 funds, or a class of passport funds, the home economy
2 for which is specified in the determination, must not
3 offer interests in the fund in this jurisdiction;
- 4 (ii) the determination applies to the passport fund;
- 5 (e) if the order is made under paragraph (1)(b)—taking the
6 action specified in the order is reasonably necessary to ensure
7 that an order made under paragraph (1)(a) is complied with;
8 or
- 9 (f) if the order is made under paragraph (1)(c)—not taking the
10 action specified in the order is reasonably necessary to ensure
11 that an order made under paragraph (1)(a) is complied with.
- 12 (4) For the purposes of paragraph (3)(a), this subsection is satisfied if
13 ASIC is of the opinion that one or more of the following has not
14 been, is not being or is not likely to be complied with in relation to
15 the fund (whether in this jurisdiction or in any other place):
- 16 (a) this Act (including the Passport Rules for this jurisdiction);
17 (b) the ASIC Act;
18 (c) the law of the home economy for the fund, to the extent that
19 the law is administered by the home regulator for the fund
20 (including the Passport Rules for the home economy of the
21 fund).
- 22 (5) In determining its opinion in relation to a matter mentioned in
23 paragraph (4)(c), ASIC must:
- 24 (a) make a request, in writing, to the home regulator for the fund
25 for the opinion of the home regulator on the matter; and
26 (b) specify in the request the basis for ASIC’s concerns about
27 compliance with the law of the home economy; and
28 (c) state a reasonable period during which ASIC will wait for a
29 reply before acting; and
30 (d) if the home regulator replies to the request within that
31 period—give effect to the opinion of the home regulator on
32 the matter.
- 33 (6) For the purposes of paragraph (3)(a), this subsection is satisfied if
34 ASIC is of the opinion that the stop order is necessary, having
35 regard to:
- 36 (a) the impact on the members and prospective members of the
37 fund of the failure, or potential failure, to comply with a law
38 mentioned in subsection (4); and
-

EXPOSURE DRAFT

-
- 1 (b) any action taken, or that may be taken, by the home regulator
2 for the fund.

3 *Hearings before certain stop orders made*

- 4 (7) Before making a stop order on the basis of subsections (4) and (6),
5 ASIC must:
6 (a) hold a hearing; and
7 (b) give a reasonable opportunity to any interested people to
8 make oral or written submissions to ASIC on whether an
9 order should be made.

10 *ASIC must give notice if stop order made*

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

14 **1215B Interim stop orders**

- 15 (1) ASIC may make an interim stop order, if ASIC is of the opinion
16 that:
17 (a) any delay in making a stop order under section 1215 or
18 1215A would be prejudicial to the public interest; and
19 (b) either:
20 (i) in the case of an order that is to be made in relation to
21 an Australian passport fund—one or more of the
22 circumstances mentioned in subsection 1215(3) exists;
23 or
24 (ii) in the case of an order that is to be made in relation to a
25 notified foreign passport fund—one or more of the
26 circumstances mentioned in subsection 1215A(3) exists.
- 27 (2) An interim stop order under subsection (1):
28 (a) may be made without holding a hearing, or during a hearing;
29 and
30 (b) must be in writing; and
31 (c) lasts:
32 (i) if the stop order is made during a hearing—until ASIC
33 makes a stop order after the conclusion of the hearing,
34 or the interim stop order is revoked; and

EXPOSURE DRAFT

(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 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.

EXPOSURE DRAFT

-
- 1 (5) Nothing in this section limits the circumstances in which ASIC
2 may revoke or vary a stop order made under section 1215 or
3 1215A.

4 **1215D Compliance with stop orders**

- 5 (1) This section applies if:

- 6 (a) ASIC gives the operator of an Australian passport fund a
7 copy of a stop order under subsection 1215(5) or an interim
8 stop order under subsection 1215B(3); or
9 (b) ASIC gives the operator of a notified foreign passport fund a
10 stop order under subsection 1215A(8) or an interim stop
11 order under subsection 1215B(3).

- 12 (2) The operator must not contravene the order.

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

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

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

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

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

EXPOSURE DRAFT

1 **Part 8A.8A—Deregistration and denotification**

2 **Division 1—Deregistration of Australian passport funds**

3 **Subdivision A—Voluntary deregistration**

4 **1216A Application to deregister**

- 5 (1) The operator of an Australian passport fund may lodge an
6 application for deregistration of the fund as an Australian passport
7 fund.
- 8 (2) The application must be in the prescribed form.

9 **1216AA ASIC to deregister**

- 10 (1) On an application under section 1216A, ASIC must deregister a
11 fund as an Australian passport fund if ASIC is satisfied that:
- 12 (a) there are no members of the fund who became members
13 (whether in this jurisdiction or any host economy for the
14 fund) after the fund became an Australian passport fund; and
- 15 (b) there are no members of the fund who became members
16 (whether in this jurisdiction or any host economy for the
17 fund) on the expectation that the fund would become an
18 Australian passport fund.
- 19 (2) For the purposes of subsection (1), ignore any member of the fund
20 that:
- 21 (a) is, or has at any time been, the operator of the fund; or
22 (b) is a related party of an entity that is, or has at any time
23 been, the operator of the fund.

24 **1216AB When is there an expectation that a fund would become an** 25 **Australian passport fund?**

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

- 29 (a) a representation has been made by the fund or the operator of
30 the fund in any document, or other means of communication,
31 that might reasonably be expected to be available to persons
-

EXPOSURE DRAFT

1 considering acquiring an interest in the fund that the fund
2 will become, or that it is intended or expected that the fund
3 will become, an Australian passport fund; and

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

6 **Subdivision B—Deregistration initiated by ASIC**

7 **1216B Deregistration—initiated by ASIC**

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

- 13 (a) this Act (including the Passport Rules for this jurisdiction);
14 (b) the ASIC Act.

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

- 18 (a) members of the fund who became members (whether in this
19 jurisdiction or any host economy for the fund) after the fund
20 became an Australian passport fund; and
21 (b) members of the fund who became members (whether in this
22 jurisdiction or any host economy for the fund) on the
23 expectation that the fund would become an Australian
24 passport fund.

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

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

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

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

EXPOSURE DRAFT

-
- 1 (5) The notice must specify:
2 (a) the grounds on which it is proposed to deregister the fund as
3 an Australian passport fund; and
4 (b) a reasonable time and place at which the hearing is to be
5 held.
6 However, if the operator consents, the person conducting the
7 hearing may fix a different time or place.
- 8 (6) The person conducting the hearing must:
9 (a) give the operator an opportunity to be heard at the hearing;
10 and
11 (b) give ASIC:
12 (i) a report about the hearing; and
13 (ii) a recommendation about the grounds in the notice on
14 which it is proposed to deregister the fund.
- 15 (7) After considering the report and recommendation, ASIC may
16 decide to:
17 (a) take no further action in relation to the matter and give
18 written advice of that decision to the operator; or
19 (b) deregister the fund as an Australian passport fund.
- 20 (8) Neither of the following is a legislative instrument:
21 (a) a notice under subsection (4);
22 (b) a report under subsection (6) (if it is in writing).

23 Subdivision C—Process for deregistration

24 1216BA Process for deregistration

25 *Notice before deregistration*

- 26 (1) If ASIC proposes to deregister a fund as an Australian passport
27 fund under subsection 1216AA(1) or paragraph 1216B(7)(b), ASIC
28 must give written notice setting out the date on which ASIC
29 proposes to deregister the fund as an Australian passport fund to:
30 (a) the operator of the fund; and
31 (b) each host regulator for the fund.
- 32 (2) The notice must be given at least 5 business days before the fund is
33 deregistered.

EXPOSURE DRAFT

1
2
3
4
5
6
7
8
9
10
11
12
13
14

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 1216AA(1) or paragraph 1216B(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.

EXPOSURE DRAFT

1 **Division 2—Denotification of notified foreign passport**
2 **funds**

3 **Subdivision A—Voluntary denotification**

4 **1217C Application to be removed as a notified foreign passport fund**

- 5 (1) The operator of a notified foreign passport fund may lodge an
6 application for the fund to be removed as a notified foreign
7 passport fund.
- 8 (2) The application must be in the prescribed form.

9 **1216CA ASIC to remove fund as a notified foreign passport fund**

- 10 (1) On an application under section 1217C, ASIC must remove a fund
11 as a notified foreign passport fund if ASIC is satisfied that:
- 12 (a) there are no members of the fund who became members in
13 this jurisdiction after the fund became a notified foreign
14 passport fund; and
- 15 (b) there are no members of the fund who became members in
16 this jurisdiction on the expectation that the fund would
17 become a notified foreign passport fund.
- 18 (2) For the purposes of subsection (1), ignore any member of the fund
19 that:
- 20 (a) is, or has at any time been, the operator of the fund; or
21 (b) is a related party of an entity that is, or has at any time been,
22 the operator of the fund.

23 **1216CB When is there an expectation that a fund would become a**
24 **notified foreign passport fund?**

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

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

EXPOSURE DRAFT

-
- 1 will become, or that it is intended or expected that the fund
2 will become, a notified foreign passport fund; and
3 (b) the person acquires an interest in the fund after that
4 representation was made.

5 **Subdivision B—Notified foreign passport fund deregistered in**
6 **the fund’s home economy**

7 **1216D ASIC to remove a fund as a notified foreign passport fund**

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

11 **Subdivision C—Process for removal as a notified foreign**
12 **passport fund**

13 **1216DA Process for removal as a notified foreign passport fund**

14 *Notice before removal*

- 15 (1) If ASIC proposes to remove a fund as a notified foreign passport
16 fund under section 1216CA or 1216D, ASIC must give written
17 notice setting out the date on which ASIC proposes to remove the
18 fund as a notified foreign passport fund to:
19 (a) the operator of the fund; and
20 (b) the home regulator for the fund and each other host regulator
21 for the fund.
- 22 (2) The notice must be given at least 5 business days before the fund is
23 removed.

