

# **Handbook for ASEAN CIS and Their Operators**

Version 2

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# Introduction

## Background

At the 13<sup>th</sup> ASEAN Summit in Singapore in November 2007, ASEAN leaders jointly adopted the [ASEAN Economic Community Blueprint](#) (“AEC Blueprint”), with the goal of establishing ASEAN as a single market and production base, with free flow of goods, services, investments and skilled labor, and freer flow of capital. The AEC Blueprint also sets out a general framework to strengthen ASEAN capital market development and integration.

Pursuant to the [AEC Blueprint](#), the ASEAN Capital Markets Forum (“ACMF”) developed an Implementation Plan to Promote the Development of an Integrated Capital Market to Achieve the Objectives of the AEC Blueprint (“[the Implementation Plan](#)”). The Implementation Plan proposal was approved by the ASEAN Finance Ministers at the 12<sup>th</sup> ASEAN Finance Ministers’ Meeting in Danang, Vietnam in April 2008. One of the initiatives under the Implementation Plan was to develop a mutual recognition framework to facilitate cross-border offers of collective investment schemes within ASEAN (“ASEAN CIS”).

On 1<sup>st</sup> October 2013, the Securities Commission Malaysia, the Monetary Authority of Singapore and the Securities and Exchange Commission, Thailand signed the Memorandum of Understanding (“MOU”) to establish an ASEAN CIS framework for cross-border offerings of CIS (“ASEAN CIS Framework”), and, on 11<sup>th</sup> May 2021, the Securities and Exchange Commission Philippines became the 4<sup>th</sup> ACMF member to sign on to the framework.

The ASEAN CIS Framework allows the units or shares of an ASEAN CIS authorised in its Home Jurisdiction to be offered in other Host Jurisdictions under a streamlined authorisation process, provided that the ASEAN CIS satisfies the set of common standards specified in the Standards of Qualifying CIS (the “Standards”). A full set of the Standards is available at <http://www.theacmf.org>.

The participating jurisdictions have published this Handbook to enable industry practitioners to gain an understanding of the different legislative requirements in each participating jurisdiction and the procedures for the cross-border offering of ASEAN CIS.

## **Purpose**

This document seeks to provide guidance to CIS Operators or CIS, as the case may be, who are seeking to offer their CIS under the ASEAN CIS Framework. It covers:

- the steps that CIS Operators or CIS, as the case may be, should take to obtain approval from the Home and Host Regulators for the cross-border offering of their funds in a Host Jurisdiction;
- the factors that the Home and Host Regulators will consider when assessing the applications;
- the legislative and regulatory requirements of the participating jurisdictions which are applicable to the offer of an ASEAN CIS in the respective jurisdiction; and
- the manner in which the funds may be distributed in the relevant participating jurisdiction.

## Definition

In this Handbook, the following terms shall have the following meanings, unless the context otherwise requires:

ACMF	means ASEAN Capital Markets Forum
ACMF member	means the securities regulator of the respective ASEAN jurisdiction, collectively the “ACMF members”
Approval or Approved	in relation to the Home Jurisdiction, means the approval, authorisation, or registration (as the case may be) granted by the Home Regulator for the public offer of CIS in that Home Jurisdiction; whereas in relation to the Host Jurisdiction, means approval, authorisation, registration, or recognition (as the case may be) granted by the Host Regulator for the public offer of Qualifying CIS in that Host Jurisdiction
ASEAN CIS	means a Qualifying CIS
CIS	means a collective investment scheme
CIS Operator	means a person or investment management entity which is licensed or registered with a Home Regulator to operate or manage CIS (that is offered to the public in the Home Jurisdiction) under the laws and regulations of the Home Jurisdiction
Home Jurisdiction	means the jurisdiction in which the ASEAN CIS is constituted or established, and Approved by the competent securities regulator of that jurisdiction for offer to the public in that jurisdiction
Host Jurisdiction	means a jurisdiction (other than the Home Jurisdiction) in which the ASEAN CIS is offered or to be offered to the public in that jurisdiction
Home Regulator	means the securities regulator of the Home Jurisdiction
Host Regulator	means the securities regulator of the Host Jurisdiction
Participants	Means a person who participates in a CIS by way of owning one or more, –  (a) in the case of CIS that has a trust or contractual structure, units in the CIS; or (b) in the case of CIS that has a corporate structure, shares in the CIS
Qualifying CIS	means a CIS constituted or established in its Home Jurisdiction which has been Approved by its Home Regulator for offer to the public in the Home Jurisdiction, and assessed by its Home Regulator as suitable to apply to a Host Regulator for its units or shares, as the case may be, to be offered to the public cross-border in the Host Jurisdiction pursuant to the ASEAN CIS Framework

Qualifying CIS Operator

means a person or an investment management entity which is licensed, or registered with its Home Regulator to operate or manage CIS (that is offered to the public in the Home Jurisdiction) under the laws and regulations of the Home Jurisdiction, and which complies with Section 1 of Part I of the Standards of Qualifying CIS

Standards of Qualifying CIS

means the set of rules and regulations as agreed and may be amended from time to time amongst the ACMF members, which apply only to a Qualifying CIS under the ASEAN CIS Framework

# Handbook Guidance

## A. Procedural matters

### **Box 1: Assessment to be an ASEAN CIS by the Home Regulator**

A CIS Operator or CIS, as the case may be, who intends to offer a CIS in Host Jurisdictions under the ASEAN CIS Framework must first submit an application to its Home Regulator for the Home Regulator to (i) Approve the CIS for offer to the public in the Home Jurisdiction, and (ii) to assess whether the CIS is suitable to be an ASEAN CIS.

### **Explanatory text**

A CIS Operator or a CIS (in the case of a CIS with a corporate structure) who intends to offer a CIS in Host Jurisdictions under the ASEAN CIS Framework must first apply for the CIS to be Approved by the Home Regulator for offer to the public in the Home Jurisdiction. The CIS must also be assessed as suitable to be an ASEAN CIS by the Home Regulator before it can be offered cross-border in the Host Jurisdictions.

In assessing whether a CIS is suitable to be an ASEAN CIS, the Home Regulator will take into consideration, amongst other things, the qualifications of the CIS Operator and the trustee / fund supervisor / Independent Oversight Entity, the custody arrangements for the CIS' assets, and the CIS' compliance with the product restrictions specified in the Standards of Qualifying CIS.

Where the Home Regulator is satisfied that the CIS Operator, the trustee / fund supervisor / Independent Oversight Entity and the CIS meet the applicable requirements stated above and the laws and regulations of the Home Jurisdiction, the Home Regulator will issue a letter (in the format set out in Appendix I) to the CIS Operator or CIS, as the case may be, stating that:

- the CIS has been Approved by the Home Regulator for public offering in the Home Jurisdiction; and
- the Home Regulator has no objection to such CIS being deemed as an ASEAN CIS pursuant to the Standards of Qualifying CIS.

An illustration of the process above can be found in Appendix IV ASEAN CIS approval process – Part A Home Regulator.

### **Box 2: Application to a Host Regulator**

After obtaining the necessary approvals from the Home Regulator, the Qualifying CIS Operator or Qualifying CIS, as the case may be, must apply to the Host Regulator for approval to offer the ASEAN CIS in the Host Jurisdiction.

The application must be made using the ASEAN CIS Application Form (set out in Appendix II). The ASEAN CIS Application Form must be completed in English.

### **Explanatory text**

To offer units of an ASEAN CIS in a Host Jurisdiction, a Qualifying CIS Operator or Qualifying CIS, as the case may be, must first apply to the Host Regulator for the ASEAN CIS to be Approved for public offer in that jurisdiction.

The Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure) must submit the ASEAN CIS Application Form (set out in Appendix II) to the Host Regulator. The ASEAN CIS Application Form is intended to provide the Host Regulator with a summary of the pertinent information concerning the Qualifying CIS Operator and the ASEAN CIS. The Host Regulator will review the application under a streamlined authorisation process.

### **Box 3: Documents to be submitted to the Host Regulator**

The following documents must be submitted to the Host Regulator together with the ASEAN CIS Application Form–

- The letter issued by the Home Regulator stating that the CIS has been Approved by the Home Regulator for public offering in the Home Jurisdiction and has no objection to the CIS being deemed as an ASEAN CIS;
- The offering documents which must be in compliance with the Host Jurisdiction’s laws and regulations;
- An undertaking to submit to the non-exclusive jurisdiction of the Host Jurisdiction’s courts (in the format set out in Appendix III) which must be signed by the Qualifying CIS Operator or Qualifying CIS, as the case may be; and
- Other documents that may be required by the Host Regulator, including other application forms used in the Host Jurisdiction.

