



ASIC
Australian Securities &
Investments Commission

ASIC Corporations (Asia Region Funds Passport) Instrument 2019/75

I, Grant Moodie, delegate of the Australian Securities and Investments Commission, make the following legislative instrument.

Date 31 January 2019

Grant Moodie

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Part 1—Preliminary

1 Name of legislative instrument

This is the *ASIC Corporations (Asia Region Funds Passport) Instrument 2019/75*.

2 Commencement

This instrument commences on the later of:

- (a) 1 February 2019; and
- (b) the day it is registered on the Federal Register of Legislation.

Note: The register may be accessed at www.legislation.gov.au.

3 Authority

This instrument is made under subsections 1212(4) and 1213(4) of the *Corporations Act 2001*.

4 Definitions

In this instrument:

- (a) *Act* means the *Corporations Act 2001*;
passport fund has the meaning given in section 1210 of the Act;
Passport Rules has the meaning given by section 1211A of the Act;
- (b) unless the contrary intention appears, an expression that:
 - (i) is used in a Schedule to this instrument; and
 - (ii) is defined in the Passport Rules;has the same meaning in the Schedule as in the Passport Rules.

Part 2—Determination

5 Information that will not be available for inspection or copying

Application for registration as an Australian passport fund

- (1) Information that is lodged with ASIC under section 1212 of the Act will not be available for inspection or copying from ASIC if it is information about any of the matters set out in Schedule 1 in connection with an application for registration as an Australian passport fund.

Notice of intention to offer interests in a foreign passport fund

- (2) Information that is lodged with ASIC under section 1213 of the Act will not be available for inspection or copying from ASIC if it is information about any of the matters set out in Schedule 2 in connection with a notice of intention to offer interests in a foreign passport fund.

Schedule 1—Australian passport funds

Proposed fund

1. The value of the assets of the fund, the number of issued shares or interests and the date of the most recent valuation.

Single entity and group limits

2. If the fund has exceeded the limit in relation to more than one entity, the earliest date on which a limit was exceeded.
3. How the fund complies with the single entity limits and the group entity limits in sections 30 and 31 of the Passport Rules.
4. Any plan in place to bring the portfolio allocation within the limit.

Application of certain limits to index funds and benchmarks

5. When the fund commenced exceeding the limit in subsection 33(2) of the Passport Rules.
6. By how much the limit is exceeded.
7. Any plan in place to bring the portfolio allocation within the limit.

Portfolio allocation limit—financial asset regulated CIS

8. When the fund commenced exceeding the limit in subsection 34(1) of the Passport Rules.
9. Any plan in place to bring the portfolio allocation within the limit in subsection 34(1) of the Passport Rules.
10. When the fund commenced exceeding the limit in subsection 34(2) of the Passport Rules.
11. Any plan in place to bring the portfolio allocation within the limit in subsection 34(2) of the Passport Rules.

Limit on unquoted transferable securities

12. When the fund commenced exceeding the limit in section 35 of the Passport Rules.
13. Any plan in place to bring the portfolio allocation within the limit.

Limit on investments conferring significant management influence

14. When the fund commenced exceeding the limit in subsection 36(1) of the Passport Rules.
15. By how much the limit is exceeded.
16. Any plan in place to bring the portfolio allocation within the limit.

Limit on share of transferable securities or money market instruments on issue

17. When the fund commenced exceeding the limit in section 37 of the Passport Rules.
18. By how much the limit is exceeded.
19. Any plan in place to bring the portfolio allocation within the limit.

Limit on depository receipts over gold

20. When the fund commenced exceeding the limit in section 38 of the Passport Rules.
21. Any plan in place to bring the portfolio allocation within the limit.

Derivatives and securities lending arrangements — global exposure limit

22. When the fund commenced exceeding the limit in section 39 of the Passport Rules.
23. Any plan in place to bring the portfolio allocation within the limit.

Securities lending limit

24. When the fund commenced exceeding the 50% limit in section 41 of the Passport Rules.
25. Any plan in place to bring the portfolio allocation within the limit.

Relief

26. Whether an exemption or modification of the Passport Rules has been applied for.
27. Whether there is an intention to apply for an exemption or modification of the Passport Rules.
28. Details of the exemption or modification sought or intended to be sought.

Delegation of functions in connection with operating the fund

29. Reasons why the delegate does not require an authorisation or licence.

Delegation of investment management role

30. Details of each person responsible for the investment management role.

Annual implementation reviewer

31. Auditor type.

32. Registered auditor number of lead auditor.

Financial statements auditor

33. Name of individual auditor, lead auditor or review auditor.

External legal firm or company

34. Whether an external legal firm or company was used to help prepare the application.

35. Name and other details of the external law firm or company.

Directors

36. Details about each of the directors

Chief executive officer

37. Details about each chief executive officer or equivalent.

Compliance committee

38. Whether the fund has a compliance committee.

39. Details of each compliance committee member.

Responsible persons

40. Details of each person responsible for discretionary investment decisions.

Identification and role of relevant parties

41. Whether there is a relevant party that is a natural person.

42. Details of each relevant party.

Related party

43. Details about the processes and staff of the related party which are materially different to those of the operator.
44. Details about how the related party is related to the operator.

Change in control

45. Details about any changes to corporate governance arrangements.
46. Details about changes to the operational arrangements over the last five years.
47. Details about who has substantial influence over the operator or related party.
48. Details about how the person exercises substantial influence.
49. Details about circumstances which prevented the decisions being made without substantial influence.
50. Details about the type of decisions made.

Good standing of operator

51. Details of any finding, infringement notice, enforcement action, decision, judgment, settlement or undertaking in relation to the conduct of the operator, controller or any officer.