24 *Removing the fund as a notified foreign passport fund*

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

EXPOSURE DRAFT

1
2
3
4
5
6
7
8
9

Notice of removal

- (4) If ASIC removes a fund as a notified foreign passport fund under section 1216CA or 1216D, 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.

EXPOSURE DRAFT

1 **Division 3—Continued application of the Corporations**
2 **legislation**

3 **1216BB ASIC’s power to continue the application of the**
4 **Corporations legislation**

5 *Declarations on continued application of the Corporations*
6 *legislation*

7 (1) ASIC may:

8 (a) declare that the Corporations legislation continues to apply:

9 (i) in relation to a fund that has been deregistered as an
10 Australian passport fund or removed as a notified
11 foreign passport fund; and

12 (ii) to an entity in relation to a fund that has been
13 deregistered as an Australian passport fund or removed
14 as a notified foreign passport fund; and

15 (b) declare that the Corporations legislation continues to apply:

16 (i) in relation to a fund that has been deregistered as an
17 Australian passport fund or removed as a notified
18 foreign passport fund; and

19 (ii) to an entity in relation to a fund that has been
20 deregistered as an Australian passport fund or removed
21 as a notified foreign passport fund;

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

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

25 (a) apply to all or specified provisions of the Corporations
26 legislation; and

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

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

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

EXPOSURE DRAFT

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

- 1
2 (3) A declaration that relates to all entities, a specified class of entities,
3 all former passport funds or a specified class of former passport
4 funds, must be made by legislative instrument.

5 *Declarations relating to specified entities or passport funds*

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

- 8 (5) ASIC must also:

9 (a) give a copy of a declaration that relates to a specified entity
10 to the entity; and

11 (b) give a copy of a declaration that relates to a specified former
12 passport fund to the most recent operator of the fund.

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

15 **1216BC Regulations may continue the application of the**
16 **Corporations legislation**

17 The regulations may:

- 18 (a) provide that the Corporations legislation continues to apply:

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

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

- 26 (b) provide that the Corporations legislation continues to apply:

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

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

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

EXPOSURE DRAFT

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.
- (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.

EXPOSURE DRAFT

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:

(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

EXPOSURE DRAFT

-
- 1 (c) apply to all passport funds, a specified class of passport funds
2 or a specified passport fund; and
3 (d) relate to any other matter generally or as specified.

4 (3) However:

- 5 (a) ASIC may only give an exemption or make a declaration
6 under subsection (1) in relation to an Australian passport
7 fund if each host regulator for the fund has agreed to the
8 exemption being given or the declaration being made; and
9 (b) ASIC may only give an exemption or make a declaration
10 under subsection (1) in relation to a foreign passport fund if
11 the home regulator for the fund has granted an equivalent
12 exemption or made a similar omission, modification or
13 variation of the Passport Rules for the home economy for the
14 fund.

15 *Imposition of conditions on exemption*

- 16 (4) An exemption may apply unconditionally or subject to specified
17 conditions.
18 (5) An entity to whom a condition specified in an exemption applies
19 must comply with the condition.
20 (6) The Court may order the entity to comply with the condition in a
21 specified way. Only ASIC may apply to the Court for the order.

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

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

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

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

31 (9) ASIC must also:

- 32 (a) give a copy of an exemption or declaration that relates to a
33 specified entity to the entity; and

EXPOSURE DRAFT

-
- 1 (b) give a copy of an exemption or declaration that relates to a
2 specified passport fund to the operator of the fund.
3 ASIC must do so as soon as is reasonably practicable after the
4 exemption or declaration is made.

5 **1217B Exemptions and modification by regulations**

6 The regulations may:

- 7 (a) exempt from all or specified provisions of the Corporations
8 legislation (which includes this Chapter and the Passport
9 Rules for this jurisdiction):
10 (i) a passport fund, all passport funds of a specified class or
11 all passport funds; or
12 (ii) an entity, all entities of a specified class or all entities,
13 in relation to a passport fund, all passport funds of a
14 specified class or all passport funds;
15 (b) provide that the Corporations legislation (which includes this
16 Chapter and the Passport Rules for this jurisdiction) applies
17 in relation to:
18 (i) a passport fund, all passport funds of a specified class or
19 all passport funds; or
20 (ii) an entity, all entities of a specified class or all entities,
21 in relation to a passport fund, all passport funds of a
22 specified class or all passport funds;
23 as if specified provisions of the Corporations legislation were
24 omitted, modified or varied as specified in the regulations.

EXPOSURE DRAFT

Schedule 2—Amendments consequential on Chapter 8A

Australian Securities and Investments Commission Act 2001

1 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.

2 Paragraph 11(17)(c)

Omit “or (14)”, substitute “, (14) or (16A)”.

2A Subsection 12BAA(7) (note)

Omit “Note”, substitute “Note 1”.

2B 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.

2C Paragraph 12BAB(7)(c)

Repeal the paragraph, substitute:

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

2D 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.

2E After paragraph 12BAB(14)(b)

Insert:

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

EXPOSURE DRAFT

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

2 **2F At the end of section 12BL**

3 Add:

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

7 **3 Part 3A (heading)**

8 Repeal the heading, substitute:

9 **Part 3A—Enforceable undertakings**

10 **4 Section 93A (heading)**

11 Repeal the heading, substitute:

12 **93A Undertakings—registered schemes**

13 **5 At the end of Part 3A**

14 Add:

15 **93B Undertakings—notified foreign passport funds**

- 16 (1) ASIC may accept a written undertaking given by the operator of a
17 notified foreign passport fund in connection with a matter:
- 18 (a) concerning the fund; and
19 (b) in relation to which ASIC has a power or function under the
20 corporations legislation (other than the excluded provisions).
- 21 (2) The operator may withdraw or vary the undertaking at any time,
22 but only with ASIC's consent.
- 23 (3) If ASIC considers that the operator has breached any of the terms
24 of the undertaking, ASIC may apply to the Court for an order
25 under subsection (4).
- 26 (4) If the Court is satisfied that the operator has breached a term of the
27 undertaking, the Court may make all or any of the following
28 orders:
- 29 (a) an order directing the operator to comply with that term of
30 the undertaking;

EXPOSURE DRAFT

-
- 1 (b) an order directing the operator to transfer to fund property an
2 amount up to the amount of any financial benefit that the
3 operator has obtained directly or indirectly and that is
4 reasonably attributable to the breach;
- 5 (c) any order that the Court considers appropriate directing the
6 operator to compensate any person who has suffered loss or
7 damage as a result of the breach;
- 8 (d) any other order that the Court considers appropriate.
- 9 (5) ASIC must keep a record of the full text of the undertaking.
- 10 (6) ASIC must make available to a person who asks for it a copy of the
11 text of the undertaking, but ASIC must delete from the copy
12 information:
- 13 (a) that the operator has asked it not to release; and
14 (b) that ASIC is satisfied:
- 15 (i) is commercial in confidence; or
16 (ii) should not be disclosed because it would be against the
17 public interest to do so; or
18 (iii) consists of personal details of an individual.
- 19 (7) If ASIC makes available a copy that has information deleted from
20 it, the copy must include a note stating that information has been
21 deleted.

22 **6 After subsection 127(3)**

23 Insert:

- 24 (3AA) For the purposes of subsection (1), the disclosure of information by
25 a person to enable or assist the performance of functions, or
26 exercise of powers, by a home regulator or a host regulator for a
27 passport fund under the Memorandum of Cooperation is authorised
28 use and disclosure of the information.

29 ***Corporations Act 2001***

30 **7 Section 9**

31 Insert:

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

EXPOSURE DRAFT

-
- 1 (a) the person holds an interest in the fund that was acquired in
2 this jurisdiction; or
3 (b) the person is ordinarily resident in this jurisdiction and holds
4 an interest in the fund.

- 5 ***Australian passport fund*** means a managed investment scheme:
6 (a) that is registered under section 601EB as a registered scheme
7 and also registered as an Australian passport fund under
8 Part 8A.3; and
9 (b) that is not deregistered as a registered scheme and an
10 Australian passport fund under Division 2 of Part 5C.10, or
11 deregistered as an Australian passport fund under Division 1
12 of Part 8A.8A.

13 **8 Section 9 (paragraph (a) of the definition of *cash***
14 ***management trust interest*)**

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

16 **9 Section 9 (paragraph (c) of the definition of *civil penalty***
17 ***order*)**

18 Omit “or 1317HB”, substitute “, 1317HB or 1317HC”.

19 **10 Section 9 (definition of *consolidated entity*)**

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

22 **11 Section 9 (note at the end of the definition of *constitution*)**

23 Omit “Note”, substitute “Note 1”.

24 **12 Section 9 (at the end of the definition of *constitution*)**

25 Add:

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

30 **13 Section 9 (definition of *entity*)**

31 Omit “Chapter 2E”, substitute “Chapters 2E and 8A”.

32 **13A Section 9**

33 Insert:

EXPOSURE DRAFT

expectation:

- (a) a person has an *expectation* that a managed investment scheme will become an Australian passport fund only as set out in section 1216AB; and
- (b) a person has an *expectation* that a fund will become a notified foreign passport fund only as set out in section 1216CB.

14 Section 9 (definition of *extract of particulars*)

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

15 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);

16 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.

17 Section 9

Insert:

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

EXPOSURE DRAFT

-
- 1 (b) money that forms part of the fund property under provisions
2 of this Act or the ASIC Act; and
3 (c) money borrowed or raised by the operator of the fund for the
4 purposes of the fund; and
5 (d) property acquired, directly or indirectly, with, or with the
6 proceeds of, contributions or money referred to in
7 paragraph (a), (b) or (c); and
8 (e) income and property derived, directly or indirectly, from
9 contributions, money or property referred to in paragraph (a),
10 (b), (c) or (d).