### **Explanatory text**

This section sets out the documents and information required by a Host Regulator under the streamlined authorisation process.

The offer of the ASEAN CIS in the Host Jurisdiction must be accompanied by an offering document or prospectus which complies with the laws and regulations in the Host Jurisdiction. The Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure) can satisfy this requirement by using either:

- the latest version of the offering document/prospectus as approved by, registered or filed with the Home Regulator together with a wrapper which contains the additional information required to be disclosed to investors under the Host Jurisdiction’s laws and regulations; or
- another offering document/prospectus (in addition to the original offering document/prospectus approved by, registered or filed with the Home Regulator) which complies with the Host Jurisdiction’s laws and regulations.

Host Regulators may request for additional supporting documents. Qualifying CIS Operators or Qualifying CIS, as the case may be, should familiarise themselves with the relevant laws and regulations of the Host Jurisdiction, which are listed in **Part C - National regulations regarding approval process, disclosure and other requirements**.

An illustration of the process above can be found in Appendix IV - ASEAN CIS approval process – Part B Host Regulator.

**Box 4: Certification of documents by Qualifying CIS Operator or Qualifying CIS, as the case may be**

The ASEAN CIS Application Form and all accompanying documents submitted to the Host Regulator must be in, or translated into, English. In addition, the Host regulator may require the documents to be translated into an official language of the Host Jurisdiction. Where applicable, the documents must be the latest versions. Where a document is translated into English (or the official language of the Host Jurisdiction, as the case may be) from another language, the Qualifying CIS Operator or Qualifying CIS, as the case may be, must certify that the document is a true and accurate translation of the original document.

**Explanatory text**

To simplify the application process, the Host Regulators will rely on self-certification by the Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure) for documents that are translated into English (or the official language of the Host Jurisdiction, as the case may be) from another language. Where required, the Host Regulators may also require the Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure) to certify that the documents submitted are the latest versions.

#### **Box 5: Translation of the offering document/prospectus**

The offering document/prospectus of an ASEAN CIS submitted to the Host Regulator and made available to investors must be in English. A Host Regulator may require the offering document/prospectus to be translated into the official language(s) of the Host Jurisdiction.

The language requirements of the participating jurisdictions are set out in **Part C. - National regulations regarding approval process, disclosure and other requirements.**

#### **Explanatory text**

The offering of an ASEAN CIS must comply with the disclosure requirements in the Host Jurisdiction, including the language(s) in which the offering document/prospectus should be prepared. The documents and acceptable language(s) in each Host Jurisdiction are set out in **Part C. - National regulations regarding approval process, disclosure and other requirements.**

Where the offering document/prospectus is translated into the official language(s) of the Host Jurisdiction, the Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure) should take steps to ensure that the documents are translated accurately, and certify that the translated documents are a true and accurate translation of the original (as required in Box 4). Certification by notary or similar public agents is not required.

#### **Box 6: The medium for submitting applications to Host Regulator**

The ASEAN CIS Application Form as well as other supporting documents (as required in **Box 2** and **Box 3**) must be submitted to the Host Regulator in such manner as may be required by the Host Regulator.

#### **Explanatory text**

Host Regulator may accept multiple mediums for receiving application (for example, by mail, by hand or electronically). Where the documents are submitted electronically, hard copies may still be required at the Host Regulator's request.

The acceptable medium for submitting applications to each Host Regulator is set out in **Part C. - National regulations regarding approval process, disclosure and other requirements.**

### **Box 7: Assessment by Host Regulator**

In addition to the review of application for Approval of the ASEAN CIS, a Host Regulator will review the offering document/prospectus for compliance with the Host Jurisdiction's disclosure requirements. The timeframe for the review will be within 21 calendar days from receipt of a duly completed application, except for applications for Qualifying CIS to be listed in the Host Jurisdiction which may require more time.

### **Explanatory text**

In general, the timeframe for the review of ASEAN CIS by a Host Jurisdiction is expected to be comparable to the timeframe for the review of local funds in that Host Jurisdiction, which shall be within 21 calendar days from receipt of a duly complete application. However, for applications of Qualifying CIS to be listed in the Host Jurisdiction, the timeframe for the review of ASEAN CIS may be longer due to the additional review process by the relevant listing authority.

### **Box 8: The right of refusal by Host Regulator**

A Host Regulator retains the right to decline an application from a Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure).

### **Explanatory text**

The Host Regulator may decline/reject an application from a Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure) under certain circumstances including but not limited to the following –

- the Host Regulator is not satisfied that applicable requirements under the laws and regulations of the Host Jurisdiction are fully complied with;
- the Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure) submits or has been found to have submitted false or misleading information to either the Home Regulator or Host Regulator;
- the Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure) misrepresents to or has been found to have misrepresented to, defrauds or has been found to have defrauded, investors;
- the Qualifying CIS Operator, the trustee/fund supervisor/ Independent Oversight Entity or the Qualifying CIS contravenes or has been found to have contravened any obligations or provisions in the constitutive documents that are applicable to them;

- the Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure) or the trustee/ fund supervisor/ Independent Oversight Entity of the CIS fails or has been found to have failed to comply with any resolution passed by participants; or
- the Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure) contravenes or has been found to have contravened any laws, regulations, Standards of Qualifying CIS, or administrative provisions imposed in the Home Jurisdiction or the Host Jurisdiction.

### **Box 9: Appointment of local distributors and local representatives**

The offering of ASEAN CIS to the public in a Host Jurisdiction must be done through local distributors who are local intermediaries licensed or regulated in that Host Jurisdiction.

In addition, a Host Regulator may require the Qualifying CIS Operator or Qualifying CIS, as the case may be, of the ASEAN CIS to appoint a local representative who is approved, regulated by, or required by the Host Regulator.

### **Explanatory text**

The Qualifying CIS Operator or Qualifying CIS, as the case may be, must make arrangements to distribute the ASEAN CIS through local intermediaries licensed or regulated in the Host Jurisdiction.

The appointment of a local representative is subject to the requirements of a Host Jurisdiction. Where there are such requirements, a local representative must be approved, regulated by, or required by the Host Regulator. The local representative is responsible for various functions which may include:

- issuance and redemption of units or shares;
- publishing of unit or share prices;
- sending of reports to participants;
- inspection of constitutive documents;
- maintaining a register of participants in the Host Jurisdiction; and
- representing the Qualifying CIS Operator or Qualifying CIS, as the case may be, in any dispute resolution scheme in the Host Jurisdiction.

The Qualifying CIS Operator or Qualifying CIS, as the case may be, may be required to seek prior approval from the Host Regulator for the appointment of the local representative.

Information on the requirements for local distributors and local representatives in each Host Jurisdiction is set out in **Part C. - National regulations regarding approval process, disclosure and other requirements.**

## **B. On-going notification and disclosure requirements**

### **Box 10: Updating of offering document/prospectus**

The Qualifying CIS Operator or Qualifying CIS, as the case may be, is expected to keep the ASEAN CIS' offering document/prospectus accurate and up-to-date.

Where a Qualifying CIS Operator or Qualifying CIS, as the case may be, files a supplementary or updated offering document/prospectus with the Home Regulator, it must also update the offering document/prospectus used in the Host Jurisdiction and file the updated document without delay with the Host Regulator according to the regulation stipulated by Host Jurisdiction unless this is not required by the laws and regulations of the Host Jurisdiction.

### **Explanatory text**

It is important that the investors in the Host Jurisdiction have access to the most accurate and up-to-date information on the ASEAN CIS.

The Qualifying CIS Operator or Qualifying CIS, as the case may be, should ensure that the offering document/prospectus and the information of an ASEAN CIS are up-to-date.

In addition, a Qualifying CIS Operator or Qualifying CIS, as the case may be, may be required, under the Host Jurisdiction's requirements, to lodge/register an updated offering document/prospectus periodically (e.g. annually).

Disclosure requirements of each Host Jurisdiction can be found in **Part C. - National regulations regarding approval process, disclosure and other requirements**

### **Box 11: On-going reporting**

The ASEAN CIS is subject to the on-going reporting requirements in the Host Jurisdictions.

