

ALLEN & OVERY

Your passport to funds in the Asia Pacific region

2014

The prospective HK/PRC tie-up has immense potential given the huge PRC market and developed regimes; the Asian Funds Passport offers significant potential, albeit likely to be over a longer period and subject to various tax issues being ironed out; the ASEAN passport initiative has considerable potential if critical mass is achieved. A number of important issues remain to be determined across the various regimes. Ultimately, the evolution over a much longer period of a broader and deeper passport regime across the region is the ultimate key to unlocking the staggering potential of APAC funds.

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Purpose of passporting/mutual recognition schemes: Enable streamlined approval process for distribution of retail funds established in a member jurisdiction.

A. Structural

Regulatory Feature	Asia Region Funds Passport	ASEAN Passport	Cross Border Mutual Recognition Scheme	Australia	Singapore	Hong Kong
Member jurisdictions	Australia, New Zealand, South Korea and Singapore	Malaysia, Singapore and Thailand	Hong Kong and PRC	–	–	–
Proposed date of launch	Estimated January 2016	Estimated first half of 2014	Estimated some time in 2014	–	–	–

B. Qualifications – Fund

Regulatory Feature	Asia Region Funds Passport	ASEAN Passport	Cross Border Mutual Recognition Scheme	Australia	Singapore	Hong Kong
Domiciliation	Constituted and authorised by a regulator of a member jurisdiction	Constituted and authorised in a member jurisdiction	Constituted and authorised in a member jurisdiction	Constituted and authorised by ASIC	<ul style="list-style-type: none"> – Unit trusts for schemes established in Singapore – For offshore “recognized” schemes, typically UCITS schemes established in Luxembourg or Ireland – Manager or its related corporation must manage SGD500m in Singapore to offer “recognized” funds to Singapore retail 	<ul style="list-style-type: none"> – No restriction – Simplified process for “recognised jurisdiction schemes”

Regulatory Feature	Asia Region Funds Passport	ASEAN Passport	Cross Border Mutual Recognition Scheme	Australia	Singapore	Hong Kong
Legal Structure	Any, must be open-ended	To be determined	Unit trusts	<p>Collective investment vehicles that meet the following criteria:</p> <ul style="list-style-type: none"> – registered managed investment schemes under Chapter 5C of the Australian Corporations Act 2001 (Cth) – ARF Passport rules are expected to provide that the fund must include reasonable redemption rights for investors (this may mean that funds with illiquid assets are excluded from the scheme) 	See above	Unit trusts and mutual fund corporations

C. Qualifications – Manager

Regulatory Feature	Asia Region Funds Passport	ASEAN Passport	Cross Border Mutual Recognition Scheme	Australia	Singapore	Hong Kong
Eligible entities	Any, must have principal place of business in home jurisdiction	To be determined	To be determined	Australian company	Corporate	Corporate

Regulatory Feature	Asia Region Funds Passport	ASEAN Passport	Cross Border Mutual Recognition Scheme	Australia	Singapore	Hong Kong
Required licences	Must be authorised in the home jurisdiction	Licensed by the regulator in the home jurisdiction	Licensed by the regulator in the home jurisdiction	Hold an Australian Financial Services Licence (AFSL). With appropriate authorisations to manage the fund (including providing advice in relation to underlying assets) or be able to rely on a relevant exemption	Required to hold a Capital Markets Service Licence for fund management	<ul style="list-style-type: none"> – SFC licence for type 9 regulated activities – Recognised managers from acceptable inspection regimes – Non-acceptable inspection regime managers would be required to be approved separately
Experience	<ul style="list-style-type: none"> – must have capacity and strong record of fund management experience 	<ul style="list-style-type: none"> – minimum 5 year track record – minimum AUM of USD500m globally (including AUM of related companies, but exclude AUM for property funds or REITs) 	To be determined	Must meet the general experience required necessary to obtain an AFSL Passport rules require a “strong record of experience” – it is not clear whether this will constitute an additional obligation	<ul style="list-style-type: none"> – Reputable entity with established track record for at least 5 years – Applicant or related corporation has good ranking in home country 	None
Capital	To be determined	<ul style="list-style-type: none"> – minimum USD1m – additional capital of 0.1% of AUM over USD500m 	To be determined	<p>Must comply with financial requirements relevant to AFSL authorisation. For a manager, such requirements would typically include:</p> <ul style="list-style-type: none"> – solvent with positive net assets – sufficient resources to meet anticipated cash flow expenses <p>Other requirements will depend on the authorisations of and activities carried out by the manager</p>	<ul style="list-style-type: none"> – Minimum SGD1m in base capital. – Subject to additional risk-based regulatory capital charge <p>These are the legal minimums. In practice some buffer will be required</p>	<ul style="list-style-type: none"> – Minimum HKD1m – Positive net asset position