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

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

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

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

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

22 **18 Section 9 (definition of *interest*)**

23 After “in a managed investment scheme”, insert “(including a notified
24 foreign passport fund)”.

25 **19 Section 9**

26 Insert:

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

- 28 (a) an interest in the fund; or
29 (b) a legal or equitable interest in an interest in the fund; or
30 (c) an option to acquire (whether by way of issue or transfer) an
31 investment in the fund covered by paragraph (a) or (b); or
32 (d) an option to dispose of an investment in the fund covered by
33 paragraph (a) or (b); or
34 (e) an interest a person holds under an arrangement that is a
35 derivative if:

EXPOSURE DRAFT

-
- 1 (i) the consideration to be provided under the arrangement;
2 or
3 (ii) the value of the arrangement;
4 is ultimately determined, derived from or varies by reference
5 to an investment in the fund covered by paragraph (a), (b), (c)
6 or (d); or
7 (f) an investment in the operator of the fund.

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

13 **20 Section 9 (note after paragraph (c) of the definition of**
14 ***managed investment scheme*)**

15 Repeal the note.

16 **21 Section 9 (note after paragraph (i) of the definition of**
17 ***managed investment scheme*)**

18 Repeal the note.

19 **22 Section 9 (note at the end of the definition of *managed***
20 ***investment scheme*)**

21 Omit “Note”, substitute “Note 1”.

22 **23 Section 9 (at the end of the definition of *managed***
23 ***investment scheme*)**

24 Add:

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

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

29 **24 Section 9**

30 Insert:

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

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

EXPOSURE DRAFT

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

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

5 *Passport Rules*: see section 1211A.

6 **24A Section 9 (definition of *related party*)**

7 Repeal the definition, substitute:

8 *related party*:

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

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

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

16 **25 Section 9 (definition of *relevant financial market*)**

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

19 **26 Section 9 (paragraphs (a) and (b) of the definition of 20 *relevant financial market*)**

21 Omit “the company or scheme”, substitute “the company, scheme or
22 fund”.

23 **27 Section 9 (definition of *relevant market operator*)**

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

26 **28 Section 9 (paragraphs (a) and (b) of the definition of 27 *relevant market operator*)**

28 Omit “the company or scheme”, substitute “the company, scheme or
29 fund”.

30 **29 Section 9**

31 Insert:

EXPOSURE DRAFT

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

5 **30 Section 9 (definition of *return of particulars*)**

6 Omit “a company or a registered scheme”, substitute “a company,
7 registered scheme or notified foreign passport fund”.

8 **31 Section 9 (paragraph (a) of the definition of *return of* 9 *particulars*)**

10 Repeal the paragraph, substitute:

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

15 **32 Section 9 (definition of *substantial holding*)**

16 Repeal the definition, substitute:

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

- 20 (a) the total votes attached to voting shares in the body or voting
21 interests in the scheme or fund, in which they or their
22 associates:
23 (i) have relevant interests; and
24 (ii) would have a relevant interest but for subsection 609(6)
25 (market traded options) or 609(7) (conditional
26 agreements);

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

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

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

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

EXPOSURE DRAFT

1 33 Section 9 (definition of *this Act*)

2 Omit “and the Insolvency Practice Rules”, substitute “, the Insolvency
3 Practice Rules and the Passport Rules for this jurisdiction”.

4 34 Subsection 9A(2)

5 Omit “a managed investment scheme”, substitute “a registered scheme
6 or notified foreign passport fund”.

7 35 Paragraph 9A(3)(a)

8 Omit “the body or responsible entity (as the case requires)”, substitute
9 “the offering entity”.

10 36 Paragraphs 9A(3)(b) and (c)

11 Omit “the body or responsible entity”, substitute “the offering entity”.

12 37 After subsection 9A(3)

13 Insert:

14 (3A) For the purposes of subsection (3), *offering entity* means the
15 following:

- 16 (a) in relation to an offer of securities in a body that is not a
17 registered scheme or a notified foreign passport fund—the
18 body;
19 (b) in relation to an offer of interests in a registered scheme—the
20 responsible entity of the scheme;
21 (c) in relation to an offer of interests in a notified foreign
22 passport fund—the operator of the fund.

23 38 Section 64A

24 Omit “Chapter 2E”, substitute “Chapters 2E and 8A”.

25 39 After subsection 92(2)

26 Insert:

27 (2A) In Part 1.2A, *securities* means:

- 28 (a) shares in a body; or
29 (b) debentures of a body; or
30 (c) interests in a registered scheme or a notified foreign passport
31 fund; or
32 (d) legal or equitable rights or interests in:

EXPOSURE DRAFT

-
- 1 (i) shares; or
2 (ii) debentures; or
3 (iii) interests in a registered scheme or a notified foreign
4 passport fund; or
5 (e) options to acquire (whether by way of issue or transfer) a
6 security covered by paragraph (a), (b), (c) or (d).

7 It does not cover:

- 8 (f) a derivative (as defined in Chapter 7), other than an option to
9 acquire by way of transfer a security covered by
10 paragraph (a), (b), (c) or (d); or
11 (g) a market traded option.

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

14 Note 2: Section 9 defines *body*.

15 **40 Subsection 92(3)**

16 Repeal the subsection, substitute:

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

18 *securities* means:

- 19 (a) shares in a body; or
20 (b) debentures of a body; or
21 (c) interests in a registered scheme; or
22 (d) when used in Chapter 6C—an interest in a listed notified
23 foreign passport fund; or
24 (e) legal or equitable rights or interests in:
25 (i) shares; or
26 (ii) debentures; or
27 (iii) interests in a registered scheme or interests in a fund
28 mentioned in paragraph (d); or
29 (f) options to acquire (whether by way of issue or transfer) a
30 security covered by paragraph (a), (b), (c), (d) or (e).

31 It does not cover:

- 32 (g) a derivative (as defined in Chapter 7), other than an option to
33 acquire by way of transfer a security covered by
34 paragraph (a), (b), (c), (d) or (e); or
35 (h) a market traded option; or
36 (i) when used outside Chapter 6C—an interest in a notified
37 foreign passport fund.
-

EXPOSURE DRAFT

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

3 Note 2: Section 9 defines *body*.

4 **41 Paragraph 111AD(1)(a)**

5 After “111AFA,”, insert “111AFB,”.

6 **42 Section 111AE (heading)**

7 Repeal the heading, substitute:

8 **111AE Securities of bodies or undertakings included in a licensed** 9 **market’s official list**

10 **43 Paragraph 111AE(1)(a)**

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

13 **44 After subsection 111AE(1A)**

14 Insert:

15 (1B) If:

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

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

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

26 **45 After section 111AFA**

27 Insert:

28 **111AFB Foreign passport fund products held by 100 or more** 29 **persons**

30 Foreign passport fund products in a class of foreign passport fund
31 products issued by a body are *ED securities* if 100 or more people

EXPOSURE DRAFT

1 who reside in this jurisdiction hold foreign passport fund products
2 in that class.

3 **46 Section 111AH (heading)**

4 Repeal the heading, substitute:

5 **111AH When a person holds securities for the purposes of**
6 **sections 111AF, 111AFA, 111AFB and 111AG**

7 **47 After subsection 111AH(1)**

8 Insert:

- 9 (1A) For the purposes of section 111AFB, a person holds securities in a
10 notified foreign passport fund if, and only if:
- 11 (a) the person is registered as the holder of securities in the fund
12 on a register maintained by the operator of the fund under the
13 law of the home economy for the fund; or
 - 14 (b) the person is entitled to be so registered.

15 **48 Subsection 111AH(2)**

16 After “111AFA”, insert “, 111AFB”.

17 **49 Subsection 168(1) (note 1A)**

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

20 **50 Section 178 (heading)**

21 Repeal the heading, substitute:

22 **178 Overseas branch registers—companies**

23 **51 Subsection 178(1)**

24 After “a branch register of members”, insert “of the company”.

25 **52 At the end of Part 2C.1**

26 Add:

EXPOSURE DRAFT

178AA Overseas branch registers—Australian passport funds

- 1
- 2 (1) An Australian passport fund may keep a branch register of
- 3 members of the fund outside Australia.
- 4 (2) If an Australian passport fund keeps an overseas branch register
- 5 under subsection (1):
- 6 (a) the fund must keep the branch register in the same manner as
- 7 this Act requires the fund to keep the register kept under
- 8 section 169 (the *principal register*); and
- 9 (b) the fund must enter in the principal register the details
- 10 contained in the branch register; and
- 11 (c) the fund must distinguish interests that are registered in the
- 12 branch register from the interests registered in the principal
- 13 register.

14 53 At the end of Division 1 of Part 2D.1

15 Add:

16 190C Division does not apply in relation to notified foreign passport

17 funds or their operators

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

- 19 (a) the act or omission is in the person's capacity as a director,
- 20 other officer or employee of a notified foreign passport fund;
- 21 or
- 22 (b) the act or omission:
- 23 (i) is in the person's capacity as a director, other officer or
- 24 employee of the operator of a notified foreign passport
- 25 fund; and
- 26 (ii) is connected with the operation of the fund.

27 54 After subsection 197(3)

28 Insert:

- 29 (3A) This section does not apply to a liability incurred by a corporation
- 30 that is:
- 31 (a) a notified foreign passport fund; or
- 32 (b) the operator of a notified foreign passport fund acting in that
- 33 capacity.