### **Explanatory text**

The Qualifying CIS Operator or Qualifying CIS, as the case may be, should comply with the on-going reporting requirements in the Host Jurisdiction at all times, e.g. issuance of semi-annual reports and annual reports. The requirement for on-going reporting is to ensure that investors in the Host Jurisdiction have access to adequate and timely information to assess ASEAN CIS. It is therefore important that the Qualifying CIS Operator or Qualifying CIS, as the case may be, familiarize themselves with the relevant on-going reporting laws and regulations of each Host Jurisdiction. These laws and regulations are set out in **Part C. - National regulations regarding approval process, disclosure and other requirements**.

**Box 12: Notification of significant changes to Qualifying CIS Operator or ASEAN CIS**

A Qualifying CIS Operator is required to inform both the Home and Host Regulators of significant changes to the Qualifying CIS Operator or the ASEAN CIS. In addition, Host Regulators may require the Qualifying CIS Operator to similarly notify investors in the ASEAN CIS.

**Explanatory text:**

The Qualifying CIS Operator must use its best efforts to provide, without prior request, the Home Regulator and the Host Regulator with any information that it considers to be of assistance to the Home Regulator and the Host Regulator. In particular, the Qualifying CIS Operator must, at a minimum, inform the Home Regulator and the Host Regulator in advance (where practicable) or as soon as possible thereafter, of:

- (a) any material event that could adversely impact the ASEAN CIS or the Qualifying CIS Operator. Such events include known changes in the operating environment, operations, financial resources, management, or systems and control of an ASEAN CIS or the Qualifying CIS Operator;
- (b) any information on any non-compliance of a Qualifying CIS or a Qualifying CIS Operator with Laws and Regulations applicable in its jurisdiction which has significant impact on the operation or activities of a Qualifying CIS or Qualifying CIS Operator;
- (c) any regulatory changes that may have a significant impact on the operations or activities of an ASEAN CIS or the Qualifying CIS Operator; and
- (d) any enforcement or regulatory action or sanction that has been or may be taken by the Home Regulator or the Host Regulator, including the revocation or suspension of relevant licences or the Approval, concerning the ASEAN CIS, and the licensing or registration concerning a Qualifying CIS Operator.

The Host Regulator may also require the Qualifying CIS Operator to notify investors of significant changes to the ASEAN CIS before (e.g. 1 month) the change is to take effect.

**Box 13: Annual Compliance Review**

A Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure) must appoint an independent reviewer (as listed in the table below) to conduct compliance review of the operation of the Qualifying CIS in accordance with the Standards of Qualifying CIS (the “**Compliance Review**”) in relation to each period for which a financial statement of the Qualifying CIS is prepared, or is required to be prepared (“**the review period**”). The Qualifying CIS Operator or Qualifying CIS, as the case may be, should provide the report of the Compliance Review to the trustee / fund supervisor/ Independent Oversight Entity, the Home Regulator and each Host Regulator.

**Explanatory text:**

The CIS Operator or CIS, as the case may be, must provide the independent reviewer's report to, where applicable, the trustee / fund supervisor/ Independent Oversight Entity of the relevant Qualifying CIS, the Home Regulator, and the Host Regulator. The report shall minimally state the following information:

1. whether any matter has come to the attention of the independent reviewer that causes the independent reviewer to believe that it is likely that the Qualifying CIS was not operated in compliance with the Standards of Qualifying CIS during the review period in all respects that may be material to the persons to whom it is addressed. These should minimally include whether:

- (i) the Qualifying CIS Operator complies with the qualifications of CIS Operator under Part I, Section 1 of the Standards of Qualifying CIS;
- (ii) there are adequate arrangements in place for the custody of assets of the Qualifying CIS in accordance with Part I, Section 3 of the Standards of Qualifying CIS;
- (iii) the valuation requirements in relation to the assets of the Qualifying CIS and the pricing of units of the Qualifying CIS comply with Part I, Section 5 of the Standards of Qualifying CIS;
- (iv) conflicts of interest are minimised and amendments to the trust deed/constitutive documents are made in accordance with Part I, Section 7 of the Standards of Qualifying CIS;
- (v) cross-border offers of the Qualifying CIS are made in accordance with requirements; and
- (vi) the Qualifying CIS complies with the product restrictions under Part II of the Standards of Qualifying CIS.

2. details explaining the reasons why the Compliance Reviewer considers that the Qualifying CIS did not comply with, or is likely not to have complied with the Standards of Qualifying CIS requirements during that period; and

3. relevant information which forms the basis for the statements made in 1. and 2. above.

The requirements for Compliance Review does not apply to the Qualifying CIS or its operator for a particular review period or for a period as set out in the report if the Home Regulator has notified the Qualifying CIS Operator or Qualifying CIS, as the case may be, and each Host Regulator that the Home Regulator has taken or will be taking actions to check compliance of the Qualifying CIS and its operator during a particular review period or on an on-going basis.

<b>Home Regulator</b>	<b>Entity that can conduct independent reviews</b>
Malaysia	A chartered accountant who is registered with the Malaysian Institute of Accountants.
Singapore	A public accountant who is registered or deemed to be registered under the Accountants Act of Singapore or a trustee approved under the Securities and Futures Act.
Thailand	An auditor as defined by the Securities and Exchange Commission or the mutual fund supervisor appointed for the mutual fund under the Securities and Exchange Act, B.E. 2535.
The Philippines	An independent Accountant or auditor duly registered with the Board of Accountancy of the Professional Regulation Commission of the Philippines and accredited by the Securities and Exchange Commission.

For the avoidance of doubt, the requirement to conduct a Compliance Review will only commence after a Qualifying CIS has been approved for offer to retail investors in a Host Jurisdiction under the ASEAN CIS Framework.

**C. National regulations regarding the approval process, disclosure and other requirements**

**Box 14: Differences in the laws and regulations in the participating jurisdictions**

It is important that Qualifying CIS Operators or Qualifying CIS, as the case may be, familiarise themselves with the applicable laws and regulations of the jurisdiction in which they intend to offer ASEAN CIS.

**Explanatory text**

As there are differences in the laws and regulations governing the offering of CIS amongst the participating jurisdictions, it is important that CIS Operators or CIS, as the case may be, familiarise themselves with the applicable laws and regulations of the jurisdiction in which they intend to offer ASEAN CIS.

A summary of the relevant laws and regulations of the participating jurisdictions is provided in Appendix V. Detailed information on the relevant laws and regulations of the participating jurisdictions may be obtained from the website of the respective regulator, as provided in Appendix VI.

CIS Operators or CIS, as the case may be, should seek legal advice as appropriate to ensure that their activities are in compliance with all applicable laws and regulations of the jurisdiction in which they intend to offer ASEAN CIS.

## **Appendices to the Handbook**

## Appendix I

### Standard letter issued by the Home Regulator to a Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure)

For the purpose of the “MEMORANDUM OF UNDERSTANDING ON STREAMLINED AUTHORISATION FRAMEWORK FOR CROSS-BORDER PUBLIC OFFERS OF ASEAN COLLECTIVE INVESTMENT SCHEMES”,

\_\_\_\_\_ confirms that  
(name of the ASEAN Home Regulator, as above)

\_\_\_\_\_  
(name of ASEAN CIS)

is established or constituted in \_\_\_\_\_  
(name of Home Jurisdiction)

and has been registered/ approved/ authorised\* by \_\_\_\_\_,  
(name of the ASEAN Home Regulator, as above)

on \_\_\_\_\_ for public offer in \_\_\_\_\_  
(date) (name of the Home Jurisdiction)

and \_\_\_\_\_ has no objection to  
(name of the ASEAN Home Regulator, as above)

\_\_\_\_\_ being deemed as  
(name of ASEAN CIS)

a Qualifying CIS, in accordance with the requirements under the Standards of Qualifying CIS.

on \_\_\_\_\_  
(date that the ASEAN CIS is deemed as a Qualifying CIS)

\_\_\_\_\_  
(name of ASEAN CIS)  
is (tick the appropriate box)

EITHER  unit trust OR  legal entity<sup>1</sup> OR  corporate entity OR  
 any other structure acceptable to participating jurisdictions

\* Please delete where inapplicable.

