



Financial Markets Conduct (Asia Region Funds Passport) Amendment Regulations 2019

Patsy Reddy, Governor-General

Order in Council

At Wellington this 13th day of May 2019

Present:

Her Excellency the Governor-General in Council

These regulations are made under subpart 1 of Part 9 and 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 549, 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 2019.

2 Commencement

These regulations come into force on 14 June 2019.

3 Principal regulations

These regulations amend the Financial Markets Conduct Regulations 2014 (the **principal regulations**).

4 Regulation 5 amended (Interpretation)

In regulation 5(1), insert in their appropriate alphabetical order:

foreign passport fund has the same meaning as in regulation 3 of the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019

host economy has the same meaning as in section 55 of the passport rules

memorandum of cooperation has the same meaning as memorandum has in regulation 3 of the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019 (*see* Schedule 2 of those regulations, which sets out the text of the memorandum)

passport fund means a scheme that is registered on the scheme register as a passport fund

passport rules means the rules in Annex 3 of the memorandum of cooperation (*see* Schedule 2 of the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019)

5 Regulation 24 amended (Content of PDS for offer of managed investment products)

(1) After regulation 24(1), insert:

(1A) However, in the case of interests in a foreign passport fund that are offered under Part 1 of the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019, the following apply (regardless of whether the fund is a managed fund):

- (a) the PDS must contain all of the information specified in Part 1 of Schedule 4 that is applicable (as modified in accordance with Part 6 of Schedule 4); and
- (b) the PDS must be accompanied by a statement in the form set out in Schedule 26.

(2) In regulation 24(2), after “(1)”, insert “or (1A)”.

(3) After regulation 24(4), insert:

(5) If a foreign passport fund referred to in subclause (1A) is not a managed fund, this regulation and the rest of these regulations apply with all necessary modifications as if—

- (a) the foreign passport fund were a managed fund; and
- (b) the interests in the foreign passport fund were managed investment products.

Example

Regulation 29(2) sets length restrictions for the key information summary. Regulation 29(2)(c), which is the length restriction for managed funds, applies to an offer of interests in a foreign passport fund.

6 Regulation 40 amended (Content of register entry for offer of managed investment products)

After regulation 40(1), insert:

- (1A) However, in the case of interests in a foreign passport fund that are offered under Part 1 of the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019, the register entry must contain all of the information specified in Part 2 of Schedule 4 that is applicable (as modified in accordance with Part 6 of Schedule 4).

7 New regulation 61AA inserted (Fund update requirements apply to foreign passport funds)

After regulation 61A, insert:

61AA Fund update requirements apply to foreign passport funds

If interests in a foreign passport fund are offered under Part 1 of the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019, regulations 56 to 61A of these regulations apply with all necessary modifications as if the fund were a registered scheme that is a managed fund.

8 New regulations 63A to 63C and cross-heading inserted

After regulation 63, insert:

Passport funds

63A Annual report requirements apply to foreign passport funds

- (1) If interests in a foreign passport fund are offered under Part 1 of the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019, regulation 62(1) and (2) applies with all necessary modifications as if the fund were a registered scheme that is a managed fund.
- (2) However, the documents referred to in regulation 62(1)(b) are only required to be sent to a scheme participant if the participant is—
 - (a) resident in New Zealand (in the case of a natural person); or
 - (b) incorporated in, or established under the laws of, New Zealand.
- (3) The annual report of the foreign passport fund must contain all of the information specified in Part 5 of Schedule 4 that is applicable (as modified in accordance with Part 6 of Schedule 4).
- (4) For the purposes of section 97 of the Act, a manager of a foreign passport fund must ensure that each annual report prepared in respect of the fund under regulation 62 is available on the register entry for the offer on and after the date that is 28 days after it is prepared.