EXPOSURE DRAFT

1 55 Paragraph 199A(2)(b)

2 Omit “or 1317HB”, substitute “, 1317HB or 1317HC”.

3 56 At the end of subsection 206B(6)

4 Add:

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

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

8 57 Subparagraph 206EAA(1)(a)(ii)

9 Omit “company; and”, substitute “company; or”.

10 58 At the end of paragraph 206EAA(1)(a)

11 Add:

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

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

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

20 59 Paragraph 206EAA(3)(a)

21 After “a foreign company”, insert “or a passport fund (as the case
22 requires)”.

23 60 Section 206H (heading)

24 Repeal the heading, substitute:

25 206H Limited application of Part to foreign companies

26 61 After section 206H

27 Insert:

28 206HAA Limited application of Part to notified foreign passport 29 funds and their operators

30 This Part (except for subsection 206B(6) and section 206EAA)
31 does not apply in respect of an act or omission by a person while

EXPOSURE DRAFT

1 they are managing a corporation that is either the operator of a
2 notified foreign passport fund, or a notified foreign passport fund,
3 unless the act or omission occurred in connection with:

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

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

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

10 **62 Section 247A (heading)**

11 Repeal the heading, substitute:

12 **247A Order for inspection of books of company or registered** 13 **scheme**

14 **63 Subsection 247A(1)**

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

17 **64 Part 2G.4 (heading)**

18 Repeal the heading, substitute:

19 **Part 2G.4—Meetings of members of registered** 20 **schemes**

21 **65 Subsection 285(1) (heading)**

22 Repeal the heading, substitute:

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

25 **66 Subsection 285(1) (table heading)**

26 Repeal the heading, substitute:

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

29 **67 After subsection 285(1)**

30 Insert:

EXPOSURE DRAFT

Obligations under this Chapter—notified foreign passport funds

- 1
2 (1A) Under this Chapter, all notified foreign passport funds must
3 provide reports on financial matters to Australian members of the
4 fund (see section 314A) and to ASIC (see section 319).

5 **68 At the end of section 285**

6 Add:

7 *Application to notified foreign passport funds*

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

14 **69 Section 314 (heading)**

15 Repeal the heading, substitute:

16 **314 Annual financial reporting by companies, registered schemes**
17 **and disclosing entities to members**

18 **70 Subsection 314(1A) (note)**

19 Repeal the note.

20 **71 After section 314**

21 Insert:

22 **314A Annual financial reporting by notified foreign passport funds**
23 **to Australian members**

- 24 (1) A notified foreign passport fund must report to Australian
25 members of the fund for each financial year for the fund by
26 providing Australian members with each of the following:
27 (a) a copy of a report for the fund for the year, prepared in
28 accordance with the financial reporting requirements
29 applying to the fund under the Passport Rules for the home
30 economy for the fund;

EXPOSURE DRAFT

-
- 1 (b) a copy of each auditor’s report that relates to the report
2 mentioned in paragraph (a).
- 3 Note: Under the Passport Rules for this jurisdiction, the operator of a
4 notified foreign passport fund must ensure that the financial report for
5 the fund is audited and an audit report prepared.
- 6 (2) A notified foreign passport fund may provide the reports for a
7 financial year by doing all of the following:
- 8 (a) sending, to each Australian member of the fund who has
9 made the election referred to in paragraph (3)(a):
- 10 (i) a hard copy of the reports; or
11 (ii) if the member has elected to receive the reports as an
12 electronic copy in accordance paragraph (3)(c)—an
13 electronic copy of the reports;
- 14 (b) making a copy of the reports readily accessible, in English,
15 on a website;
- 16 (c) directly notifying, in writing, all members who did not make
17 the election referred to in paragraph (3)(a) that the copy is
18 accessible on the website, and specifying the direct address
19 on the website where the reports may be accessed.
- 20 Note: A direct address may be specified, for example, by specifying the
21 URL of the reports.
- 22 (3) For the purposes of paragraph (2)(a), a notified foreign passport
23 fund must, on at least one occasion, directly notify in writing each
24 Australian member of the fund that:
- 25 (a) the member may elect to receive, free of charge, a copy of
26 the reports for each financial year for the fund; and
27 (b) if the member does not so elect—the member may access the
28 report on a specified website; and
29 (c) if the member elects to receive reports under paragraph (a)
30 and the fund offers to send reports either as a hard copy or an
31 electronic copy—the member may elect to receive the copy
32 as either a hard copy or an electronic copy; and
33 (d) if the member elects to receive reports under paragraph (a),
34 the member may elect to receive the reports in English, or in
35 an official language of the home economy of the fund.
- 36 (4) An election made under subsection (3) is a standing election for
37 each later financial year for the fund until the member changes his,
38 her or its election.
-

EXPOSURE DRAFT

-
- 1 (5) An Australian member of the fund may, for the purposes of
2 paragraph (2)(c) or subsection (3), be notified by electronic means
3 only if the member has previously nominated that means as one by
4 which the member may be notified.
- 5 (6) A notified foreign passport fund may provide the reports by
6 sending each Australian member of the fund:
7 (a) a hard copy of the reports; or
8 (b) an electronic copy of the reports if the member has
9 nominated that means as one by which the member may be
10 sent the reports.
- 11 (7) A notified foreign passport fund must provide the reports in the
12 following language:
13 (a) if the member elects under paragraph 314A(3)(d) to receive
14 reports in English or in an official language of the home
15 economy of the fund—in the language elected by the
16 member;
17 (b) otherwise—in English.
- 18 (8) Subsection (1) does not apply in relation to an Australian member
19 of the fund for a financial year if the member has elected under
20 subsection 316AA(1) not to receive the report for the year.
- 21 (9) An offence based on subsection (1), (3) or (7) is an offence of strict
22 liability.

72 After subsection 315(3)

Notified foreign passport funds

- 24 (3A) A notified foreign passport fund must report to Australian
25 members of the fund under section 314A within 3 months after the
26 end of the financial year for the fund.
27

73 At the end of section 315

28 Add:

- 29 (6) For the purposes of this section, a notified foreign passport fund
30 that reports in accordance with subsection 314A(2) is taken to
31 report at the time the fund has fully complied with the
32 requirements of that subsection.
33

EXPOSURE DRAFT

74 Section 316 (heading)

Repeal the heading, substitute:

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

75 Subsection 316(4) (note)

Repeal the note.

76 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.

77 After subsection 319(1)

Insert:

- (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).

78 Subsection 319(1A)

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

79 Paragraph 319(3)(a)

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

EXPOSURE DRAFT

80 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).

81 Subsection 321(1A)

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

82 Before subsection 322(1)

Insert:

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

83 After subsection 322(1)

Insert:

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

84 Subsection 322(2)

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

EXPOSURE DRAFT

1 85 Paragraph 322(2)(b)

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

3 86 Before subsection 322(3)

4 Insert:

5 *Offence*

6 87 Subsection 322(3)

7 Omit “subsection (1) or (2)”, insert “subsection (1), (1A) or (2)”.

8 88 Section 323D (heading)

9 Repeal the heading, substitute:

10 323D Financial years and half-years for companies, registered 11 schemes and disclosing entities

12 89 At the end of Division 7 of Part 2M.3

13 Add:

14 323DAA Financial years for notified foreign passport funds

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

- 16 (a) a period of 12 months in relation to which the operator of the
17 fund must, under the Passport Rules for the home economy
18 for the fund, prepare a report in accordance with the financial
19 reporting requirements applying to the fund under those
20 Passport Rules; or
21 (b) if, under the law of the home economy for the fund, an
22 exception allows a report in accordance with the financial
23 reporting requirements applying to the fund under the
24 Passport Rules for the home economy for the fund to be
25 prepared for a shorter or longer period—that period.

26 90 After section 340

27 Insert:

28 340A Exemption orders—notified foreign passport funds

- 29 (1) On an application made in accordance with subsection (3) in
30 relation to a notified foreign passport fund, ASIC may make an
-

EXPOSURE DRAFT

1 order, in writing, relieving any of the following from all or
2 specified requirements of Part 2M.3:

- 3 (a) a notified foreign passport fund;
- 4 (b) the operator of a notified foreign passport fund;
- 5 (c) directors of the operator of a notified foreign passport fund.

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

7 (2) The order may:

- 8 (a) be expressed to be subject to conditions; and
- 9 (b) be indefinite or limited to a specified period.

10 (3) The application must be:

- 11 (a) authorised by the operator of the notified foreign passport
12 fund; and
- 13 (b) in writing; and
- 14 (c) lodged with ASIC.

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

17 **91 After section 341**

18 Insert:

19 **341A Exemption orders—class orders for notified foreign passport** 20 **funds**

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

- 24 (a) notified foreign passport funds;
- 25 (b) the operators of notified foreign passport funds;
- 26 (c) the directors of the operators of notified foreign passport
27 funds.

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

29 (2) The order may:

- 30 (a) be expressed to be subject to conditions; and
- 31 (b) be indefinite or limited to a specified period.

32 **92 Section 342 (heading)**

33 Repeal the heading, substitute:

EXPOSURE DRAFT

1 **342 Exemption orders—criteria for orders for companies, registered**
2 **schemes, notified foreign passport funds and disclosing**
3 **entities**

4 **93 Subsection 342(1)**

5 Omit “section 340 or 341”, substitute “section 340, 340A, 341 or
6 341A”.

7 **94 Paragraph 343(a)**

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

9 **95 Paragraph 343(b)**

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

11 **96 At the end of Part 2M.6**

12 Add:

13 **343A Minister may apply the Chapter to notified foreign passport**
14 **funds**

15 (1) The Minister may, by legislative instrument:

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

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

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

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

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

28 **97 Subsection 344(1) (note)**

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

30 **98 After subsection 344(1)**

31 Insert:

EXPOSURE DRAFT

1 (1A) A person contravenes this section if:

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

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

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

7 **99 Subsection 344(2)**

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

9 **100 Chapter 2N (heading)**

10 Repeal the heading, substitute:

11 **Chapter 2N—Updating ASIC information** 12 **about companies, registered schemes** 13 **and notified foreign passport funds**

14 **101 At the end of section 345A**

15 Add:

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

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

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

21 **102 Section 345B (heading)**

22 Repeal the heading, substitute:

23 **345B Company, responsible entity or operator may change review** 24 **date**

25 **103 After subsection 345B(2)**

26 Insert:

27 (2A) With ASIC’s approval, the operator of a notified foreign passport
28 fund may choose as the review date for the fund a date that is
29 different from the anniversary of the day on which the fund first
30 became a notified foreign passport fund.

