

MEMO# 30804

July 31, 2017

Asia Region Funds Passport - Publication of First Annual Report and Guidance Consultation (Deadline: 19 September 2017)

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July 31, 2017 TO: ICI Global Exchange Traded Funds Committee
ICI Global Pacific Chapter
ICI Global Regulated Funds Committee
ICI Global Tax Committee
International Operations Advisory Committee
International Operations Working Group RE: Asia Region Funds Passport - Publication of First Annual Report and Guidance Consultation (Deadline: 19 September 2017)

On 25 July 2017, the Joint Committee (JC) of the Asia Region Funds Passport (ARFP) initiative published the following documents:

- the first annual report on the ARFP covering the period July 2016- June 2017;[\[1\]](#) and
- a public consultation on guidance describing the host economy laws and regulations that will apply to passported funds (“guidance consultation”);[\[2\]](#)

ICI Global has strongly supported the development of the ARFP,[\[3\]](#) including the submission of comment letters in 2014[\[4\]](#) and 2015[\[5\]](#) to support the development of the ARFP rules. ICI Global also welcomed the signing of a Memorandum of Cooperation (MoC)[\[6\]](#) between participating countries.[\[7\]](#)

ICI Global intends to respond to the guidance consultation by the deadline of Tuesday 19 September.[\[8\]](#) In the areas covered by the consultation (outlined in more detail below), we are seeking to include high-level references to regulatory practices in other parts of the work in our response. We will circulate a draft of ICI Global’s response for member comment in due course. Members seeking to provide input to ICI Global’s response should contact Giles Swan on +44 (0) 207 961 0832 or at giles.swan@iciglobal.org

Guidance Consultation

The JC of the ARFP is consulting on draft guidance which is intended to help collective investment scheme (CIS) operators make an initial assessment of host state requirements for ARFP funds. The guidance relates to Japan, Australia, Korea, New Zealand and Thailand.

For each country the draft guidance covers the following matters (section and page references refer to the guidance consultation):

- disclosure (section 1, pages 1-19) – covering requirements including point of sale (e.g. prospectus) and ongoing disclosure (e.g. periodic reports);
- capital controls (section 2, page 20) – covering capital controls (where applicable) and notifications for offshore investment;
- Taxation (section 3, page 21) – covering investor (resident and non-resident), fund and fund manager taxation;
- distribution (section 4, page 24-35) – covering requirements including distributor qualifications, registration and notification obligations, marketing and products rules and regulatory intervention powers;
- local agents (section 5, page 36-38) – covering host state agent/representative requirements;
- access to financial markets to sell exchange traded funds (section 6, pages 39-40) – covering the issuance, sale, marketing and listing of ETFs in host states;
- privacy and anti-money laundering (AML) legislation (section 7, pages 41-47) – covering privacy, data protection and AML obligations on fund managers concerning fund investors.

The cover note to the guidance consultation^[9] acknowledges that in some areas the legal requirements that will apply in host economies are not settled. The stated purpose of the consultation is to identify areas covered by the draft guidance where further clarification is needed.

As well as the draft guidance, the JC is also seeking feedback on part A of the draft Application Form that is included as an annex to the annual report.

Annual Report on the ARFP

The first annual report on activities under the ARFP covers the period between July 2016 - June 2017. The report summarises the ARFP framework, including the framework of home, host and ARFP rules applicable to ARFP funds, and also contains:

- a summary of the ARFP framework, including the framework of home, host and ARFP rules applicable to ARFP funds;
- summaries of Joint Committee meetings held in November 2016^[10] and April 2017^[11];
- an update on progress of tax issues;
- a summary of discussions on back-office fund processing;
- summaries of engagement with potential participant economies and industry;
- an example application form setting out minimum requirements for a fund's entry into a ARFP economy, subject to any additional regulatory requirements.

Development of pre-implementation by member economies

The annual report also contains a summary of pre-implementation of the ARFP in participating member economies, an extract of which is in the table below.

Country

Development of pre-implementation

Australia

- Implementation through draft legislation developed for public consultation, including to create a corporate fund vehicle;
- Regulatory guidance being developed, alongside IT infrastructure to support online fund registration and notification.

Japan

- Implementation through amendments to legislative ordinance by end 2017, with the intention to accept incoming ARFP funds from 2018;
- ARFP checklist developed to accompany the regulatory submission of application and notification documents;

New Zealand

- Finalising regulations for domestic and foreign ARFP funds by late 2017 with full implementation by end 2017.

Thailand

- Stakeholder consultation and public hearing conducted on ARFP host economy law and regulation;
- Drafting and issuing of regulations, including building on experience with ASEAN CIS Framework, to enable ARFP funds to commence in 2018;
- Seeking pilot ARFP fund to build readiness prior to ARFP launch.