63B Manager of passport fund must lodge certain information

- (1) For the purposes of section 97 of the Act, if a registered scheme becomes registered as a passport fund (*see* regulations 82A and 82B), the manager must, as soon as practicable, lodge with the Registrar the following (for inclusion on the scheme register):
 - (a) an indication of the scheme's status as a passport fund;
 - (b) the information referred to in section 7 of Annex 2 of the memorandum of cooperation, including the Part A information set out in Schedule 27 of these regulations, subject to the exceptions referred to in section 7(1)(a) of Annex 2 (*see* section 3(2)(a) of Annex 2).
- (2) If regulation 82B(3) applies, the Part A information set out in Schedule 27 must be provided under subclause (1)(b) in relation to each relevant fund instead of in relation to the scheme (and, for that purpose, Schedule 27 applies with all necessary modifications as if each relevant fund were a scheme).

63C Manager of passport fund must lodge information for updating scheme register

- (1) This regulation applies if—
 - (a) the information referred to in section 7 of Annex 2 of the memorandum of cooperation that is recorded in the scheme register in relation to a passport fund has changed; or
 - (b) a change of circumstances has arisen that would have required different information to have been lodged under regulation 63B had it arisen before the information was lodged.
- (2) For the purposes of section 97 of the Act, the manager of the passport fund must, within 5 working days after becoming aware of the matter referred to in subclause (1), lodge with the Registrar information to update the information recorded in the scheme register.

Example

Regulation 63B and section 7 of Annex 2 of the memorandum of cooperation provide for the scheme register to include a list of the host economies in which the passport fund has completed the entry process under the memorandum.

After becoming registered as a passport fund, ABC Fund has completed the entry process in Japan. The manager of ABC Fund must lodge information with the Registrar to update the list on the scheme register.

9 New regulations 82A and 82B inserted

After regulation 82, insert:

82A Passport funds are type of registered scheme

A passport fund is prescribed as a type of registered scheme.

82B Additional initial and ongoing registration requirements for passport funds

- (1) Every passport fund must meet the registration requirements specified in subclause (2) and, if applicable, subclause (3) (in addition to the requirements in section 127 of the Act).
- (2) The requirements are as follows:
 - (a) the scheme is constituted or governed by a trust deed or other governing document that is interpreted and administered in accordance with New Zealand law;
 - (b) the scheme must already be registered as a registered scheme;
 - (c) a request under section 134(3) of the Act for a direction that the scheme be registered as a passport fund is made and is accompanied by the Part A information set out in Schedule 27 in relation to—
 - (i) the scheme; or
 - (ii) if subclause (3) applies, each relevant fund (and, for that purpose, Schedule 27 applies with all necessary modifications as if each relevant fund were a scheme):
 - (d) that request is accompanied by all other information that is reasonably necessary to assess whether the scheme or, if subclause (3) applies, each relevant fund is likely to be operated in compliance with the passport rules and with financial markets legislation;
 - (e) at the time of that request, the manager of the scheme is an eligible entity under section 3(4) of Annex 2 of the memorandum of cooperation;
 - (f) the scheme is operating, and is likely to continue to be operated, in compliance with financial markets legislation;
 - (g) the scheme,—
 - (i) if it is not yet operating in a host economy, is likely to be operated in compliance with the passport rules; and
 - (ii) if it is operating in a host economy, is operated in compliance with the passport rules and the relevant laws and regulations;
 - (h) no request has been made to the FMA under section 14(1)(b) of Annex 2 of the memorandum of cooperation.
- (3) If, when interests in the scheme are offered in a host economy, the investment options that may be selected by investors in the host economy are or will be limited to options that involve 1 or more (but not all) specified funds in the scheme, subclause (1)(g) does not apply. Instead, the following requirements must be met:
 - (a) each relevant fund,—
 - (i) if the scheme is not yet operating in the host economy, is likely to be operated in compliance with the passport rules; and

- (ii) if the scheme is operating in a host economy, is operated in compliance with the passport rules and the relevant laws and regulations:
 - (b) the manager's licence is or will be subject to a condition imposed under regulation 199A.
- (4) In considering whether a relevant fund is likely to operate or is operating in compliance with the passport rules and the relevant laws and regulations, those rules, laws, and regulations apply with all necessary modifications as if the relevant fund were a scheme.
- (5) In this regulation and regulation 63B,—
relevant fund means a specified fund referred to in subclause (3) in respect of which an investment option may be selected by investors in a host economy
relevant laws and regulations means the laws and regulations (as defined in paragraph 4.1(f) of the memorandum of cooperation) of each host economy in which interests in the scheme are or will be offered.