EXPOSURE DRAFT

104 Subsection 345B(3)

Omit “the company or responsible entity”, substitute “the company, responsible entity or operator”.

105 Section 345C

Omit “the company or responsible entity”, substitute “the company, responsible entity or operator”.

106 Paragraphs 345C(a) and (b)

Omit “company or scheme”, substitute “company, scheme or fund”.

107 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.

108 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.

EXPOSURE DRAFT

109 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”.

110 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”.

111 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.

112 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.

113 Section 348B

Repeal the section, substitute:

EXPOSURE DRAFT

1 348B ASIC may ask questions

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

7 114 Subsection 348D(1)

8 Omit “or responsible entity of a registered scheme,” substitute
9 “responsible entity of a registered scheme or operator of a notified
10 foreign passport fund”.

11 115 Subsection 348D(2)

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

15 116 Paragraph 348D(2)(e)

16 Omit “or responsible entity of the scheme”, substitute “, responsible
17 entity of the scheme or operator of the fund”.

18 117 After subsection 351(1)

19 Insert:

- 20 (1A) A document lodged with ASIC in writing by, or on behalf of, a
21 notified foreign passport fund or its operator, must be signed by:
22 (a) a director or secretary of the operator of the fund; or
23 (b) the local agent for the operator of the fund; or
24 (c) if the local agent is a company—a director or secretary of
25 that company.

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

29 118 Subsection 354(2)

30 After “the company’s”, insert “or the scheme’s”.

31 119 Subsection 601ED(1)

32 Omit “Subject to subsection (2)”, substitute “Subject to subsections (2)
33 and (2A)”.

EXPOSURE DRAFT

1 **120 After subsection 601ED(2)**

2 Insert:

3 (2A) A notified foreign passport fund does not have to be registered.

4 **121 Subparagraphs 601HG(10)(b)(i) and (ii)**

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

6 **122 Paragraph 601JB(4)(b)**

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

9 **122A Part 5C.10 (after the heading)**

10 Insert:

11 **Division 1—Registered schemes that are not Australian**
12 **passport funds**

13 **601PAA Application of this Division**

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

16 **122B Subsection 601PA(1)**

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

18 **122C Subsection 601PB(1)**

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

20 **122D After section 601PB**

21 Insert:

22 **Division 2—Registered schemes that are Australian**
23 **passport funds**

24 **601PBA Application of this Division**

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

EXPOSURE DRAFT

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 1216AB 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
- (b) the fund does not have a constitution that meets the requirements of sections 601GA and 601GB; or

EXPOSURE DRAFT

-
- 1 (c) the fund does not have a compliance plan that meets the
2 requirements of section 601HA; or
- 3 (d) the fund's property is not being:
4 (i) clearly identified as the fund's property; and
5 (ii) held separately from property of the operator and
6 property of any other scheme;
7 in accordance with the fund's compliance plan; or
- 8 (e) the following conditions are satisfied:
9 (i) the response to a return of particulars given to the
10 operator of the fund is at least 6 months late;
11 (ii) no other documents have been lodged by or on behalf of
12 the fund in the last 18 months;
13 (iii) ASIC has no reason to believe that the fund is being
14 operated; or
- 15 (f) the fund's review fee in respect of a review date has not been
16 paid in full at least 12 months after the due date for payment;
17 or
- 18 (g) the fund has been wound up.
- 19 (2) However, ASIC must not decide to deregister an Australian
20 passport fund if ASIC is of the opinion that to do so would not be
21 in the interests of:
- 22 (a) members of the fund who became members (whether in this
23 jurisdiction or any host economy for the fund) after the fund
24 became an Australian passport fund; and
- 25 (b) members of the fund who became members (whether in this
26 jurisdiction or any host economy for the fund) on the
27 expectation that the fund would become an Australian
28 passport fund.
- 29 (3) For the purposes of subsection (2), ignore any member of the fund
30 that:
- 31 (a) is, or has at any time been, the operator of the fund; or
32 (b) is a related party of an entity that is, or has at any time been,
33 the operator of the fund.
- 34 Note: See section 1216AB for the circumstances in which a person becomes
35 a member of a fund on the expectation that it would become an
36 Australian passport fund.
- 37 (4) Before deciding to deregister the fund as a registered scheme,
38 ASIC must give the operator written notice that requires the
-

EXPOSURE DRAFT

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

EXPOSURE DRAFT

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

3 *Notice of deregistration*

- 4 (3) If ASIC deregisters a registered scheme that is an Australian
5 passport fund under subsection 601PBB(3) or
6 paragraph 601PBC(7)(b), ASIC must give written notice that the
7 fund has been deregistered as a registered scheme and the date on
8 which it has been deregistered:
9 (a) to the operator; and
10 (b) to each host regulator for the Australian passport fund.
- 11 (4) The notice must be given within 5 business days after the fund is
12 deregistered as a registered scheme.

13 **601PBE Consequences of deregistration on status as an Australian**
14 **passport fund**

- 15 (1) A scheme ceases to be an Australian passport fund at the same time
16 as it ceases to be a registered scheme.
- 17 (2) ASIC must annotate the Register of Passport Funds to indicate that
18 the scheme is no longer a registered scheme or an Australian
19 passport fund, or cause that annotation to be made on the Register.

20 **122E At the end of section 601PC**

21 Insert:

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

26 **123 Subparagraph 602(a)(ii)**

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

29 **124 Subparagraph 602(a)(iii)**

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

EXPOSURE DRAFT

1 **125 Subsections 602A(1) and (3)**

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

5 **126 Section 604 (heading)**

6 Repeal the heading, substitute:

7 **604 Chapter extends to listed registered schemes**

8 **127 Subsection 604(2)**

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

11 **127A At the end of section 608**

12 Add:

13 *Extension to interests in listed notified foreign passport funds*

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

18 **128 Paragraph 636(1)(d)**

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

20 **130 Subparagraphs 636(1)(ga)(i) and (ii)**

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

22 **132 Paragraph 637(1)(a)**

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

25 **134 Paragraphs 650D(3)(b) and (c)**

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

EXPOSURE DRAFT

1 **136 Paragraph 658C(5)(b)**

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

4 **137 After paragraph 658C(5)(b)**

5 Insert:

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

8 **138 Section 660B (heading)**

9 Repeal the heading, substitute:

10 **660B Chapter extends to listed registered schemes**

11 **139 Subsection 660B(4)**

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

14 **141 Subsection 670B(1) (table item 3, column headed “For
15 these documents these people...”)**

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

17 **144 Subsection 670B(1) (table item 9, column headed “For
18 these documents these people...”)**

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

21 **145 Subsection 670B(1) (after table item 9)**

22 Insert:

- | | | |
|----|--|---|
| 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: | any contravention of subsection 670A(1) in relation to the document |
| | (a) were not present when the directors resolved to give the notice; or | See also items 10 and 11. |
| | (b) voted against the resolution | |

23 **146 Chapter 6C (heading)**

24 Repeal the heading, substitute:

EXPOSURE DRAFT

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

147 Section 671B (heading)

After “responsible entity”, insert “, fund operator”.

148 Subsection 671B(1)

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

149 Paragraphs 671B(1)(a) and (b)

Omit “or scheme”, substitute “, scheme or fund”.

149A At the end of subsection 671B(1)

Add:

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

150 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 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.

EXPOSURE DRAFT

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

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

6 **151 Paragraphs 671B(3)(b) and (c)**

7 Repeal the paragraphs, substitute:

8 (b) details of their relevant interest in:

9 (i) voting shares in the company; or

10 (ii) interests in the scheme; or

11 (iii) interests in the fund; and

12 (c) details of any relevant agreement through which they would
13 have a relevant interest in:

14 (i) voting shares in the company; or

15 (ii) interests in the scheme; or

16 (iii) interests in the fund; and

17 **152 Paragraph 671B(3)(d)**

18 Omit “or interests in the scheme”, substitute “, interests in the scheme
19 or interests in the fund”.

20 **154 Subsection 672A(1)**

21 Repeal the subsection, substitute:

22 (1) ASIC, a listed company, the responsible entity for a listed
23 registered scheme or the operator of a listed notified foreign
24 passport fund may direct:

25 (a) a member of the company, scheme or fund; or

26 (b) a person named in a previous disclosure under section 672B
27 as having a relevant interest in, or having given instructions
28 about, voting shares in the company, interests in the scheme
29 or interests in the fund;

30 to make the disclosure required by section 672B.

31 **155 Subsection 672A(2)**

32 Omit “or scheme”, substitute “, scheme or fund”.

EXPOSURE DRAFT

156 Paragraph 672B(1)(a)

Omit “or interests in the scheme”, substitute “, interests in the scheme or interests in the fund”.

157 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.

158 Subsection 672B(3)

Omit “or the responsible entity”, substitute “, responsible entity or operator”.

159 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”.

160 Paragraph 672C(a)

Omit “or the responsible entity for the scheme”, substitute “, the responsible entity for the scheme or the operator of the fund”.

161 Section 672D (heading)

Repeal the heading, substitute:

672D Fee for complying with a direction given by a company, scheme or fund under this Part

162 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”.

163 Subsection 672D(2)

Omit “or responsible entity”, substitute “, responsible entity or operator”.

