



Financial Markets Conduct (Asia Region Funds Passport) Amendment Regulations 2024

Cindy Kiro, Governor-General

Order in Council

At Wellington this 27th day of May 2024

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 576 and 581 of the Financial Markets Conduct Act 2013—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with sections 576(2) and 581(2) of that Act.

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Regulations

1 Title

These regulations are the Financial Markets Conduct (Asia Region Funds Passport) Amendment Regulations 2024.

2 Commencement

These regulations come into force on 30 June 2024.

3 Principal regulations

These regulations amend the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019.

4 Regulation 3 amended (Interpretation)

In regulation 3, definition of **memorandum**, replace “as in force on the commencement of these regulations” with “as in force on 30 June 2024”.

5 Schedule 2 amended

- (1) In Schedule 2, replace paragraph 9 (amendments to the MOC) with:

Paragraph 9: Amendments to the MOC

- 9.1 One or more Participants that wish to make an amendment to this MOC may make a proposal by writing to the Joint Committee in English setting out an amendment for the Joint Committee to assess whether it might be reasonable and implementable for each Participant.
- 9.2 As soon as practicable after receiving a proposed amendment, the Chair of the Joint Committee will circulate the proposed amendment to all Participants and request each Participant to notify the Chair of the Joint Committee, in writing, of:
- a. whether it agrees or agrees in principle with the proposed amendment;
 - b. if the Participant agrees or agrees in principle with the proposed amendment, the extent of its authority to fully implement the amendment in the economy of the Participant if recommended by the Joint Committee;
 - c. if the Participant agrees or agrees in principle with the proposed amendment, the possible date of the implementation of the amendment if recommended by the Joint Committee; and
 - d. if the Participant does not agree with the proposed amendment, the reason for the disagreement.
- 9.3 Within six months of circulating the proposed amendment to all other Participants, the Chair of the Joint Committee will endeavour to notify the other Participants, in writing, of:
- a. whether the Chair of the Joint Committee agrees or agrees in principle with the proposed amendment;
 - b. if the Chair of the Joint Committee agrees or agrees in principle with the proposed amendment, the extent of its authority to implement the proposed amendment in the economy if recommended by the Joint Committee;

- c. if the Chair of the Joint Committee agrees or agrees in principle with the proposed amendment, the possible date of the implementation of the amendment if recommended by the Joint Committee; and
 - d. If the Chair of the Joint Committee does not agree with the proposed amendment, the reason for the disagreement.
- 9.4 All Participants will comply with the requests of the Chair of the Joint Committee pursuant to paragraph 9.2, and will endeavour to do so within six months of the date on which the proposed amendment was circulated.
- 9.5 As soon as practicable after receiving notices from all Participants pursuant to paragraph 9.4, and providing the notification pursuant paragraph 9.3, the Chair of the Joint Committee will schedule the proposed amendment for consideration at the next Joint Committee meeting or at an interim meeting as deemed appropriate by the Joint Committee.
- 9.6 If the Joint Committee assesses that the amendment is sufficiently reasonable and implementable for economies of all Participants giving due and full consideration to matters for all Participants' circumstances pursuant to paragraphs 9.2 and 9.3, the Joint Committee will make a recommendation for the proposed amendment with the timeframe of the implementation and the commencement date of the amendment.
- 9.7 If the Joint Committee assesses that an amendment is not sufficiently reasonable and implementable for economies of all Participants giving due and full consideration to matters for all Participants' circumstances pursuant to paragraphs 9.2 and 9.3, the Joint Committee may suggest further considerations needed for the proposed amendment.
- 9.8 In recommending amendments under subparagraph 6.2(f), the Joint Committee will consider any known views of other economies in the region that have expressed a wish to become, at a later date, Subsequent Participants.
- 9.9 For the avoidance of doubt, any recommendations for amendment made by the Joint Committee under this MOC are non-binding. Participants may decline to accept a recommendation, in which case they will give notice in writing to all other Participants within any time frame set out in the Joint Committee's recommendation.
- 9.10 Where the Joint Committee makes a recommendation for amendment under this paragraph, each Participant will endeavour to implement the agreed recommendation by the time specified in the recommendation by the Joint Committee and will notify the Joint Committee when its implementation of the recommendation is completed.
- 9.11 If written notice is given under subparagraph 9.9 that the Participant declines to accept a recommendation referred in subparagraph 9.6, the recommendation will:
 - a. be considered by the Joint Committee at the next Joint Committee meeting or at an interim meeting; or