10 New regulation 197A inserted (Condition for manager of passport fund)

After regulation 197, insert:

197A Condition for manager of passport fund

- (1) A market services licence for a person acting as a manager of a passport fund is subject to a condition that, in respect of the passport fund, the manager must comply with the following to the extent that those rules, laws, or regulations apply to an operator of the fund (including rules, laws, or regulations that impose obligations on the fund):
 - (a) the passport rules:
 - (b) the laws and regulations (as defined in paragraph 4.1(f) of the memorandum of cooperation) of each host economy in which the fund operates.
- (2) If regulation 82B(3) applies, the reference to rules, laws, or regulations that impose obligations on the fund must be treated as the rules, laws, and regulations referred to in subclause (1)(a) and (b) applied with all necessary modifications in relation to each relevant fund as if the relevant fund were a passport fund.
- (3) See also regulation 199A (which relates to limitations on investment options).

11 Regulation 198 amended (Conditions are Part 6 services provisions)

In regulation 198, replace “197” with “197A”.

12 New regulation 199A inserted (Other FMA conditions for licences for managers of passport funds)

After regulation 199, insert:

199A Other FMA conditions for licences for managers of passport funds

- (1) This regulation applies to a market services licence for a person acting as a manager of a passport fund if regulation 82B(3) applies.
- (2) The FMA may impose on the licence a condition that the manager must ensure that the investment options that may be selected by an investor in a host economy are limited to options that involve 1 or more specified funds that are listed in the condition.

13 Part 9 heading amended

In the Part 9 heading, after “**recognition**”, insert “**with Australia**”.

14 Regulation 256 amended (Interpretation)

In regulation 256, replace the definition of **Australian regulated offer** with:

Australian regulated offer—

- (a) means an offer of financial products by an Australian offeror in respect of which an Australian disclosure document is required under Australian securities legislation; but
- (b) does not include an offer of interests in a passport fund (within the meaning of regulation 3 of the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019) the home economy for which is not Australia

15 New regulation 256A inserted (Offeror may act under alternative mutual recognition regime)

After regulation 256, insert:

256A Offeror may act under alternative mutual recognition regime

- (1) Subparts 2 and 3 do not limit the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019.
- (2) In particular, an offeror may elect to act under either those subparts or those regulations.

16 Schedule 4 amended

In Schedule 4, after Part 5, insert:

Part 6**Modifications for funds passport recognition regime****84 Interpretation**

In this Part, unless the context otherwise requires,—

independent oversight entity, in relation to a foreign passport fund, means the entity that is the independent oversight entity of the fund under section 14 of the passport rules

recognised offer means a recognised offer of managed investment products under Part 1 of the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019.

85 General modifications

- (1) If interests in a foreign passport fund are offered under Part 1 of the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019, clauses 1 to 8C and Parts 1 to 5 of this schedule apply with all necessary modifications as if—
 - (a) the fund were a registered scheme that is a managed fund; and
 - (b) the operator of the fund under the passport rules were the manager; and
 - (c) the constituent document (within the meaning of the passport rules) were the governing document.
- (2) This clause does not limit the modifications that must be made under clauses 86 to 93.

86 Modification relating to GAAP

In the case of interests in a foreign passport fund that are offered under Part 1 of the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019, the reference to GAAP in clause 3 applies as if it were a reference to relevant accounting standards (as defined in section 7(4) of the passport rules).