Korea

- Legal amendments being prepared to cover registration, sales and operations, with official procedures for adoption planned for H2 2017.

Non-participant Engagement

The ARFP JC has continued an active process of engagement with other economies in the Asia region that might be interested to join the ARFP. ICI Global has previously expressed its support for enlargement of the group of economies participating in the ARFP. In this regard, the annual report lists various forms of engagement with Indonesia, Malaysia, India and Singapore. The report also notes that The Philippines, which aims to be a member of the ARFP, is currently not eligible to be a member as it is not a signatory under the International Organisation of Securities Commissions' Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMoU) Appendix A.

Tax Issues

ICI Global has underscored the need for the implementation of the ARFP to ensure tax neutrality and tax certainty for funds across participating economies.^[12] The annual report summaries the progress that has been made to address tax issues under the ARFP, including through a Tax Reference Working Group that has been established, and through efforts taken by Australia to address certain domestic issues.

Fund Back-office processing

The annual report describes efforts by the JC to enhance the efficiency and accuracy for fund market players seeking to engage in the trading of ARFP funds through various efforts

to improve fund back-office processing. The standardisation of fund registration and the harmonisation of the different business processes and terminology used between markets are listed as examples of improvements that the JC is examining.

Next Steps

The deadline for responses to the guidance consultation is Tuesday 19 September. JC members have indicated that they may update the guidance as the applicable legal requirements become clear and also to take into account industry submissions. As described in the annual report, some participating member economies intend to implement the ARFP by the end of this year. As described in the MoC, the activation of the Passport will occur after any two participating economies complete implementation.

Giles Swan
Director of Global Funds Policy, ICI Global

endnotes

[1] Asia Region Funds Passport, Annual Report 2016-2017, available from https://cdn.tspace.gov.au/uploads/sites/20/2017/07/ARFP_AR_2017.pdf

[2] Interim guidance on host economy laws and regulations, ARFP Joint Committee, available from <https://cdn.tspace.gov.au/uploads/sites/20/2017/07/Interim-ARFP-Guidance.pdf>

[3] ICI Global News Release, ICI Global Applauds Asia Region Funds Passport Initiative; Recommends Operational, Implementation, Tax Changes, 14 July 2014, available from https://www.iciglobal.org/iciglobal/news/news/ci.14_news_icig_arfp_global

[4] Letter from Dan Waters, Managing Director, ICI Global to ARFP working group members, RE: Consultation Paper: Arrangements for an Asia Region Funds Passport, dated 10 July 2014, available from <https://www.iciglobal.org/pdf/28259.pdf>

[5] Letter from Dan Waters, Managing Director, ICI Global to ARFP working group members, RE: Arrangements for an Asia Region Funds Passport: Feedback Statement and Consultation on Draft Rules, dated 10 July 2014, available from <https://www.iciglobal.org/pdf/28890.pdf>

[6] ARFP News Release: Asia Region Funds Passport Memorandum of Cooperation, available from <https://fundspassport.apec.org/2016/04/28/asia-region-funds-passport-memorandum-of-cooperation/>

[7] ICI Global News Release, ICI Global Welcomes Memorandum of Cooperation on Asia Region Funds Passport, 29 April 2016, available from https://www.iciglobal.org/iciglobal/policy/rules/16_news_arfp_cooperation

[8] Responses are to be submitted to ARFP Joint Committee members (<https://fundspassport.apec.org/consultation-on-arfp-guidance-2017/>)

[9] <https://cdn.tspace.gov.au/uploads/sites/20/2017/07/ARFP-Guidance-CoverNote.pdf>

[10] ARFP News Release: Asia Region Funds Passport – Joint Committee Meeting 23-24 November 2016, available from <http://fundspassport.apec.org/2016/12/06/joint-committee-meeting-23-24-november-2016/>

[11] ARFP News Release: Asia Region Funds Passport – Joint Committee Meeting 20-21 April 2017, available from <http://fundspassport.apec.org/2017/04/27/arfp-joint-committee-meeting-20-21-april-2017/>

[12] ICI Global has recommended that the ARFP initiative must ensure tax neutrality and tax certainty for funds across APEC jurisdictions. Passported funds should receive equal tax treatment, regardless of any existing home country tax advantages. A level playing field would support competition among firms and choice for investors. In addition, funds and their investors should have clarity over, for example, the tax consequences of a fund portfolio investment. Tax certainty is critical for funds to make the economic investment to expand and for investors to invest their money. To ensure that tax issues do not erode the benefits of investing in a passport fund, ICI Global recommends that the member economies work together to identify and address tax issues

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