<sup>1</sup> **Legal entity** refers to the legal form of Thai CIS. CIS in Thailand is set up as a legal entity separate from the CIS Operator. In short, after obtaining approval from the Thai SEC to set up a mutual fund and offer investment units to investors, the money received from such offer shall constitute a pool of assets that is required to be registered as a mutual fund with the Thai SEC.

managed by the Qualifying CIS Operator

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(name and address of the Qualifying CIS Operator)

and by the sub-manager (if applicable)

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(name and address of the sub-manager)

Signature: \_\_\_\_\_

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(Name of Authorised Signatory of ASEAN Home Regulator)

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(Designation of Authorised Signatory)

## Appendix II

### ASEAN CIS Application Form to be submitted to the Host Regulator for an offer of ASEAN CIS in a Host Jurisdiction

Application to offer ASEAN CIS in \_\_\_\_\_  
(the Host Jurisdiction)

#### Part A: Fund Information

Name of ASEAN CIS: \_\_\_\_\_

Home Jurisdiction: \_\_\_\_\_

Home Regulator: \_\_\_\_\_

Legal form of ASEAN CIS:

legal entity<sup>2</sup>       unit trust       corporate entity

any other structure acceptable to participating jurisdictions

Is the ASEAN CIS a sub-fund of an umbrella fund?

Yes       No

If yes, please state the name of the umbrella fund

\_\_\_\_\_

Is the ASEAN CIS authorised/approved by its Home Regulator for public offer?

Yes       No

Has the ASEAN CIS been publicly offered in the Home Jurisdiction?

Yes       No

If not, please specify the expected commencement of public offering of ASEAN CIS

\_\_\_\_\_

If yes please state the AUM as at the latest practicable date

\_\_\_\_\_

<sup>2</sup> **Legal entity** refers to the legal form of Thai CIS. CIS in Thailand is set up as a legal entity separate from the CIS Operator. In short, after obtaining approval from the Thai SEC to set up a mutual fund and offer investment units to investors, the money received from such offer shall constitute a pool of assets that is required to be registered as a mutual fund with the Thai SEC.

The investment objective of the ASEAN CIS:

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**Part B: Information on the Qualifying CIS Operator**

Name of the Qualifying CIS Operator: \_\_\_\_\_

Home Jurisdiction of the Qualifying CIS Operator: \_\_\_\_\_

Home Regulator of the Qualifying CIS Operator: \_\_\_\_\_

Address of registered office:

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Company's website: \_\_\_\_\_

Details of contact person at the Qualifying CIS Operator:

Name/Position (at least CEO or equivalent): \_\_\_\_\_

Email address: \_\_\_\_\_

Tel No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Is the Qualifying CIS Operator currently licensed or authorised to conduct fund management in the jurisdiction of its principal place of business?  Yes  No

Number of years the Qualifying CIS Operator has managed funds: \_\_\_\_\_

Total assets under management (latest available figures):

in Home Jurisdiction \_\_\_\_\_

offered cross-border \_\_\_\_\_

**Total** \_\_\_\_\_

As at (date) \_\_\_\_\_

**Part C: Distribution and CIS Operator or CIS (in the case of a CIS with a corporate structure)'s representative**

Arrangement for distribution

Units or Shares, as the case may be, in ASEAN CIS will be offered/ marketed in Host Jurisdiction by the following intermediaries that are licensed or regulated by the host regulator:

- Management company
- Licensed bank/ Financial institution
- Licensed brokerage firms/ authorised investment firms or advisers
- Licensed institution/Corporation/Organisation
- Other bodies (Please provide details): \_\_\_\_\_)

Please specify the name and address of the distributor (please use an attachment if there is more than one distributor):

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Details of contact person:

Name/Position (at least CEO or equivalent): \_\_\_\_\_

Email address: \_\_\_\_\_

Tel No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

- To be notified at a date no later than \_\_\_\_\_
- Not applicable (in the case of Qualifying CIS listed on the Host Jurisdiction's Exchange, e.g. ETF)

Representative

Name of proposed representative in Host Jurisdiction:

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Is such representative regulated by or acceptable to the Host Regulator?

- Yes                       No

Registered office and the address:

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Details of contact person:

Name/Position (at least CEO or equivalent): \_\_\_\_\_

Email address: \_\_\_\_\_

Tel No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

Details of where and how unit prices will be published:

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**Part D: Trustee/ Fund supervisor/ Independent Oversight Entity**

Name of Trustee/ Fund supervisor/ Independent Oversight Entity:

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Address of registered office:

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Email address: \_\_\_\_\_

Tel No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

**Part E: Custody of Assets**

Same as Trustee/Fund supervisor/ Independent Oversight Entity

No [if answer “no”, please provide further information below]

Name of custodian

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Address of registered office:

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Email address: \_\_\_\_\_

Tel No.: \_\_\_\_\_ Fax No.: \_\_\_\_\_

**Part F: Declaration**

I/We declare that to the best of our knowledge and belief all information given in this application letter and the documents attached are true and accurate. The text of each document is the same as that previously submitted to the home authority, and is an accurate translation of that text (where applicable).

Dated this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Signature: \_\_\_\_\_

---

(Name of Authorised Signatory)

---

(Name of Qualifying CIS Operator or  
Name of Qualifying CIS, in the case of a CIS with a corporate structure)

(\*The application form shall be signed by an authorised signatory of the Qualifying CIS Operator of the ASEAN CIS or Qualifying CIS, as the case may be. The authorised signatory shall state his/her full name and capacity, and shall ensure the declaration is dated)

## Appendix III

### **Undertaking by the Qualifying CIS Operator, or Qualifying CIS (in the case of a CIS with a corporate structure) to submit to the non-exclusive jurisdiction of the Host Jurisdiction’s courts**

To: \_\_\_\_\_  
(name of the ASEAN Host Regulator)

We, \_\_\_\_\_, in consideration of  
(name of the Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure))

\_\_\_\_\_ approving/authorising/ registering/ recognising\*  
(name of the ASEAN Host Regulator)

\_\_\_\_\_ (the “Qualifying CIS”) for public offer in  
(name of the Qualifying CIS)

\_\_\_\_\_ (the “Host Jurisdiction”), agree:  
(name of the ASEAN Host Jurisdiction)

- (i) to submit to the non-exclusive jurisdiction of the Host Jurisdiction’s courts in respect of any action or legal proceeding against us in connection with the Qualifying CIS;  
and
- (ii) to ensure that our constitutive documents<sup>3</sup> will not contain any provisions that exclude the Host Jurisdiction’s courts from entertaining any action or legal proceedings against us in connection with the Qualifying CIS.

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<sup>3</sup> Constitutive documents refer to the trust deed, the memorandum of association and articles of association or the equivalent documents.

The above Undertaking has been signed by me as \_\_\_\_\_ of  
(designation)

\_\_\_\_\_ pursuant to the authority granted to me by resolution of  
(name of the Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure))

the Board of Directors of the said corporation on \_\_\_\_\_.<sup>4</sup>  
(date of resolution)

Dated this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Signature: \_\_\_\_\_