Qualifications and experience

52. Details about each compliance control to ensure compliance with obligations for officers having relevant qualifications and experience.
53. Description of any other compliance controls to ensure compliance with section 6 of the Passport Rules.

Financial resources

54. Details about each compliance control to ensure compliance with obligations about meeting the financial resources test.
55. Description of any other compliance controls to ensure compliance with section 7 of the Passport Rules.

Organisational arrangements

56. Description of the procedures the operator must have in place to know when there are exceptional circumstances that would mean the derivative does not have to be closed or sold for a value in the time stated in paragraph 25(1)(c) of the Passport Rules.

Track record

57. Details about each compliance control to ensure compliance with obligations to meet the track record test.
58. Description of any other compliance controls to ensure compliance with section 9 of the Passport Rules.
59. Details about the procedures the operator has in place to monitor decisions in relation to the operation of financial asset collective investment schemes without substantial influence by any person who controls the operator.

Good standing

60. Details about each compliance control to ensure compliance with obligations to meet the good standing test.
61. Description of any other compliance controls to ensure compliance with section 10 of the Passport Rules.

Delegation and engagement of service providers

62. Details about each compliance control to ensure compliance with obligations about delegating functions and engaging service providers.
63. Description of any other compliance controls to ensure compliance with sections 11, 13 and 15 of the Passport Rules.

Reporting breaches and changes

64. Details about each compliance control to ensure compliance with obligations about reporting breaches and changes.
65. Description of any other compliance controls to ensure compliance with section 12 of the Passport Rules.

Monitoring by independent oversight entity

66. Details about each compliance control to ensure compliance with obligations about monitoring by the independent oversight entity.
67. Description of any other compliance controls to ensure compliance with section 14 of the Passport Rules.

Permitted assets and portfolio allocation and exposure

68. Details about each compliance control to ensure compliance with obligations about permitted assets and portfolio allocation and exposures.
69. Description of any other compliance controls to ensure compliance with Divisions 6.2, 6.3 and 6.4 of the Passport Rules.

Restrictions for loans, guarantees and underwriting

70. Details about each compliance control to ensure compliance with obligations about restrictions for loans, guarantees or underwriting.
71. Description of any other compliance controls to ensure compliance with section 43 of the Passport Rules.

Borrowing

72. Details about each compliance control for compliance obligations about borrowing.
73. Description of any other compliance controls to ensure compliance with section 44 of the Passport Rules.

Short-selling

74. Details about each compliance control to ensure compliance with obligations about short-selling.
75. Description of any other compliance controls to ensure compliance with section 45 of the Passport Rules.

Liability of members

76. Details about each compliance control to ensure compliance with obligations about liability of members.
77. Description of any other compliance controls to ensure compliance with section 46 of the Passport Rules.

Performance fees

78. Details about each compliance control to ensure compliance with obligations about performance fees.
79. Description of any other compliance controls to ensure compliance with section 47 of the Passport Rules.

Withdrawal

80. Details about each compliance control to ensure compliance with obligations about withdrawal.
81. Description of any other compliance controls to ensure compliance with sections 48, 49, 50, 51 and 52 of the Passport Rules.

Valuation

82. Details about each compliance control to ensure compliance with obligations about valuation.
83. Description of any other compliance controls to ensure compliance with section 53 of the Passport Rules.

Breach history

84. Whether the operator is in breach of the Corporations Act, the ASIC Act or the conditions of its Australian financial services licence.
85. Whether the operator has contravened the Corporations Act, ASIC Act or the conditions of its Australian financial services licence in the last five years.

Constituent document

86. References to each section in the constituent document that satisfy the requirements of subsection 4(3) of the Passport Rules.
87. Details about each compliance control about amending the constituent document.
88. Description of any other compliance controls to ensure compliance with subsection 4(3) of the Passport Rules.

Schedule 2—Foreign passport funds

Proposed operator

1. Details of the operator's local agent in Australia.

Proposed fund

2. A request to ASIC to manually review a proposed fund name.
3. Whether the Minister's consent was obtained to use the name.
4. Evidence of the Minister's consent to use the name.
5. Whether the APRA's consent was obtained to use the name.
6. Evidence of APRA's consent to use the name.
7. Details of the fund's local agent in Australia.
8. The value of the assets of the fund, the number of issued shares or interests and the date of the most recent valuation.

Application form 'Part A' submitted to home regulator

9. A copy of Part A of the application form submitted to the home regulator.

Directors of the operator

10. Details of directors of the operator.

Distributors of interests in the fund

11. Reasons why the distributor does not require an authorisation or licence.

Fund and operator compliance

12. Whether the fund or operator is in breach of the laws and regulations of the home economy.
13. In the last two years, whether the fund or operator has breached the laws and regulations of the home economy.
14. In the last five years, whether the fund or operator has breached any Australian law or regulation including the Act and the ASIC Act.
15. In the last five years, whether the fund or operator has breached the Passport Rules.

16. Whether the operator has applied for, or been granted an exemption, modification or any other relief in relation to any law or regulation of its home economy in relation to the fund.
17. Whether the operator has applied for, or been granted an exemption, modification or any other relief in relation to the Passport Rules.

Complaints

18. Details about each compliance control for ensuring compliance with obligations about complaints about the fund or the operator by Australian investors.

Distribution

19. Details about each compliance control for ensuring compliance with obligations to monitor Australian distributors.

Disclosure and reporting

20. Details about each compliance control for ensuring compliance with obligations about disclosure and reporting to Australian investors.

Marketing

21. Details about each compliance control for ensuring compliance with obligations about advertising and marketing.

Communication with Australian financial markets

22. Details about each compliance control for ensuring compliance with obligations about lodging communications with an Australian financial market.

Lodgment of notices with ASIC

23. Details about each compliance control for ensuring compliance with obligations about lodging notices with ASIC.