- b. where appropriate, the Joint Committee will determine a new amendment, timeframe for implementation and new commencement date for the amendment.
- 9.12 If a Participant cannot implement a recommendation referred to in subparagraph 9.10 within the timeframe determined by the Joint Committee while the other Participants have implemented the recommendation, the timeframe can be extended to the Participant by the Joint Committee and the amendment will commence for the other Participants at the specified time referred to in subparagraph 9.10.
- 9.13 Any amendments to this MOC will commence on the date specified in the agreed recommendation even where an economy has completed its domestic implementation before the specified date. The date may be varied by agreement in writing by all Participants. Before commencement, an updated MOC will be issued and published on the Passport website with the date of commencement of the updated MOC.
- (2) In Schedule 2, Annex 3, Part 2, section 4(2), table, item relating to Japan, second column, replace “Investment Trusts and Investment Corporations Act” with “Act on Investment Trusts and Investment Corporations”.
- (3) In Schedule 2, Annex 3, Part 3, section 7(4), definition of *relevant accounting standards*, table, item relating to Japan, second column, replace “and related Cabinet Office Ordinance” with “and other relevant regulations”.
- (4) In Schedule 2, Annex 3, Part 4, section 16(4), table, item relating to Japan, replace the item in the second column with:
Requirement imposed under the Financial Instruments and Exchange Act and other relevant regulations.
- (5) In Schedule 2, Annex 3, Part 4, section 16(6), table, item relating to Japan, replace the item in the second column with:
The relevant home audit requirements under the Financial Instruments and Exchange Act, the Certified Public Accountants Act and other relevant regulations.
- (6) In Schedule 2, Annex 3, Part 9, section 56(b), table, item relating to Japan, replace the item in the second column with:
A scheme under the Act on Investment Trusts and Investment Corporations.
- (7) In Schedule 2, Annex 4, Part 1, section 2(1)(c)(iiii), after “Bank of Thailand”, insert “or the Office of Insurance Commission”.
- (8) In Schedule 2, Annex 4, Part 1, after section 2(1)(c)(iiii), insert:
(v) where the Requesting Regulator is the Financial Markets Authority, any department of State that, with the authority of the Prime Minister of New Zealand, is responsible for the administration of any part of the financial markets legislation listed in Schedule 1 to the Financial Markets Authority Act 2011 (New Zealand), the Commerce Commission, the Director of the Serious Fraud

Office, the New Zealand Police, the Registrar of Companies, the Registrar of Financial Service Providers, the Reserve Bank of New Zealand, the Takeovers Panel, the Inland Revenue Department and an accredited body (within the meaning of section 6(1) of the Auditor Regulation Act 2011).

Nicola Purvis,
Acting Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations but is intended to indicate their general effect.

These regulations come into force on 30 June 2024.

These regulations amend the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019 (the **principal regulations**), which provide for a recognition and application regime that is implemented under subpart 6 of Part 9 of the Financial Markets Conduct Act 2013 (the **Act**) to give effect to the Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport (the **memorandum**) that was entered into between New Zealand and Australia, Japan, the Republic of Korea, and Thailand (the **Participants**). The memorandum is set out in Schedule 2 of the principal regulations.

Under the arrangements for this regime,—

- investments in certain overseas managed investment schemes (**foreign passport funds**) are able to be offered in New Zealand. Each foreign passport fund is primarily regulated under the laws of its home country (instead of New Zealand law); and
- investments in certain New Zealand managed investment schemes (**New Zealand passport funds**) are able to be offered in Australia, Japan, the Republic of Korea, and Thailand. The New Zealand passport fund is primarily regulated under New Zealand law (for example, the governance requirements of Part 4 of the Act) rather than overseas law.

The amendments made by these regulations update Schedule 2 of the principal regulations to reflect changes to be made by the Participants on 30 June 2024. The amendments are of 3 main types as follows:

- they replace the paragraph that provides for how Participants may change the memorandum:
- they update or correct references in respect of Japan:
- they extend the definition of governmental entity in respect of New Zealand and Thailand. That definition applies for the purpose of the information sharing provisions. One effect is that, if the Financial Markets Authority is required by

New Zealand law to disclose information to another governmental entity, then the Financial Markets Authority must first notify the regulator of the Participant, and endeavour to provide assurances concerning the other governmental entity's use of the information.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 30 May 2024.

These regulations are administered by the Ministry of Business, Innovation, and Employment.