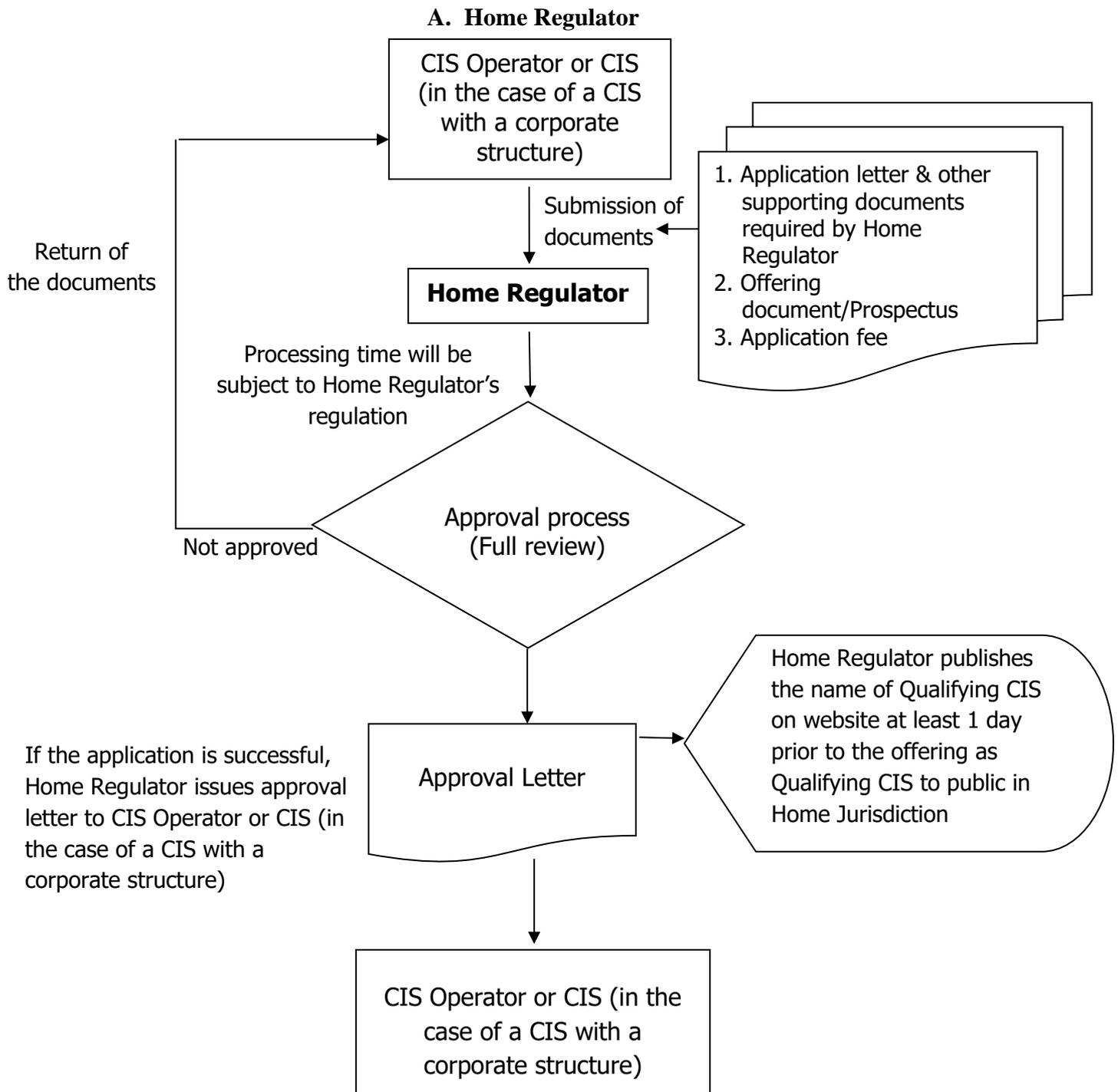
Name: \_\_\_\_\_

\* Please delete where inapplicable.

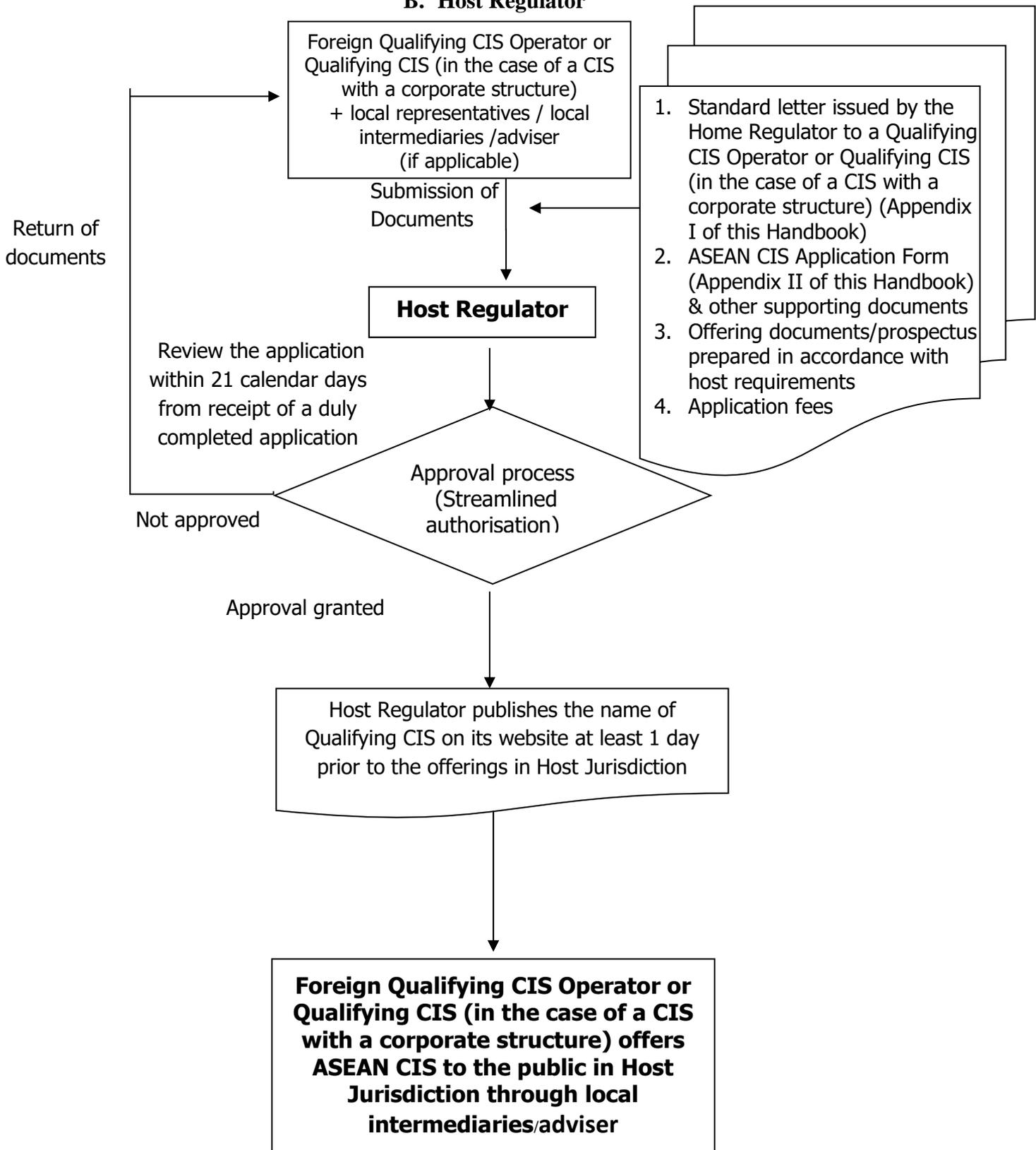
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<sup>4</sup>This paragraph may be excluded if this statement of undertaking is signed by all directors of the Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure).

ASEAN CIS approval process



## B. Host Regulator



## **Appendix V**

**National regulations: Information on the laws and regulations relevant to an offer of  
ASEAN CIS in each Host Jurisdiction**

# **MALAYSIA**

Information on the relevant laws, regulations which are specifically relevant to the offer of ASEAN CIS in Malaysia.

This section is intended as a guide to Qualifying CIS Operators or Qualifying CIS (in the case of a CIS with a corporate structure) who are interested to offer its ASEAN CIS in Malaysia. Qualifying CIS Operators should refer to the *Capital Markets and Services Act 2007* (“**CMSA**”) and the *Guidelines for the Offering, Marketing and Distribution of Foreign Funds* (“**OMD Guidelines**”), and seek the necessary advice (from an adviser as defined in the OMD Guidelines) to ensure that the offering is in compliance with all applicable laws, regulations and guidelines in Malaysia.

The OMD Guidelines set out the types of foreign funds that may be offered, marketed or distributed in Malaysia and the requirements for the offering, marketing and distribution of the foreign funds in Malaysia.

Pursuant to Section 212 of the CMSA, approval or recognition of the Securities Commission must be obtained for the offering of foreign funds in Malaysia.

In addition to the above, the offering of foreign funds to retail investors shall not be made unless a prospectus in respect of the offer has been registered and lodged with the SC. For the offering of foreign funds that are not listed on Bursa Malaysia Securities Berhad, a product highlights sheet (“**PHS**”) must also be lodged with the SC. Qualifying CIS Operators must ensure that the prospectus and PHS comply with the *Prospectus Guidelines for Collective Investment Schemes* (“**CIS Prospectus Guidelines**”) and *Guidelines on Sales Practices of Unlisted Capital Market Products* (“**Sales Practices Guidelines**”), respectively.