EXPOSURE DRAFT

1 **164 Section 672DA (heading)**

2 Repeal the heading, substitute:

3 **672DA Register of information about relevant interests in listed**
4 **company, listed registered scheme or listed notified**
5 **foreign passport fund**

6 **165 Subsection 672DA(1)**

7 Repeal the subsection, substitute:

8 (1) A listed company, the responsible entity for a listed registered
9 scheme or the operator of a listed notified foreign passport fund,
10 must keep a register of the following information that it receives
11 under this Part on or after 1 January 2005 (whether the information
12 is received pursuant to a direction the company, the responsible
13 entity or the operator itself gives under section 672A or is received
14 from ASIC under section 672C):

- 15 (a) details of the nature and extent of a person's relevant interest
16 in shares in the company, interests in the scheme or interests
17 in the fund;
- 18 (b) details of the circumstances that give rise to a person's
19 relevant interest in shares in the company, interests in the
20 scheme or interests in the fund;
- 21 (c) the name and address of a person who has a relevant interest
22 in shares in the company, interests in the scheme or interests
23 in the fund;
- 24 (d) details of instructions that a person has given about:
- 25 (i) the acquisition or disposal of shares in the company,
26 interests in the scheme or interests in the fund; or
- 27 (ii) the exercise of any voting or other rights attached to
28 shares in the company, interests in the scheme or
29 interests in the fund; or
- 30 (iii) any other matter relating to shares in the company,
31 interests in the scheme or interests in the fund;
- 32 (e) the name and address of a person who has given instructions
33 of the kind referred to in paragraph (d).

34 The register must be kept in accordance with this section.

EXPOSURE DRAFT

166 Subsection 672DA(3)

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

167 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.

168 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:
 - (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*).

169 Subsection 672DA(5)

After “(3)”, insert “, (3A)”.

EXPOSURE DRAFT

170 Paragraph 672DA(6)(a)

Omit “or interests in the scheme,”, substitute “interests in the scheme or interests in the fund”.

171 Subparagraphs 672DA(6)(b)(i) and (ii)

Omit “or the responsible entity,”, substitute “responsible entity or operator”.

172 Paragraph 672DA(7)(a)

Omit “or scheme”, substitute “, scheme or fund”.

173 Subsection 672DA(7)

Omit “or the responsible entity,” (wherever occurring), substitute “responsible entity or operator”.

174 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:

(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*).

EXPOSURE DRAFT

175 Subsection 672DA(9)

Omit “or the responsible entity,” (wherever occurring), substitute “responsible entity or operator”.

176 Subsection 672DA(9) (note)

Omit “or responsible entity”, substitute “, responsible entity or operator”.

177 Section 672E

Omit “or responsible entity”, substitute “, responsible entity or operator”.

178 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”.

179 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 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.

180 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.

181 Subparagraphs 675(2)(c)(i) and (ii)

After “managed investment products”, insert “or foreign passport fund products”.

182 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:

EXPOSURE DRAFT

-
- 1 (a) the entity is aware of information if, and only if, the operator
2 of the fund is aware of the information; and
3 (b) the obligation of the entity to lodge a document under
4 subsection (2) is an obligation of the operator of the fund.

5 **183B Section 761A (paragraph (a) of the definition of**
6 ***financial services law***)

7 Omit “or 6D”, substitute “, 6D or 8A”.

8 **183C Section 761A (after paragraph (b) of the definition of**
9 ***financial services law***)

10 Insert:

- 11 (ba) a provision of the Passport Rules for this jurisdiction; or

12 **184 Section 761A**

13 Insert:

14 *foreign passport fund product* means a financial product described
15 in paragraph 764A(1)(bb).

16 **185 Section 761A (subparagraph (e)(ii) of the definition of**
17 ***security***)

18 Omit “or (ba)”, substitute “, (ba) or (bb)”.

19 **186 Section 761A (definition of *security*)**

20 Omit “but does not include an excluded security. In Part 7.11, it also
21 includes a managed investment product”, substitute “but does not
22 include an excluded security or a foreign passport fund product. In
23 Part 7.11, it also includes a managed investment product and a foreign
24 passport fund product”.

25 **186A After subsection 761E(4)**

26 Insert:

- 27 (4A) For the purposes of subsection (4), if the financial product issued to
28 the client is an interest in a notified foreign passport fund, the
29 operator of the fund is the person responsible for the obligations
30 mentioned in that subsection that are owed under the terms of the
31 facility that is the product.

EXPOSURE DRAFT

187 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);

188 Paragraph 765A(1)(s)

After “that is not a registered scheme”, insert “or a notified foreign passport fund”.

189 Paragraph 766C(1)(c)

Repeal the paragraph, substitute:

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

190 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.

191 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;

192 Paragraph 793C(2)(b)

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

EXPOSURE DRAFT

1 **193 Subsection 793C(3)**

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

4 **194 Subsection 793C(3)**

5 Omit “with its acquiescence”, substitute “with its agreement, consent or
6 acquiescence”.

7 **195 Subsection 793C(4)**

8 Omit “with the responsible entity’s acquiescence”, substitute “with the
9 responsible entity’s agreement, consent or acquiescence”.

10 **196 After subsection 793C(4)**

11 Insert:

12 (4A) For the purposes of this section, if a disclosing entity that is an
13 undertaking to which interests in a notified foreign passport fund
14 relate is, with the agreement, consent or acquiescence of the
15 operator of the fund, included in the official list of a licensed
16 market, the operator of the fund, or an associate of the operator, is
17 taken to be under an obligation to comply with the operating rules
18 of that market to the extent to which those rules purport to apply to
19 the operator or associate.

20 **197 Subsection 798C(1)**

21 Omit “or scheme” (first occurring), substitute “, scheme or fund”.

22 **198 Paragraph 798C(1)(c)**

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

24 **199 After paragraph 798C(1)(c)**

25 Insert:

26 (ca) a notified foreign passport fund whose operator is a related
27 body corporate of the market licensee;

28 **200 Subsection 798C(1) (note)**

29 Omit “or scheme”, substitute “, scheme or fund”.

30 **201 Subsection 798C(6)**

31 Omit “or scheme”, substitute “, scheme or fund”.

EXPOSURE DRAFT

202 Paragraphs 798D(1)(a) and (b)

Omit “or scheme”, substitute “, scheme or fund”.

203 Subsections 798D(4) and (5)

Omit “or scheme”, substitute “, scheme or fund”.

204 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:

- (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);

205 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

EXPOSURE DRAFT

206 Subsection 912A(6)

Omit “In subsections (4) and (5)”, substitute “In this section”.

207 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.

208 Subparagraph 912D(1)(a)(ii)

Omit “paragraphs (a), (b) and (c)”, substitute “paragraphs (a), (b), (ba) and (c)”.

209 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

210 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.

211 At the end of section 915C

Add:

EXPOSURE DRAFT

1 (5) In this section:

2 *person with responsibilities in relation to an Australian passport*
3 *fund* means a person (other than a regulator) who has functions or
4 duties in relation to the fund under the Passport Rules for this
5 jurisdiction.

6 **212 At the end of subsection 920A(1)**

7 Add:

8 ; or (i) the person is the operator of, or another person connected
9 with, an Australian passport fund, and each of the following
10 is satisfied:

- 11 (i) a host regulator for the fund has notified ASIC in
12 writing that it is of the opinion that the person or the
13 fund has not complied, is not complying or is not likely
14 to comply with the law of that host economy to the
15 extent that the law is administered by the host regulator
16 for the fund (including the Passport Rules for the host
17 economy for the fund);
- 18 (ii) ASIC is of the opinion that it should make the banning
19 order, given the potential impact of the failure, or
20 potential failure, to comply on members or potential
21 members of the fund.

22 **213 After subsection 941C(3)**

23 Insert:

24 *Providing entity is merely operating a notified foreign passport*
25 *fund*

26 (3A) The providing entity does not have to give the client a Financial
27 Services Guide if:

- 28 (a) the providing entity is the operator of a notified foreign
29 passport fund; and
30 (b) the financial service consists only of the operation of that
31 fund by the operator.

32 **214 Paragraph 946B(1)(c)**

33 After “managed investment products”, insert “, foreign passport fund
34 products”.

EXPOSURE DRAFT

1 **215 Subsection 946B(2) (paragraph (a) of the definition of**
2 ***able to be traded on a licensed market*)**

3 Omit “or managed investment products”, substitute “, managed
4 investment products or foreign passport fund products”.

5 **216 Subsection 946B(2) (paragraph (a) of the definition of**
6 ***cash management facility*)**

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

8 **217 Subsection 946B(2) (definition of *cash management***
9 ***facility advice*)**

10 After “managed investment products”, insert “, foreign passport fund
11 products”.

12 **218 Paragraph 964(1)(b)**

13 Omit “or an RSE licensee”, substitute “, RSE licensee or the operator of
14 a notified foreign passport fund”.

15 **219 Paragraphs 988E(e) and (f)**

16 Omit “or managed investment products”, substitute “, managed
17 investment products or foreign passport fund products”.

18 **220 Subsection 992A(2)**

19 Omit “, or to offering of managed investment products,”, substitute “, or
20 to offering interests in managed investment schemes,”.

21 **221 Section 992AA (heading)**

22 Repeal the heading, substitute:

23 **992AA Prohibition on hawking of interests in managed investment**
24 **schemes**

25 **222 After paragraph 1010B(2)(a)**

26 Insert:

27 (aa) any foreign passport fund product; or

28 **223 After subparagraph 1012D(5)(b)(i)**

29 Insert:

30 (ia) a foreign passport fund product; or

EXPOSURE DRAFT

224 After subparagraph 1012D(7)(a)(i)

Insert:

- (ia) a foreign passport fund product; or

225 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
(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).

226 Paragraph 1012D(10)(a)

After "managed investment product", insert ", a foreign passport fund product".

227 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".

