

EXPLANATORY STATEMENT

Issued by authority of the Assistant Treasurer

Corporations and other Legislation Amendment (Corporate Collective Investment Vehicle Framework) Rules 2021

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* and the Corporations (Passport) Rules 2018 (Passport Rules).

The *Corporate Collective Investment Vehicle Framework and Other Measures Act 2021* amends Chapter 8A of the Corporations Act to enable a sub-fund of a retail CCIV to be registered as a passport fund in Australia. The Corporations and other Legislation Amendment (Corporate Collective Investment Vehicle Framework) Rules 2021 (the CCIV 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 includes three incidental references to schemes in table items that relate to Australia. The CCIV Rules update these table items to reflect that a passport fund may also be a sub-fund of a retail CCIV.

The CCIV Rules also 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 CCIV Rules are set out in the Attachment.

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.

Australia has advised the other participating 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 CCIV Rules commence on the later of 1 July 2022 and the day after they are registered. The CCIV Rules apply from their commencement.

Details of the Corporations and other Legislation Amendment (Corporate Collective Investment Vehicle Framework) Rules 2021

Section 1 – Name of the Regulations

This section provides that the name of the Rules is the *Corporations and Other Legislation Amendment (Corporate Collective Investment Vehicle Framework) Regulations 2021* (the CCIV Rules).

Section 2 – Commencement

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

Section 3 – Authority

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

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

Item 1 amends a table item in section 4 of the Rules to provide that, for a passport fund that is a sub-fund of a CCIV, its constituent document is the constitution of the CCIV.

Items 2 and 3 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 4 inserts a 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.