The CMSA, OMD Guidelines, CIS Prospectus Guidelines, Sales Practices Guidelines and other relevant guidelines in connection with the offering, marketing or distribution of the foreign funds in Malaysia, are available on SC’s website at <https://www.sc.com.my/regulation>.

A. How to apply for streamlined authorisation as the ASEAN CIS (established in foreign country) offering into Malaysia (as a Host Jurisdiction).

Method for submitting applications

Application to Securities Commission Malaysia (SC) must be made by submitting the relevant documents in physical and electronic copies. The electronic copy of the documents must be submitted via email, up to 10MB in size per e-mail, to [MISsubmissions@seccom.com.my](mailto:MISsubmissions@seccom.com.my).

## Place and time for submitting the application

- 1) Submission of an application must be addressed to–  
Chairman  
Securities Commission Malaysia  
3 Persiaran Bukit Kiara  
Bukit Kiara  
50490 Kuala Lumpur  
(Attention: Corporate Finance and Investments)
- 2) Submission of applications can be made on a business day in Malaysia between 9.00a.m. to 5.00p.m. Malaysian time. Any submission received by the SC (physical or electronic submission) after 5.00p.m. will be deemed to be received on the following business day.

## Supporting documents

The adviser must, for making the submission to the SC, submit the documents and application as required in the OMD Guidelines as may be amended from time to time. The supporting documents are as follows:

### **A) Approval or recognition of the ASEAN CIS under Section 212 of the CMSA\***

- 1) The duly completed and signed *Application form for approval or recognition of a foreign fund* as may be amended from time to time
- 2) The *Standard letter* issued by the Home Regulator (as per Appendix I of this Handbook);
- 3) The duly signed *ASEAN CIS Application Form* (as per Appendix II of this Handbook);
- 4) The duly signed undertaking to submit to the non-exclusive jurisdiction of the Host Jurisdiction's courts (as per Appendix III of this Handbook);
- 5) 2 copies of the ASEAN CIS' constitutive document
- 6) A declaration and undertaking from the Qualifying CIS Operator or ASEAN CIS (in the case of a CIS with a corporate structure) on matters prescribed in the OMD Guidelines.
- 7) A copy of letter appointing the representative and, where the ASEAN CIS is an unlisted fund, the registered distributor for the fund in Malaysia
- 8) An undertaking from the representative to SC that it will perform the duties required of a representative under the OMD Guidelines

## **B) Application to register the prospectus of the ASEAN CIS under Section 232 of the CMSA.**

The requisite documents are prescribed in the CIS Prospectus Guidelines, specifically in the chapter on –

- *Registration of an unlisted fund's prospectus* (for unlisted ASEAN CIS)
- *Registration of a listed fund's prospectus* (for listed ASEAN CIS)

For ease of reference, the documents include the following:

- 1) 2 copies of the registrable prospectus prepared in accordance with the CIS Prospectus Guidelines (in each language)
- 2) A copy of the prospectus which is properly annotated against the applicable provisions of the CIS Prospectus Guidelines
- 3) Director's responsibility statement for the prospectus and where applicable, the promoter's responsibility statement
- 4) Where applicable, copy of letter of approval from any other relevant authority
- 5) Copies of all material contracts referred to in the prospectus or, in the case of contracts not reduced into writing, a memorandum which gives full particulars of the contracts
- 6) Copies of reports or letters from experts disclosed in the prospectus (e.g. tax advisers). Where an expert does not possess the capability to prepare a report in the same language as the prospectus, the management company must provide a translation of the expert's report. Such translated report submitted and as incorporated in the prospectus must contain a statement that it is a translation of the original expert's report
- 7) For listed ASEAN CIS, a copy of the underwriting agreement
- 8) Letter of confirmation from the Qualifying CIS Operator or its adviser, confirming the true and accurate translation of the prospectus, where applicable
- 9) Copy of the application form

The above submission documents must be accompanied by a single cover letter that is signed by 2 authorised signatories of the adviser. The cover letter must contain the information as required in the OMD Guidelines and the CIS Prospectus Guidelines as well as listing down the documents submitted. In addition, the cover letter must also provide a confirmation that the electronic copy of the documents submitted to the SC is identical to the physical copy that will be delivered to the SC.

## **POST-REGISTRATION OF PROSPECTUS**

The adviser must lodge with the SC the following after SC's approval/recognition has been obtained and the prospectus has been registered with the SC:

### **C) Lodgement of prospectus**

The prospectus of the ASEAN CIS must be lodged **before the date of issue** of the prospectus. The documents to be submitted are prescribed in the CIS Prospectus Guidelines (under the chapter for *Lodgement of a prospectus*). These documents

include, among others, 2 printed copies of the prospectus in each language together with its application form.

**D) Lodgement of PHS**

A PHS must be prepared for each fund as per the *Sales Practices Guidelines*\*

- 1) The PHS must be lodged with the SC before a fund can be offered, marketed or distributed to investors.
- 2) A duly completed Fee Computation Checklist\*
- 3) Cheque made payable to ‘Securities Commission’ or ‘Suruhanjaya Sekuriti’.

**E) Fee in relation to A), B), C) and D) above**

The above submission must also be accompanied by the relevant fees prescribed by the SC in the *Capital Markets and Services (Fees) Regulations 2012* as may be amended from time to time. Payment should be made in the form of either

- 1) a crossed cheque/draft order made in favour of “Suruhanjaya Sekuriti” or “Securities Commission”; or
- 2) an online transfer. Banking details are available upon request.

In addition, a duly completed *Fee Computation Checklist* must be submitted to the SC.\*

Notes:

- The *Capital Markets and Services (Fees) Regulations 2012* is available on SC’s website at <https://www.sc.com.my/regulation/acts/capital-markets-and-services-act-2007>

The application form and checklist mentioned above are available on SC’s website at <https://www.sc.com.my/regulation/guidelines/collective-investment-scheme>.

Language of documents submitted by CIS Operator

SC accepts documents in English or Bahasa Malaysia.

Signed declaration/ Certification of documents

SC requires certain documents be signed by the following persons:

- 1) authorised signatories of the adviser; and/or
- 2) director(s) of the operator of the fund, or the authorised director of the fund (in the case of a fund with a corporate structure).

Please refer to the relevant guidelines as highlighted under “Supporting documents” section.

## Application fee

Please refer to *Capital Markets and Services (Fees) Regulations 2012\** as may be amended from time to time for the relevant fees payable. For example: The fee payable for a typical application for recognition of an unlisted fund are as follows:

Recognition of unlisted fund: RM5,000

Registration of prospectus: RM3,100

Lodgement of prospectus: RM100

Lodgement of PHS: RM500 (initial lodgement)

Total RM8,700

## Confirmation of streamlined authorisation

SC will issue a decision letter addressed to the submitting party i.e. the adviser.

## B. Details of the information in the offering document required to be disclosed to investors

### Full prospectus

Please refer to the CIS Prospectus Guidelines as highlighted under “Supporting documents” section.

### Simplified prospectus/ Key Information Document/ Product Highlights Sheet/

### Fund fact sheet

Please refer to the Sales Practices Guidelines as highlighted under “Supporting documents” section

## C. Lodgement fee

Please refer to the *Capital Markets and Services (Fees) Regulations 2012* as may be amended from time to time as highlighted under “Application fee” section

D. Requirements for any documents to be disclosed on an on-going basis with the SC (as the Host Regulator) or distributed to investors

Any information or report that is expected to be provided to participants and investors in the Home Jurisdiction in relation to the ASEAN CIS must be provided to participants and investors in Malaysia. The Qualifying CIS Operator or ASEAN CIS (in the case of a CIS with a corporate structure) is also expected to provide to the SC, statistical returns on the ASEAN CIS on a monthly basis.

The above submission is to be submitted by the representative in accordance with the OMD Guidelines. For ease of reference, the requirements are summarised as follows:

**1) Submission to participants**

Information on ASEAN CIS, including any periodic reports, notices and public announcements to be provided or disclosed in a timely and efficient manner

**2) Submission to SC**

- a) The same information as mentioned in 1) above to be submitted to the SC concurrently
- b) Statistical returns on the ASEAN CIS via Securities Commission Malaysia's Common Reporting (ComRep) Platform on monthly basis

E. Disclosure requirement on the NAV

OMD Guidelines requires the NAV per unit of the fund to be made publicly available daily.