228 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;

EXPOSURE DRAFT

229 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;

230 Paragraph 1012DAA(7)(d)

Before “states that”, insert “if the relevant product is a managed investment product—”.

231 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:
- (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

232 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;

233 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;

234 Paragraph 1012DA(6)(e)

Repeal the paragraph, substitute:

EXPOSURE DRAFT

-
- 1 (e) states that, as at the date of the notice, the issuer of the
2 relevant product has complied with the provisions of
3 Chapter 2M, and of section 674, as those provisions apply to:
4 (i) the issuer; or
5 (ii) if the relevant product is an interest in a registered
6 scheme—the scheme; or
7 (iii) if the relevant product is an interest in a notified foreign
8 passport fund—the fund; and

9 **235 Subsection 1013A(3)**

10 Omit “The person who”, substitute “The person by whom”.

11 **236 Subsection 1013D(2A)**

12 After “managed investment products”, insert “, foreign passport fund
13 products”.

14 **237 Paragraph 1013FA(2)(a)**

15 Before “the information”, insert “for a continuously quoted security that
16 is not a security of a notified foreign passport fund—”.

17 **238 After paragraph 1013FA(2)(a)**

18 Insert:

- 19 (aa) for a continuously quoted security of a notified foreign
20 passport fund—the information is included in any of the
21 following documents:
22 (i) a copy of a report for the fund for the most recent
23 financial year for the fund, prepared in accordance with
24 the financial reporting requirements applying to the
25 fund under the Passport Rules for the home economy
26 for the fund;
27 (ii) a copy of an auditor’s report that relates to the report
28 mentioned in subparagraph (i);
29 (iii) any continuous disclosure notices given by the issuer of
30 the product after the lodgment of the report mentioned
31 in subparagraph (i) and before the date of the Product
32 Disclosure Statement; and

33 **239 Subparagraph 1013FA(2)(b)(ii)**

34 After “paragraph (a)”, insert “or (aa) (as the case requires)”.

EXPOSURE DRAFT

240 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.
- (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.

241 After section 1013I

Insert:

EXPOSURE DRAFT

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:
- (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)).

EXPOSURE DRAFT

1 (6) In subsection (5), *give* means give in a way that would satisfy
2 requirements of section 1015C if the copy of the document were a
3 Statement to which that section applied.

4 **242 Subparagraph 1015B(1)(a)(i)**

5 After “managed investment product”, insert “or a foreign passport fund
6 product”.

7 **243 Paragraph 1015B(1)(b)**

8 After “managed investment product”, insert “or a foreign passport fund
9 product”.

10 **244 Subsection 1015B(2)**

11 After “The lodgment of a Statement”, insert “in relation to a managed
12 investment product”.

13 **245 At the end of section 1015B**

14 Add:

15 (3) The lodgment of a Statement in relation to a foreign passport fund
16 product with ASIC requires the consent of:

- 17 (a) if the operator of the fund is a body corporate—every
18 director of the operator; or
19 (b) otherwise—the responsible person.

20 **246 Subsection 1016A(1) (after paragraph (a) of the definition 21 of *relevant financial product*)**

22 Insert:

- 23 (aa) a foreign passport fund product; or

24 **247 Subparagraph 1017A(4)(a)(i)**

25 After “at a suitable place”, insert “in this jurisdiction”.

26 **248 Subsection 1017B(2)**

27 After “managed investment product”, insert “or foreign passport fund
28 product”.

29 **249 Subsection 1017B(2) (note 1)**

30 After “managed investment products”, insert “and foreign passport fund
31 products”.

EXPOSURE DRAFT

250 After subparagraph 1017D(1)(b)(i)

Insert:

(ia) a foreign passport fund product; or

251 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).

252 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”.

253 After subparagraph 1019A(1)(a)(iii)

Insert:

(iiia) foreign passport fund products;

254 Subsection 1020AA(1) (subparagraph (a)(i) of the definition of *securities lending arrangement*)

After “managed investment products”, insert “, foreign passport fund products”.

255 After section 1020A

Insert:

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 notified foreign passport fund. This is so even if it is proposed that the fund will become a notified foreign passport fund.

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

EXPOSURE DRAFT

-
- 1 (2) Subject to subsection (3), the kinds of conduct that must not be
2 engaged in in relation to an interest in such a foreign passport fund
3 are as follows:
- 4 (a) making a recommendation, as described in
5 subsection 1012A(3), that is received in this jurisdiction;
- 6 (b) making an offer, as described in subsection 1012B(3) or
7 1012C(3), that is received in this jurisdiction;
- 8 (c) accepting an offer, made as described in subsection 1012B(3)
9 or (4), that was received in this jurisdiction.
- 10 (3) Subsection (2) does not apply to a recommendation or offer made
11 in a situation to which a subsection of section 1012D, other than
12 subsection 1012D(1), applies.

13 **256 Section 1020B (heading)**

14 Repeal the heading, substitute:

15 **1020B Prohibition of certain short sales of securities, managed** 16 **investment products, foreign passport fund products and** 17 **certain other financial products**

18 **257 Subsection 1020B(1) (after paragraph (b) of the definition** 19 **of section 1020B products)**

20 Insert:

21 (ba) foreign passport fund products; or

22 **258 Section 1043B (heading)**

23 Repeal the heading, substitute:

24 **1043B Exception for withdrawal from registered scheme or notified** 25 **foreign passport fund**

26 **259 Section 1043B**

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

28 **260 Paragraphs 1043C(1)(a) and (c)**

29 Omit “or managed investment products”, substitute “, managed
30 investment products or foreign passport fund products”.

EXPOSURE DRAFT

1 261 Paragraphs 1043C(2)(a) and (b)

2 Omit “or managed investment products” (wherever occurring),
3 substitute “, managed investment products or foreign passport fund
4 products”.

5 262 Subsection 1043L(8) (heading)

6 Repeal the heading, substitute:

7 *Special provision for registered schemes and notified foreign*
8 *passport funds—treatment of amount recovered in respect of*
9 *subsection (2) loss*

10 263 Paragraphs 1043L(8)(a) and (b)

11 After “the responsible entity for a registered scheme”, insert “or the
12 operator of a notified foreign passport fund”.

13 264 Subsection 1043L(8)

14 After “any interests in the scheme”, insert “or fund”.

15 265 Paragraph 1043L(8)(c)

16 Repeal the paragraph, substitute:

17 (c) is to be held:

- 18 (i) in the case of a registered scheme other than an
19 Australian passport fund—by the responsible entity; and
20 (ii) in the case of an Australian passport fund or a notified
21 foreign passport fund—by the responsible holding party
22 for the fund;

23 on behalf of the persons who, at the time of the subscription
24 or agreement, had rights or interests in the relevant financial
25 or business undertaking or scheme, common enterprise,
26 investment contract or time-sharing scheme; and

27 266 Subsection 1043L(9) (heading)

28 Repeal the heading, substitute:

EXPOSURE DRAFT

1 *Special provision for registered schemes and notified foreign*
2 *passport funds—treatment of amount recovered in respect of*
3 *subsection (5) loss*

4 **267 Paragraphs 1043L(9)(a) and (b)**

5 After “the responsible entity for a registered scheme”, insert “or the
6 operator of a notified foreign passport fund”.

7 **268 Subsection 1043L(9)**

8 After “interests in the scheme”, insert “or fund”.

9 **269 Paragraph 1043L(9)(c)**

10 Repeal the paragraph, substitute:

11 (c) is to be held:

- 12 (i) in the case of a registered scheme other than an
13 Australian passport fund—by the responsible entity; and
14 (ii) in the case of an Australian passport fund or a notified
15 foreign passport fund—by the responsible holding party
16 for the fund;

17 on behalf of the persons who, at the time of the disposal,
18 acquisition or agreement, had rights or interests in the
19 relevant financial or business undertaking or scheme,
20 common enterprise, investment contract or time-sharing
21 scheme; and

22 **270 After subparagraph 1274(2)(a)(ia)**

23 Insert:

- 24 (iab) information of the kind specified under
25 subsection 1212(4) or 1213(4) (information included in,
26 or accompanying, applications in relation to passport
27 funds); or

28 **270A At the end of section 1300**

29 Add:

30 *Books relating to notified foreign passport funds*

- 31 (5) Subsection (1) does not apply in relation to the books of the
32 operator of a notified foreign passport fund that relate to the fund,
33 or the books of a notified foreign passport fund.

EXPOSURE DRAFT

1 (6) If a book of that kind is by this Act required to be available for
2 inspection, it must, subject to and in accordance with this Act, be
3 available for inspection:

4 (a) at the registered office in this jurisdiction of the operator of
5 the fund; and

6 (b) at all times when that office is open to the public.