PDS

87 Application

Clauses 88 to 91 apply to a PDS for a recognised offer.

88 Multiple-participant schemes provisions do not apply

Clause 8B does not apply.

89 Modification relating to SIPO

The PDS is not required to have a summary under clause 23(3)(a).

90 Modifications relating to supervisor

- (1) This clause modifies clause 44 (who else is involved?) and clause 46 (how to complain).
- (2) The PDS—
 - (a) is not required to refer to a supervisor in the table under clause 44; but

- (b) must instead refer in the table to the independent oversight entity, including—
 - (i) the name of the entity or, if the entity consists of a number of individuals, the name of each individual; and
 - (ii) a brief description of the role of the entity.
- (3) The PDS—
 - (a) is not required to include information about the supervisor under clause 46; but
 - (b) must instead include a statement as to whether complaints about the managed investment products or the scheme can be made to the independent oversight entity and, if so, the contact details of the entity.

91 Modifications relating to scheme register

- (1) This clause modifies clause 48 (where you can find more information).
- (2) The PDS—
 - (a) is not required to refer to the scheme register; but
 - (b) must instead refer to the register on which the foreign passport fund is registered.

Register entry

92 Modifications to register entry

- (1) Clause 51(1)(e), (ea), (f), (g), (ga), (h), and (k) and (2) does not apply to a register entry for a recognised offer.
- (2) A register entry for a recognised offer must also contain the following:
 - (a) confirmation of the fact that the offer is made under Part 1 of the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019;
 - (b) the address required by regulation 21 of the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019;
 - (c) the dates on which the offer opens and, if applicable, closes in New Zealand;
 - (d) if the operator is relying on section 17(a) of the passport rules, the dates on which the offer opens and, if applicable, closes in the home economy (within the meaning of regulation 3 of the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019);
 - (e) the manager's Internet site address.
- (3) The information required by clauses 51, 53, 53A, and 54 must be lodged in PDF format.

*Annual report***93 Modifications to annual report**

- (1) This clause applies to an annual report of a foreign passport fund.
- (2) Clauses 78(1), 79(1)(c), 80, and 82(a)(ii) do not apply.
- (3) Clauses 77(d), 81(1)(d), and 83(1)(b) and (2)(b) apply as if the references to the supervisor were references to the independent oversight entity.
- (4) Clause 77(g) applies as if the reference to the latest financial statements were a reference to the latest financial reporting statements lodged under regulation 18 of the Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019.
- (5) The annual report—
 - (a) is not required to refer to the scheme register under clause 82(b)(i); but
 - (b) must instead refer to the register on which the foreign passport fund is registered.
- (6) The annual report must contain the contact details of the securities registrar under clause 83(1)(c) regardless of the words in brackets in that paragraph.

17 New Schedules 26 and 27 inserted

After Schedule 25, insert the Schedules 26 and 27 set out in the Schedule of these regulations.

Schedule

New Schedules 26 and 27 inserted

r 17

Schedule 26

Passport fund statement

r 24(1A)(b)

Offer made under the Asia region funds passport initiative

From the home jurisdiction of [*specify the home economy*]

The Product Disclosure Statement relating to [*specify financial products to which the PDS relates*] is for an offer made under the Asia Region Funds Passport initiative (ARFP). The manager ([*name*]) has completed the notification process required to make an offer in New Zealand under the ARFP and this has been recorded on the following Internet site: [*home page of the Internet site maintained by or on behalf of the FMA*]

[*Name of manager*] confirms that, at all times during the period in which [*name of foreign passport fund*] operates in New Zealand,—

- that fund will comply with the law of [*specify the home economy*] and the passport rules (which are rules that apply under the ARFP); and
- [*name of manager*] will, in relation to that fund, comply with the law of [*home economy*] and the passport rules.