F. The requirements to notify the significant changes or breaches

Significant changes

In this regards, the SC does not have an exhaustive list of significant changes/events where participants/investors and/or SC must be informed. A Qualifying CIS Operator or ASEAN CIS (in the case of a CIS with a corporate structure) is responsible to ensure compliance with the requirements under the CMSA.

The OMD Guidelines states the events (non-exhaustive) where SC must be notified as soon as practicable.

Breaches

All breaches must be reported to the SC.

## G. Appointing local intermediaries

Registered distributors i.e. IUTA and CUTA as defined under the OMD Guidelines appointed for the ASEAN CIS are permitted to offer, market or distribute the foreign ASEAN CIS in Malaysia.

## H. Appointing a local representative

OMD Guidelines currently lists the following as entities that are eligible to be appointed as local representative to foreign fund in Malaysia:

- (a) Holder of a Capital Markets Services Licence granted to a person pursuant to the CMSA
- (b) Registered distributor
- (c) Audit firm registered with the Audit Oversight Board, SC
- (d) Trustee registered with the SC.

## I. Compensation where valuation errors happen<sup>5</sup>

The following are the relevant requirements currently prescribed under the *Guidelines on Unit Trust Funds*:

- 1) Where incorrect valuation/pricing occurs, a management company should–
  - a) notify the trustee; and
  - b) notify the SC, unless the trustee considers the incorrect valuation/pricing to be of minimal significance.
- 2) The management company should take immediate remedial action to rectify any incorrect valuation/pricing. Rectification should be extended to the reimbursement of money–
  - a) by the management company to the fund;
  - b) from the fund to the management company; or
  - c) by the management company to unit holders and/or former unit holders.
- 3) Notwithstanding clause 10.41, rectification need not, unless the trustee otherwise directs, extend to any reimbursement where the trustee considers the incorrect valuation/pricing to be of minimal significance.”

Also, the Federation of Investment Managers Malaysia (FIMM) (Malaysia’s unit trust industry self-regulatory body) currently prescribes that, a management company’s remedial action must extend to the reimbursement of money if the error is at or above the significant threshold of 0.5% of the unit NAV, unless total impact on an individual account is less than RM10. If a single error is protracted over successive days, the threshold is applicable for each

<sup>5</sup> The reason to include I. in the national regulations is that the ACMF specify that where valuation errors happen, the compensation of a CIS operator must be made in compliance with the rules specified by the Home Regulator.

day separately. Please also refer to the Investment Management Standards issued by FIMM, IMS-7 “Incorrect Pricing Of Scheme Units: Correction And Reimbursement”. A copy can be downloaded at [www.fimm.com.my](http://www.fimm.com.my).

J. Termination of offering of units of ASEAN CIS in Malaysia (as the Host Jurisdiction)

A Qualifying CIS Operator or ASEAN CIS (in the case of a CIS with a corporate structure), or its representative must inform participant of an ASEAN CIS and SC on the termination of offering of units of the ASEAN CIS in Malaysia pursuant to paragraph 6.06(e) and (f) of the OMD Guidelines

K. Tax issues/Tax treatment on ASEAN CIS

1) Taxation of a foreign CIS Operator/foreign ASEAN CIS

The offering/marketing/distribution of an ASEAN CIS in Malaysia would generally not give rise to a Malaysia income tax exposure for the foreign CIS Operator or foreign ASEAN CIS, as the case may be. However, withholding tax may apply based on the tax treaty signed with the respective country.

2) Taxation of an investor

(a) Malaysian local investor receiving dividend income from foreign funds

- The dividend income is foreign-sourced income, so not subject to Malaysian tax.
- However, it may be subject to withholding tax of the foreign country (depending on DTA signed with Malaysia)

(b) Foreign investor receiving dividend income from Malaysian funds

- Non-resident unit holders are not subject to withholding taxes on distribution of income from unit trusts.

**Notes**

- Based on the assumption that the foreign CIS Operator and foreign ASEAN CIS are not tax residents in Malaysia.
- Please be informed that the above should be independently verified with a Malaysian tax adviser or the Inland Revenue Board of Malaysia.

L. Foreign Exchange Control issues/impact on ASEAN CIS

The establishment of an ASEAN CIS outside of Malaysia must be in foreign currency (base currency). The classes of units of the ASEAN CIS outside Malaysia may be denominated in ringgit or foreign currency. However, the ringgit-denominated class of units of the ASEAN CIS (“Ringgit Class”) will be offered in Malaysia only.

All ASEAN CIS with Ringgit Class must comply with the following:

- (a) All ringgit settlement and management of ringgit exposure arising from the ASEAN CIS shall be undertaken with an onshore bank;
- (b) Proceeds from the Ringgit Class shall not be used for investment in ringgit derivatives or ringgit financial instruments offered outside Malaysia;
- (c) In the case of listed ASEAN CIS, any listing of Ringgit Class must only be made on Bursa Malaysia Berhad;
- (d) Resident or non-resident fund managers that meet the following eligibility criteria can fully utilise ASEAN CIS proceeds from the RM Class for investment abroad:
  - (i) ASEAN CIS is offered in at least 2 other foreign jurisdictions;
  - (ii) 2/3 of ASEAN CIS is raised outside of Malaysia;
  - (iii) The requirement in (ii) must be complied with at all times; and
  - (iv) Submission of a compliance report on monthly basis to the SC; and

Where proceeds from the Ringgit Class will be invested abroad, such proceeds shall be converted to foreign currency with an onshore bank before remittance abroad.

\* In the event of non-compliance, the sales of the Ringgit Class must be suspended.

# **SINGAPORE**

Information on the relevant laws, regulations which are specifically relevant to the offer of ASEAN CIS in Singapore (as a Host Jurisdiction)

**This section is intended as a guide only. Interested parties should refer to the Securities and Futures Act (Cap. 289) of Singapore (“SFA”) and the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (“SFR”), and where appropriate seek the necessary advice to ensure that their offering is in compliance with all applicable laws and regulations in Singapore.**

Offers of collective investment schemes (“CIS”) to investors in Singapore are regulated under the SFA and SFR. Under section 285(1) of the SFA, no person shall make an offer of units in a CIS (that is constituted outside Singapore) in Singapore unless the CIS has been recognised by the Monetary Authority of Singapore (“MAS”). In addition, under section 296(1) of the SFA, an offer of units in a CIS may not be made unless a prospectus in respect of the offer has been lodged with, and registered by, MAS.

The SFA and SFR may be accessed at:

SFA - <https://sso.agc.gov.sg/Act/SFA2001>

SFR - <https://sso.agc.gov.sg/SL/SFA2001-S602-2005?DocDate=20200528>

A. How to apply for streamlined authorisation as the ASEAN CIS (established in a foreign country) offering into Singapore (as a Host Jurisdiction)

Method for submitting applications

An application for recognition of a CIS must be submitted by the offeror on Form 2 of the SFR on the Offers and Prospectuses Electronic Repository and Access website (“**OPERA**”). The lodgement of a prospectus of a CIS must be made on a Form 6 of the SFR on OPERA. The application and the lodgement must be accompanied by the supporting documents set out in the section of “Supporting Documents” below.

Both Form 2 and Form 6 are available on the MAS’ OPERA website at <https://eservices.mas.gov.sg/opera/>. OPERA is an online platform on which lodgements of applications for the recognition of CIS as well as their offer documents may be made with MAS.

Please refer to the CIS Practice Note 1/2005 – Administrative Procedures for Retail Schemes (“**Practice Note**”) for details on the procedures for applying for recognition of retail schemes and lodgement of prospectuses. The Practice Note may be accessed at: <https://www.mas.gov.sg/regulation/practice-notes/lodgment-practice-note-for-collective-investment-schemes>

## Place and time for submitting the application

Applications for recognition of CIS and lodgements of prospectuses should be made electronically on OPERA between 8.30 a.m. and 12.30 p.m. and between 1.30 p.m. and 5.30 p.m. from Mondays to Fridays (except public holidays).

## Supporting documents

To apply for recognition of an ASEAN CIS, a true and complete electronic image of the following shall be lodged with or submitted to MAS via OPERA:

- 1) duly signed copy of the completed Form 2;
- 2) duly signed copy of the ASEAN CIS Application Form (as set out in Appendix II of this Handbook);
- 3) Standard letter issued by the Home Regulator to the Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure) (as set out in Appendix I of this Handbook);
- 4) duly signed copy of the undertaking by the Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure) to submit to the non-exclusive jurisdiction of the Host Jurisdiction's courts (as set out in Appendix III of this Handbook); and
- 5) if applicable, the authorisation referred to in regulation 18 of the SFR.

