

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer, Minister for Housing, Minister for Homelessness, Social and Community Housing

Corporations and other Legislation Amendment (Corporate Collective Investment Vehicle Framework) Rules 2022

The Asia Region Funds Passport (ARFP) scheme is a multilateral arrangement to enable portability of eligible investment vehicles between participating APEC jurisdictions. The ARFP scheme is established by a Memorandum of Cooperation (MoC) and three annexes, including a set of rules that govern the operation of passport funds (Annex 3). The MoC and Annexes are incorporated into Australian domestic law by Chapter 8A of the *Corporations Act 2001* (Corporations Act) and the *Corporations (Passport) Rules 2018* (Passport Rules).

The *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022* amends Chapter 8A of the Corporations Act to enable a sub-fund of a retail Corporate Collective Investment Vehicle (CCIV) to be registered as a passport fund in Australia. The *Corporations and other Legislation Amendment (Corporate Collective Investment Vehicle Framework) Rules 2022* (the Rules) amend the Passport Rules to ensure they apply appropriately to a passport fund that is a sub-fund of a retail CCIV.

The Passport Rules are vehicle-neutral and apply to a passport fund that is sub-fund of a CCIV in the same way as they apply to other passport funds. However, because a managed investment scheme was the only potential Australian passport fund at the time the ARFP scheme was established, the Passport Rules include three incidental references to schemes in table items that relate to Australia. The Rules update these table items to reflect that a passport fund may also be a sub-fund of a retail CCIV. The Rules also amend the text of an existing note that clarifies the operation of section 13(4)(b) in Australia.

In addition, the Rules insert a note to signpost that expressions in the Passport Rules have the same meaning as they do in the Corporations Act. The note has been added to assist readers in understanding and interpreting the Passport Rules.

Details of the Rules are set out in [Attachment A](#).

Section 1211 of the Corporations Act provides that the Minister may, by legislative instrument, make rules that provide for matters relating to passport funds or entities connected with passport funds. The rules must be substantially the same as the rules contained in Annex 3 to the MoC.

The Corporations Act does not specify any conditions that need to be satisfied before the power to make the Rules may be exercised.

Public consultation on the Rules was undertaken between 22 December 2021 and 22 January 2022, no submissions were received.

Australia has advised the other participating ARFP jurisdictions of its intent to enable a sub-fund of a retail CCIV to be registered as a passport fund, including by making the necessary changes to domestic law.

The Rules commence on the later of 1 July 2022 and the day after they are registered. The Rules apply from their commencement.

The Regulation Impact Statement for the Rules can be found in the Explanatory Memorandum to the *Corporate Collective Investment Vehicle Framework and Other Measures Act 2022*. The Rules have no impact on compliance costs.

A statement of Compatibility with Human Rights is at [Attachment B](#).

Details of the *Corporations and other Legislation Amendment (Corporate Collective Investment Vehicle Framework) Rules 2022*

Section 1 – Name of the Rules

This section provides that the name of the Rules is the *Corporations and Other Legislation Amendment (Corporate Collective Investment Vehicle Framework) Regulations 2022* (the Rules).

Section 2 – Commencement

The Rules commence on the later of 1 July 2022 and the day after they are registered.

Section 3 – Authority

The Rules are made under section 1211 of the *Corporations Act 2001* (the Corporations Act).

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedules to this instrument will be amended or repealed as set out in the applicable items in the Schedules, and any other item in the Schedules to this instrument has effect according to its terms.

Schedule 1 – Amendments to the *Corporations (Passport) Rules 2018 (Passport Rules)*

Item 1 amends the existing table item in section 4 of the Passport Rules to provide that, for a passport fund that is a sub-fund of a Corporate Collective Investment Vehicle (CCIV), its constituent document is the constitution of the CCIV.

Item 2 amends the existing note to subsection 13(4)(b) to clarify that the operator of a passport fund is only required to delegate holding of the passport fund's assets to a third party where the operator would otherwise hold those assets. The operator of a passport fund that is a sub-fund of a CCIV does not hold its assets and is therefore unable to delegate this function.

Items 3 and 4 amend two existing table items in section 16 to provide that, for a passport fund that is a sub-fund of a CCIV, the relevant financial reporting and audit requirements are in Chapter 2M of the Corporations Act as modified by Part 8B.4 of that Act.

Item 5 inserts a new note prior to the definitions in section 55 to indicate that expressions in the Passport Rules have the same meaning as they do in the Corporations Act. This note confirms the application of section 13(1)(b) of the *Legislation Act 2003*, which provides that terms used in an instrument will generally have the same meaning as in the enabling legislation.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Corporations and other Legislation Amendment (Corporate Collective Investment Vehicle Framework) Rules 2022

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Legislative Instrument amends the *Corporations (Passport) Rules 2018* to ensure that the existing provisions will apply to a passport fund that is sub-fund of a Corporate Collective Investment Vehicle in the same way as they apply to other passport funds.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.