About the Asia region funds passport initiative (ARFP)

The intent of the ARFP is to allow managers from countries that are members of the ARFP to offer interests in funds in other countries that are members of the ARFP. Key aspects of the ARFP are that,—

- before a country can become a member of the ARFP, it must satisfy the existing members that—
 - its securities regime meets internationally recognised eligibility criteria (based on principles of the International Organization of Securities Commissions); and
 - it is committed to implementing the ARFP rules:
- the ARFP rules include requirements that—
 - the manager must meet minimum requirements relating to assets under management (US\$500 million) and capital (US\$1 million plus an additional capital amount based on assets under management):
 - the manager has a proven track record and key staff that meet minimum experience thresholds:

- an ARFP fund cannot offer interests in the fund in New Zealand unless there is an ongoing offer of interests in the fund (or in a subfund that forms part of the same regulated scheme as the fund) in its home economy, or at least 30% of the value of interests in funds operated by the manager are held by persons with addresses in the home jurisdiction; and
- investments are highly diversified and meet investment criteria:
- an ARFP fund is first registered in its home jurisdiction and then it goes through a streamlined recognition process in each other country in which the offer is made:
- there is mutual cooperation between member countries to give effect to the ARFP.

Differences between Asia region funds passport offers and “standard” retail funds registered in New Zealand under the Financial Markets Conduct Act 2013

Before you invest in an ARFP fund, you should be aware that there are different risks and benefits from those that arise from investing in a “standard” retail fund that is registered in New Zealand under the Financial Markets Conduct Act 2013. Some issues to consider are set out below. If you are uncertain about whether this investment is appropriate for you, you should seek the advice of a financial adviser to help you make an investment decision.

Additional rules	ARFP funds are required to comply with some rules that do not apply as a matter of course to “standard” retail managed investment schemes that have interests offered under the Financial Markets Conduct Act 2013. For example, the specific rules relating to minimum capital requirements, minimum assets under management, and what the fund can invest in to ensure that it is highly diversified.
Differences in regulation	There are differences in how an ARFP fund is regulated under the law of its home jurisdiction. For example, the rights, remedies, and compensation arrangements available to New Zealand investors in these investments may differ from the rights, remedies, and compensation arrangements for investments in “standard” retail managed investment schemes.
Oversight by regulators in more than 1 country	<p>An ARFP fund will be registered in its home jurisdiction (ie, <i>specify</i>) and that registration will then be recognised in New Zealand.</p> <p>Despite primarily being regulated overseas, the manager must comply with the ARFP rules and the disclosure and fair dealing rules of New Zealand law in respect of the New Zealand offer. Further, the manager must agree to be bound by any decisions made by the New Zealand courts in respect of any aspect of the New Zealand offer.</p> <p>To the extent possible, the New Zealand and home regulators have agreed to cooperate in order to facilitate the enforcement of the ARFP. However, the primary regulator of the manager is the home regulator (ie, the regulator in</p>

Exemptions from New Zealand law	<p>[specify]) and practical enforcement of any New Zealand judgment is an issue to consider.</p> <p>Some exemptions from the usual operation of New Zealand laws may be in place for ARFP funds. For example, the overseas registration requirements may not be the same as the registration requirements for New Zealand schemes, and financial reporting may not be made in accordance with New Zealand generally accepted accounting practice and therefore may not be comparable. You may want to seek advice from a financial adviser when considering the effect of these differences on your investment decision.</p>
Tax	The tax implications of investing in an overseas fund can be complex and may require independent advice.
Currency issues	<p>The offer may involve a currency exchange risk.</p> <p>*The currency for the investment in the fund is not New Zealand dollars. The value of the investment will go up or down according to changes in the exchange rate between that currency and New Zealand dollars. These changes may be significant.</p> <p>*If you expect the returns from the investment to pay any amounts in a currency that is not New Zealand dollars, you may incur significant fees in having the funds credited to a bank account in New Zealand in New Zealand dollars.</p> <p>*The fund may invest in a foreign currency, in which case there is additional currency exposure to consider.</p> <p>*Omit if inapplicable.</p>

Are there any exemptions from the ARFP rules?