Regulatory Feature	Asia Region Funds Passport	ASEAN Passport	Cross Border Mutual Recognition Scheme	Australia	Singapore	Hong Kong
Staffing	To be determined	<ul style="list-style-type: none"> – CEO have minimum of 10 years' experience in markets – all directors have minimum of 5 years' experience in markets – key executives are required to have relevant degree and minimum 3 years' experience in markets (or 5 years' experience if no degree) – portfolio managers must have relevant degree or professional qualifications and experience in the fund industry 	To be determined	Must satisfy the organisational competence obligations associated in the relevant AFSL authorisation including nominating "Responsible Managers", who are the people primarily responsible for the provision of financial services by the manager	<ul style="list-style-type: none"> – At least 2 directors with financial services experience, including managerial and supervisory experience – CEO with at least 10 years of experience – Licensed retail Fund Management Companies must employ 3 relevant professionals / representatives resident in Singapore with 5 years experience 	<ul style="list-style-type: none"> – At least 2 key personnel with at least 5 years investment experience in managing retail funds (experience gained should be in the same type of investments of the proposed fund) – Key personnel must be full-time staff
Delegation	Passport rules are expected to provide that a significant proportion of Fund activities are to be undertaken by entities within the region	Permitted, subject to satisfaction of certain requirements	To be determined	Generally permitted. It is not clear whether the Passport rules in respect of ensuring that a significant proportion of Fund activities are to be undertaken by entities within the region will be imposed as an additional requirement	Permitted subject to satisfaction of certain requirements	Permitted, subject to satisfaction of certain requirements

D. Qualifications – Trustees and Custodians

Regulatory Feature	Asia Region Funds Passport	ASEAN Passport	Cross Border Mutual Recognition Scheme	Australia	Singapore	Hong Kong
Eligible entities	To be determined	To be determined	To be determined	Australian public company	Corporate (public company)	– Banks – Trust company
Required licences	To be determined	Did not specify but institution must be subject to prudential regulation and on-going supervision	To be determined	AFSL with appropriate authorisation required	Approval as a CIS trustee under Section 289 of the SFA	Banking licence or trust company approval (or others if regulated outside Hong Kong)
Capital	To be determined	Must comply with base capital requirement from its regulator	To be determined	At a minimum will need to comply with basic financial requirements applying to “responsible entities”, including: – solvency and positive net assets – sufficient resources to meet anticipated cash flow expenses – net tangible assets of up to the higher of AUD10m or 10% of relevant entity revenue, depending on whether the “responsible entity” holds fund assets our outsources to a custodian	– Paid up capital of SGD1m – Shareholders’ funds of SGD1m These are the legal minimums. In practice some buffer will be required.	Minimum of HKD10 million
Staffing	To be determined	Sufficient number of qualified staff	To be determined	Sufficient staff to satisfy organisational competence obligations imposed on the entity as an AFSL holder	Sufficient number of qualified staff	No specific requirements
Independence	Assets must be separated from assets of manager and other funds (except for omnibus accounts)	Must be independent from manager	To be determined	There is no existing requirement under Australian law for the trustee to be independent from the manager under Australian law	Must be independent from manager	Must be independent from manager

E. Other

Regulatory Feature	Asia Region Funds Passport	ASEAN Passport	Cross Border Mutual Recognition Scheme	Australia	Singapore	Hong Kong
Permissible Investments	<ul style="list-style-type: none"> – No short selling – limited borrowing – No money lending, underwriting and provision of guarantees 	<ul style="list-style-type: none"> – Transferable securities – money market instruments – deposits – units in other CISs 	<ul style="list-style-type: none"> – No short selling – Plain vanilla fund only 	<p>Naked short selling is banned in Australia. Otherwise, trustees in Australia are generally not subject to investment restrictions so long as the trustee is appropriately authorised. We note that Funds relying on the ARF Passport regime will be subject to the following restrictions:</p> <ul style="list-style-type: none"> – Limited use of derivatives – Limited use of illiquid investments – Borrowing or obtaining of finance only permissible in limited circumstances and for limited amounts – Short selling not permitted 	<ul style="list-style-type: none"> – Various categories as permitted by the Code on Collective Investment Schemes for authorised schemes established in Singapore – Foreign “recognised” schemes generally UCITS 	<p>Various categories as permitted by the Code on Unit Trusts and Mutual Funds.</p>

Regulatory Feature	Asia Region Funds Passport	ASEAN Passport	Cross Border Mutual Recognition Scheme	Australia	Singapore	Hong Kong
Use of Financial Derivatives	Limited use only	May not exceed 20% of net assets Maximum exposure to OTC derivatives counterparty must not exceed 10% of net assets where counterparty credit rating is investment grade. Otherwise, 5%	– Not permitted	Under Australian law, trustees must hold appropriate AFSL authorisations to trade in financial derivatives on behalf of the Fund. Funds relying on the ARF Passport are likely to be subject to an additional obligation to minimise reliance on derivatives	Depends on the category of CIS under the Code on Collective Investment Schemes	Depends on the category of the fund
Disclosure requirements on distribution	– Set by regulator of the jurisdiction of which the fund is distributed	– Set by regulator of the jurisdiction of which the fund is distributed – Manager must initially provide documents showing qualification in home jurisdiction	– Set by regulator of the jurisdiction of which the fund is distributed	Product disclosure statement that satisfies the requirements of the Australian Corporations Act and ASIC	– Set by regulator of the jurisdiction of which the fund is distributed – In Singapore, a local prospectus would be required	Must be approved by the SFC
Audit	– must be prepared in accordance with international standards or prevailing national standards if similar	– Must be independent. To report to trustee, home and host regulator	To be determined	Annual audit required, with auditor's report to be filed with ASIC	Independent annual audit required	Must be independent from manager, trustee and directors of mutual fund corporation

International Funds in Asia Pacific

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