

2015

Asia/Pacific

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Recommended Citation

Justin G. Persaud & Steve Saunders, *Asia/Pacific*, 49 ABA/SIL YIR 459 (2015)
<https://scholar.smu.edu/til/vol49/iss0/34>

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Asia/Pacific

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I. Introduction

The Asia/Pacific Committee covers the Asia/Pacific region, including Afghanistan, Australia, Bangladesh, Bhutan, Brunei, Cambodia, the Cook Islands, Indonesia, Japan, North Korea, South Korea, Laos, Malaysia, the Marshall Islands, Myanmar, Nepal, New Zealand, Pakistan, Palau, the Philippines, Singapore, Sri Lanka, Thailand, Tonga, Vietnam, and other countries in the region. This article highlights selected 2014 legal developments in the Asia/Pacific region and Japan.

II. Asian Region

The Asian/Pacific securities regulatory framework witnessed numerous developments in 2014. This article will present a brief update on the Asia Region Funds Passport.

In Asia, there is currently no single agreement or streamlined process that would allow an investor to invest in several markets through one vehicle. In 2011, at the Honolulu Asia Pacific Economic Co-Operation (APEC) meeting, finance ministers endorsed the pilot Asia Region Funds Passport (ARFP) structure, a suggestion first proposed by Australia at the October 2010 APEC meeting in Kuala Lumpur. The ARFP would be akin to the European Union's Undertakings for Collective Investment in Transferable Securities (UCITS) model.

Australia had set a two-stage process to implement the proposal. First, the Australian Securities and Investments Commission (ASIC) would negotiate bilateral mutual recognition agreements with key jurisdictions in the region. Second, once the bilateral agreements were in place, governments and agencies in the region would work to develop these into a multilateral Passport system.¹ True to form, as of September 20, 2013, Australia,

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1. APEC Finance Ministers Consider UCITS-Style Asia Region Funds Passport, *GLOBAL CUSTODIAN* (November 16, 2011), <http://australia.globalcustodian.com/news/Fund-Administration/APEC-Finance-Ministers-Consider-UCITS-Style-Asia-Region-Funds-Passport/41233>.

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Korea, New Zealand, and Singapore signed the *Statement of Intent on the Establishment of the Asia Region Funds Passport*.²

On April 16, 2014, a consultation paper for the ARFP was released.³ The purpose of the paper was to seek views from the public regarding the details of the proposed arrangement. The consultation paper set out the objectives and rules that would apply to fund managers and passport funds. The objectives include: delivering benefits of greater competition to investors;⁴ ensuring adequate protections to investors;⁵ strengthening the capacity and competitiveness of the Asia region fund management industry;⁶ deepening the region's financial markets;⁷ and maintaining a stable and efficient financial system.⁸ Additionally, the ARFP consultation paper set out the rules for reporting, procedure for licensing, and any investment restrictions. The period for consultations closed on July 11, 2014. The system is expected to be launched in 2016.

III. Japan

A. THE DEATH PENALTY IN JAPAN

The death penalty continues to be a controversial topic in Japan. Two individuals were executed in August 2014.⁹ Additionally, a 78-year-old man was released from death row after being imprisoned since 1966. Japan's most recent justice minister indicated she would not review the system in Japan. The issue will probably become moot following the general election called for December 2014.¹⁰

B. ELECTORAL LAW REFORM

Japan's Supreme Court announced in November 2014 that the 2013 election for the Upper House of Parliament was "held in a state of unconstitutionality" but did not invalidate the election.¹¹ A lawsuit was filed complaining that rural voters held an almost 5-1 advantage over urban voters in voting power. The only response of the government to

2. ASIA-PACIFIC ECONOMIC COOPERATION, STATEMENT OF INTENT ON THE ESTABLISHMENT OF THE ASIA REGION FUNDS PASSPORT 3 (2013), available at <http://fundspassport.apec.org/files/2013/12/131210-ARFP-Signed-SOI.pdf>.

3. ASIA-PACIFIC ECONOMIC COOPERATION, CONSULTATION PAPER: ARRANGEMENTS FOR AN ASIA REGION FUNDS PASSPORT AN APEC FINANCE MINISTERS' INITIATIVE (2014), available at <http://fundspassport.apec.org/files/2014/04/20140411-Consultation-Paper-on-the-Passport-Arrangements-FINAL.pdf>.

4. ASIA-PACIFIC ECONOMIC COOPERATION, *supra* note 3, at 5.

5. *Id.* at 6.

6. *Id.*

7. ASIA-PACIFIC ECONOMIC COOPERATION, CONSULTATION PAPER: ARRANGEMENTS FOR AN ASIA REGION FUNDS PASSPORT AN APEC FINANCE MINISTERS' INITIATIVE 7 (2014), available at <http://fundspassport.apec.org/files/2014/04/20140411-Consultation-Paper-on-the-Passport-Arrangements-FINAL.pdf>.

8. *Id.*

9. Japan Executes Two More Prisoners, THE GUARDIAN (Aug. 29, 2014, 5:52 PM) <http://www.theguardian.com/world/2014/aug/29/japan-executes-two-more-prisoners>.

10. D. McN., The Death Penalty in Japan: Hanging Tough, THE ECONOMIST (Sept. 30, 2014, 3:34) <http://www.economist.com/blogs/banyan/2014/09/death-penalty-japan>.

11. Isabel Reynolds & Maiko Takahasi, Voting disparity to help LDP stay in charge amid Supreme Court inaction, THE JAPAN TIMES (Nov. 28, 2014), <http://www.japantimes.co.jp/news/2014/11/28/national/politics-diplomacy/voting-disparity-to-help-ldp-stay-in-charge-amid-supreme-court-inaction/#.VHkhGskjzQc>.

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this perennial issue was to pass a bill in 2013 to reduce the number of seats in the Lower House from 480 to 475, which will mostly likely dilute the power of urban voters even more than previously.

C. CYBERLAW IN JAPAN

A cyber criminal who sent out death threats online admitted his guilt in May after being arrested in 2013.¹² The suspect had used other people's computers to send out the threats, which led police to arrest and charge all four of those other individuals. All four admitted their guilt but were later released.

D. MONEY LAUNDERER WHO FLED JAPAN

Following up on a previous story,¹³ the Nigerian money launderer who escaped from Japan before he could be arrested in 2007 was finally sentenced to prison, but in the United States after his arrest in Atlanta in November 2012. He pled guilty to one felony and will spend almost five years in prison in addition to paying a large restitution of \$6.7 million.¹⁴

12. Kyodo, Accused cyberriddler changes plea to guilty, *THE JAPAN TIMES* (May 22, 2014), <http://www.japantimes.co.jp/news/2014/05/22/national/crime-legal/accused-hacker-katayama-changes-plea-admits-online-death-threats/#.VHkje8kzQd>.

13. Four money laundering suspects held, *THE JAPAN TIMES* (Sept 14, 2007), http://www.japantimes.co.jp/news/2007/09/14/national/four-money-laundering-suspects-held/#.VSU_V0KhuIA.

14. USA: Nigerian Kingsley Osagie Sentenced, *ANTI-FRAUD INTERNATIONAL* (July 28, 2014), <http://antifraudintl.org/threads/usa-nigerian-kingsley-osagie-sentenced.88408/#post-244557>.

SPRING 2015

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

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