7 **271 After paragraph 1311(1A)(dc)**

8 Insert:

9 (dd) Chapter 8A;

10 **271AA Subsection 1313(8) (after paragraph (a) of the** 11 **definition of *prescribed offence*)**

12 Insert:

13 (aa) a strict liability offence under one of the following
14 provisions:

15 (i) subsection 1211C(1) or (2);

16 (ii) subsection 1213F(1);

17 (iii) subsection 1213G(1);

18 (iv) subsection 1213H(1) or (3);

19 (v) subsection 1213HA(1);

20 (vi) subsection 1213J(1); or

21 **271A After paragraph 1317C(ge)**

22 Insert:

23 (gf) a decision of ASIC to give, withdraw or not withdraw a
24 notice under subsection 1313(1); or

25 **271B Subsection 1317DAA(1) (paragraph (a) of the definition** 26 **of *compensation proceedings*)**

27 Omit “1317HA”, substitute “1317H, 1317HA, 1317HB or 1317HC”.

28 **271C Paragraph 1317DAA(2)(f)**

29 After “93AA”, insert “or 93A”.

30 **271D At the end of section 1317DAA**

31 Add:

EXPOSURE DRAFT

-
- 1 (3) For the purposes of applying this Part to a disclosing entity that is
2 an undertaking to which interests in a notified foreign passport
3 fund relate:
- 4 (a) references to the disclosing entity are taken to be references
5 to the operator of the fund; and
- 6 (b) references to a financial report for a financial year being
7 lodged by a disclosing entity are taken to be references to a
8 copy of a report for the fund for the financial year, prepared
9 in accordance with the financial reporting requirements
10 applying to the fund under the Passport Rules for the home
11 economy for the fund, being lodged by the operator of the
12 fund; and
- 13 (c) references to securities of a disclosing entity are taken to be
14 references to interests in the fund; and
- 15 (d) references to a disclosing entity being convicted of an
16 offence based on subsection 674(2) or 675(2) are taken to be
17 references to the operator of the fund being convicted of such
18 an offence in relation to the fund; and
- 19 (e) references to a civil penalty order under Part 9.4B being
20 made against a disclosing entity in relation to a contravention
21 of subsection 674(2) or 675(2) are taken to be references to
22 such an order being made against the operator of the fund in
23 relation to the fund; and
- 24 (f) references to a disclosing entity having breached an
25 enforceable undertaking given to ASIC under section 93AA
26 or 93B of the ASIC Act in relation to the requirements of
27 subsection 674(2) or 675(2) are taken to be references to the
28 operator of the fund having breached such an undertaking
29 given in relation to the fund.

30 **271E Paragraphs 1317DAE(3)(e) and (5)(c)**

31 After “93AA”, insert “, 93A or 93B”.

32 **271F Paragraph 1317DAG(5)(c)**

33 After “93AA”, insert “, 93A or 93B”.

34 **272 Subsection 1317E(1) (table item 5, column 1)**

35 Omit “subsection 344(1)”, substitute “subsections 344(1) and (1A)”.

36 **273A Subsection 1317E(1) (after table item 45)**

37 Insert:

EXPOSURE DRAFT

45A subsections 1211C(1) and (2) contravening the Passport Rules

1 **273 Paragraph 1317E(2)(e)**

2 Omit “the corporation or registered scheme”, substitute “the
3 corporation, registered scheme or notified foreign passport fund”.

4 **273B At the end of subsection 1317E(2)**

5 Add:

6 ; (f) if the contravention is of subsection 1211C(1) or (2)
7 (complying with the Passport Rules for this jurisdiction)—the
8 passport fund in relation to which the obligation was imposed
9 on the person.

10 **274 Subparagraph 1317G(1)(b)(i)**

11 Omit “the corporation or scheme”, substitute “the corporation, scheme
12 or fund”.

13 **274A Subparagraph 1317G(1A)(c)(ii)**

14 Omit “if the issuer is a corporation or scheme, the members of that
15 corporation or scheme”, substitute “if the issuer is a corporation,
16 scheme or fund, the members of that corporation, scheme or fund”.

17 **274B Subsection 1317G(1B)**

18 Omit “The relevant maximum amount”, substitute “For the purposes of
19 subsection (1A), the relevant maximum amount”.

20 **274C After subsection 1317G(1G)**

21 Insert:

22 *Passport Rules for this jurisdiction*

23 (1H) A Court may order a person to pay the Commonwealth a pecuniary
24 penalty of the relevant maximum amount if:

- 25 (a) a declaration of contravention by the person has been made
26 under section 1317E; and
27 (b) the contravention is of subsection 1211C(1) or (2)
28 (complying with the Passport Rules for this jurisdiction); and
29 (c) the contravention:
30 (i) materially prejudices the interests of the passport fund
31 or its members; or

EXPOSURE DRAFT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

(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.

275 Subsection 1317H(1)

Omit “compensate a corporation or registered scheme”, substitute “compensate a corporation, registered scheme or notified foreign passport fund”.

276 Subsection 1317H(1)

Omit “corporation or scheme” (wherever occurring), substitute “corporation, scheme or fund”.

277 Subsection 1317H(2)

Omit “corporation or scheme”, substitute “corporation, scheme or fund”.

278 Subsection 1317H(3) (heading)

Repeal the heading, substitute:

Damage includes diminution of value of scheme or fund property

279 Subsection 1317H(3)

After “the scheme” (wherever occurring), insert “or fund”.

280 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.

281 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”.

EXPOSURE DRAFT

282 Subsection 1317HA(2)

Omit “person or scheme”, substitute “person, scheme or fund”.

283 Subsection 1317HA(3) (heading)

Repeal the heading, substitute:

Damage includes diminution of value of scheme or fund property

284 Subsection 1317HA(3)

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

285 Subsection 1317HA(3)

After “the scheme”, insert “or fund”.

286 After subsection 1317HA(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.

286A 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”.

286B Subsection 1317HB(3)

Omit “by a person or scheme”, substitute “by a person, scheme or fund”.

286C Subsection 1317HB(4) (heading)

Repeal the heading, substitute:

Damage includes diminution of value of scheme or fund property

286D Subsection 1317HB(4)

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

EXPOSURE DRAFT

1 286E Subsection 1317HB(4)

2 After “the scheme”, insert “or the fund”.

3 286F After subsection 1317HB(4)

4 Insert:

5 (4A) If the responsible entity for a registered scheme is ordered to
6 compensate the scheme, the responsible entity must transfer the
7 amount of the compensation to the scheme property. If anyone else
8 is ordered to compensate the scheme, the responsible entity may
9 recover the compensation on behalf of the scheme.

10 (4B) If the operator of a notified foreign passport fund is ordered to
11 compensate the fund, the operator must transfer the amount of the
12 compensation to the fund property. If anyone else is ordered to
13 compensate the fund, the operator may recover the compensation
14 on behalf of the fund.

15 287 After section 1317HB

16 Insert:

17 1317HC Compensation orders—Passport Rules

18 (1) A Court may order a person (the *liable person*) to compensate
19 another person (other than a passport fund) for damage suffered by
20 the other person if:

21 (a) the liable person has contravened subsection 1211C(1) or (2)
22 (failure to comply with the Passport Rules for this
23 jurisdiction); and

24 (b) the damage resulted from the contravention.

25 The order must specify the amount of compensation.

26 Note: An order may be made under this subsection whether or not a
27 declaration of contravention has been made under section 1317E.

28 (2) A Court may order a person to compensate a passport fund for
29 damage suffered by the fund if:

30 (a) the person has contravened subsection 1211C(1) or (2)
31 (failure to comply with the Passport Rules for this
32 jurisdiction); and

33 (b) the damage resulted from the contravention.

34 The order must specify the amount of compensation.

EXPOSURE DRAFT

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.
- (6) A compensation order may be enforced as if it were a judgment of the Court.

[Note: The numbering of section 1317HC will be changed on the passage of the Treasury Laws Amendment (2017 No. 5) Bill 2017.]

288 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”.

289 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.

290 After subsection 1317J(3A)

Insert:

EXPOSURE DRAFT

1 (3AA) Any other person who suffers damage in relation to a
2 contravention, or alleged contravention, of subsection 1211C(1) or
3 (2) may apply for a compensation order under section 1317HC.

4 Note: An application for a compensation order may be made whether or not
5 a declaration of contravention has been made under section 1317E.

6 **291 Subsection 1317S(1) (paragraphs (a) and (b) of the**
7 **definition of *eligible proceedings*)**

8 Omit “or 1317HB”, substitute “, 1317HB or 1317HC”.

9 **291A Subsection 1325(1)**

10 Omit “subsection 201P(1), Chapter 5C, 6CA or 6D, subsection 798H(1)
11 or Part 7.10,” (wherever occurring), substitute “a section 1325 order
12 provision”.

13 **291B Subsection 1325(2)**

14 Omit “subsection 201P(1), Chapter 5C, 6CA or 6D, subsection 798H(1)
15 or Part 7.10”, substitute “a section 1325 order provision”.

16 **291C Subsection 1325(3)**

17 Omit “subsection 201P(1), Chapter 5C, 6CA or 6D, subsection 798H(1)
18 or Part 7.10” (wherever occurring), substitute “a section 1325 order
19 provision”.

20 **291D At the end of section 1325**

21 Add:

22 (7) In this section:

23 *section 1325 order provision* means:

- 24 (a) subsection 201P(1); and
25 (b) a provision of Chapter 5C; and
26 (c) a provision of Chapter 6CA; and
27 (d) a provision of Chapter 6D; and
28 (e) subsection 798H(1); and
29 (f) a provision of Part 7.10; and
30 (g) a provision of Chapter 8A; and
31 (h) a provision of the Passport Rules for this jurisdiction.

EXPOSURE DRAFT

1 **291E Subsection 1345A(1A)**

2 Omit “or 601DC(2)”, substitute “, 601DC(2) or 1213B(6)”.

3 **292 Subsection 1378(1) (note)**

4 Omit “registered managed investment schemes”, substitute “registered
5 schemes”.

6 **293 Schedule 3 (after table item 108)**

7 Insert:

108A	Subsection 314A(1), (3) or (7)	10 penalty units or imprisonment for 3 months, or both.
------	-----------------------------------	--

8 **294 Schedule 3 (cell at table item 229AA, column headed**
9 **“Provision”)**

10 Repeal the cell, substitute:

Subsections 672DA(1),
(2), (3), (3A), (4), (6),
(7), (8) and (9)

11 **295 Schedule 3 (after table item 291B)**

12 Insert:

291BA	Subsection 1013IA(5)	100 penalty units or imprisonment for 2 years, or both.
-------	----------------------	--

13 **296 Schedule 3 (after table item 300B)**

14 Insert:

300BA	Section 1020BAA	200 penalty units or imprisonment for 5 years, or both.
-------	-----------------	--

15 **297 Schedule 3 (after table item 328)**

16 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.

EXPOSURE DRAFT

1