No—this offer complies with all of the rules of the ARFP./The following exemptions from the ARFP rules apply to this offer: *[briefly describe the exemptions]*.*

*Select one.

Further information

For further information about how managers are regulated in *[specify]*, go to the following Internet site: *[specify the home page of the Internet site maintained by or on behalf of the home regulator]*

Schedule 27**Part A information for registration as passport fund**

rr 63B, 82B

- 1 The Part A information for registration of a scheme as a passport fund is—
- (a) the following information about the scheme:
 - (i) the name of the scheme:
 - (ii) details of the scheme (including its legal structure and its type):
 - (iii) particulars about permitted investments, restrictions on portfolio allocation, limits on exposures, and other restrictions that show how Parts 6 and 7 of the passport rules are and will be complied with:
 - (iv) particulars about the offer of interests in the scheme in the home economy that show how section 17 of the passport rules is and will be complied with:
 - (v) particulars about fees that show how section 47 of the passport rules is and will be complied with:
 - (vi) the name and contact details of the auditor as referred to in section 16(5) of the passport rules (together with the name and contact details of the auditor's firm or business):
 - (vii) information about whether and how the governing documents have been updated to reflect the passport rules (including updates to ensure that the documents comply with section 4 of the passport rules):
 - (b) the following information about the manager of the scheme:
 - (i) the name of the manager and its business name:
 - (ii) the address of the manager's registered office and of its principal place of business:
 - (iii) the manager's contact details:
 - (c) information that shows that the manager of the scheme is an eligible entity under section 3(4) of Annex 2 of the memorandum of cooperation, including information to show that the manager—
 - (i) complies with section 3(4)(a) and (5) of Annex 2 of the memorandum of cooperation (which relates to total asset value under management); and
 - (ii) has officers with the relevant qualifications within the meaning of section 6 of the passport rules; and
 - (iii) meets the financial resources test under section 7 of the passport rules; and

- Michael Webster,
Clerk of the Executive Council.

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

These regulations, which come into force on 14 June 2019, amend the Financial Markets Conduct Regulations 2014 (the **2014 regulations**).

The Financial Markets Conduct (Asia Region Funds Passport) Regulations 2019 (the **2019 regulations**) and the amendments made to the 2014 regulations provide for a new recognition and application regime to be implemented under subpart 6 of Part 9 of the Financial Markets Conduct Act 2013 (the **Act**). This gives effect to the Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport (the **memorandum**) entered into between New Zealand and Australia, Japan, the Republic of Korea, and Thailand.

Under these arrangements,—

- 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.

In summary, these regulations—

- modify the requirements for a product disclosure statement or register entry for an offer of interests in a foreign passport fund (*regulations 5, 6, and 16*);
- require fund updates and annual reports for a foreign passport fund as if it were a New Zealand registered scheme (*regulations 7 and 8*);
- require the manager of a New Zealand passport fund to include certain information on the scheme register and to keep this information updated (*regulation 8*);
- specify a passport fund as a type of New Zealand registered scheme and specify the initial and ongoing requirements for a New Zealand passport fund (*regulation 9*);
- impose a condition on a manager of a New Zealand passport fund to comply with the passport rules under the memorandum and the laws and regulations of each host economy (*regulations 10 and 11*) and allow the Financial Markets Authority to impose a condition about the investment options that are offered overseas (*regulation 12*);
- clarify the relationship between the new recognition and application regime and the existing recognition and application regime with Australia under Part 9 of the 2014 regulations (*regulations 13 to 15*).

Regulatory impact assessment

The Ministry of Business, Innovation, and Employment produced a regulatory impact assessment on 7 April 2016 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact assessment can be found at—

- <https://www.mbie.govt.nz/assets/bffe1d5d39/ris-joining-the-asia-region-funds-passport.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

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