In a lodgement of prospectus for registration by MAS, a true and complete electronic image of the following shall be lodged with or submitted to MAS together with the prospectus lodged in electronic form via OPERA:

- 1) every signature accompanying the prospectus;
- 2) Form 6;
- 3) where MAS has requested for a copy of the prospectus in paper form, duly signed statement that the printed copy of the prospectus submitted is a true copy of the prospectus lodged with MAS in electronic form;
- 4) duly signed confirmation by the person making the offer, or where the person making the offer is an entity, by each and every director or equivalent person of the entity, that he is aware of the criminal liability under section 253 of the SFA read with section 305 of the SFA for any false or misleading statement, or omission of information required to be included, in the prospectus;
- 5) duly completed prospectus compliance checklist; and
- 6) if applicable, the authorisation referred to in regulation 18 of the SFR.

The foreign prospectus of the ASEAN CIS can be used if it (either on its own, or together with a Singapore “wrapper”) contains all the information required under the SFA and the SFR.

Please refer to the Practice Note for guidance on the supporting documents to be submitted in respect of an application for recognition and lodgement of prospectus.

#### Language of documents submitted by CIS Operator

All forms shall be completed in the English language. In addition, where a person submits to or lodges with MAS a document which is not in English, the person shall also submit to or lodge with MAS, as the case may be, an accurate translation thereof in the English language.

#### Signed declaration/ Certification of documents

Please refer to the Practice Note for the certification requirements that are applicable to documents submitted to or lodged with MAS.

#### Application fee

Please refer to the First Schedule to the SFR which sets out fees for application for recognition of a CIS and lodgement of a prospectus of a CIS.

#### Confirmation of streamlined authorisation

CIS Operators will be informed in writing or via OPERA as to the outcome of an application for recognition.

#### B. Details of the information in the offering document required to be disclosed to investors

##### Full prospectus

Please refer to the Third Schedule to the SFR for the disclosure requirements in respect of a prospectus issued in connection with an offer of units in a CIS in Singapore.

##### Simplified prospectus/ Key Information Document/ Product Highlights Sheet/ Fund fact sheet

A Product Highlights Sheet must also be prepared by issuers and furnished to investors. Please refer to the SFR for requirements in relation to preparing a Product Highlights Sheet.

### C. Lodgement fee

Please refer to the First Schedule to the SFR which sets out fees for lodgement of a prospectus of a CIS.

### D. Requirements for any documents to be disclosed on an on-going basis with the Monetary Authority of Singapore (the Host Regulator) or distributed to investors

Under section 299(1) of the SFA, no person shall make an offer of units in a CIS, or issue or sell any units in a CIS, on the basis of a prospectus after the expiration of 12 months from the date of registration by MAS of the prospectus in relation to such offer, issue or sale.

The re-lodgement of a prospectus that would otherwise expire must be made on Form 6 of the SFR with a payment of a lodgement fee that is specified under the First Schedule to the SFR. Please refer to the Practice Note for the administrative procedures in relation to the re-lodgement of prospectuses for registration.

Pursuant to Chapter 9.2 of the Code on Collective Investment Scheme (“**CIS Code**”), the CIS or its operator is required to notify MAS of matters relating to (i) any conditions or restrictions imposed by the Home Regulator on the CIS and (ii) documentation of the CIS’s risk management process (if applicable).

Pursuant to the Standards of Qualifying CIS, the CIS or its operator must provide the independent auditor’s report to the trustee/fund supervisor of the relevant ASEAN CIS, the Home Regulator and the Host Regulator on an annual basis.

### E. Disclosure requirements on the NAV

Pursuant to the Third Schedule to the SFR, a prospectus is required to state how investors may obtain the buying and selling prices of units in a scheme and the dealing days to which the prices apply. Where prices are available from certain publications or media in Singapore, state the names of such publications or media.

F. The requirements to notify the significant changes or breaches

Significant changes

Pursuant to the Standards of Qualifying CIS, a Qualifying CIS or Qualifying CIS Operator must use its best efforts to provide, without prior request, the Home Regulator and the Host Regulator with any information that it considers to be of assistance to the Home Regulator and the Host Regulator. In particular, the CIS or its operator must inform the Home Regulator and the Host Regulator in advance (where practicable) or as soon as possible thereafter, of:

- a) any material event that could adversely impact a Qualifying CIS or Qualifying CIS Operator. Such events include known changes in the operating environment, operations, financial resources, management, or systems and control of a Qualifying CIS or Qualifying CIS Operator;
- b) any regulatory changes that may have a significant impact on the operations or activities of a Qualifying CIS or a Qualifying CIS Operator; and
- c) any enforcement or regulatory action or sanction that has been or may be taken by the Home Regulator or the Host Regulator, including revocation, suspension of relevant licences, the Approval concerning the Qualifying CIS, and the licensing or registration concerning the Qualifying CIS Operator.

In addition, a Qualifying CIS/Qualifying CIS Operator is required to inform existing unitholders of any significant changes to be made to the ASEAN CIS no later than one month before the change is to take effect; where the change cannot be determined in advance, unitholders must be informed as soon as practicable.

Breaches

Pursuant to the Standards of Qualifying CIS, MAS should be notified of a breach where such breach has been notified to the Home Regulator and trustee/fund supervisor.

G. Appointing local intermediaries

Market intermediaries involved in distributing, advising on or marketing CIS are either governed under the SFA and/or the Financial Advisers Act (“**FAA**”) depending on the regulated activities performed. In particular, the provision of financial advice, either directly or through publication or writings, or by issuing or promulgating research analyses or research reports, and marketing of CIS are activities regulated under the FAA. Section 6 of the FAA requires a person, who engages in any activity or conduct that is intended to or likely to induce the public in Singapore or any section thereof to use any financial advisory service provided by the person, to hold a Financial Adviser’s licence. MAS-licensed financial institutions such as banks and Capital Markets Services Licence Holders (“**CMSLs**”) are exempted from FAA licensing requirement when they conduct FAA activities, but they are subject to similar business conduct requirements of the FAA as the licensed financial

advisers, as stipulated in FAA Section 23. Requirements which a Financial Adviser is subject to include, among others:

- FAA Section 25—obligation to disclose product information to clients
- FAA Section 26—prohibition from making false or misleading statement
- FAA Section 27—requirement to have a reasonable basis for making recommendation to clients
- FAA Section 28—restrictions relating to handling of client's money or property
- FAA Section 29—obligation to furnish information to MAS
- FAA Section 36—disclosure of certain interests in securities to clients
- FAA-N16—Notice on Recommendations on Investment Products
- FAA-N03—Notice on Information to Clients and Product Information Disclosure.

A person providing all or any type of financial advisory service to an institutional investor (as defined in Section 4A of the SFA), including a bank and a CMSL, is exempted from holding a financial adviser's licence.

Representatives of all licensed and exempt financial advisers are required to be registered with MAS for the specific regulated activities they intend to carry out. Section 23B of the FAA requires financial advisers to notify MAS when they intend to appoint individuals to conduct regulated activities (in this case, advising or marketing of CIS). The financial advisers have to ensure and certify that their representatives are fit and proper, and meet the competency, financial soundness, and integrity standards set out in the MAS Guidelines on Fit and Proper Criteria.

The FAA is accessible at <https://sso.agc.gov.sg/Act/FAA2001>.

#### H. Appointing a local representative

There must be a representative for the recognised scheme in Singapore to act as a liaison between investors and the Qualifying CIS and its operator. The representative must be an individual, a company incorporated in Singapore, or a foreign company registered in Singapore under the Companies Act.

Please refer to section 287 of the SFA for details on the functions that the representative of a recognised scheme has to perform.

I. Compensation where valuation errors happen<sup>6</sup>

A foreign CIS operator of an ASEAN CIS is required to comply with the requirements in relation to valuation errors set out under the Standards of Qualifying CIS.

J. Termination of offering of shares or units of ASEAN CIS in Singapore (the Host Jurisdiction)

Where a Qualifying CIS or its operator intends to withdraw the recognition of a scheme or wind up a scheme, it must submit the following (on Form 2-A of the SFR) to MAS :-

- a) an application to withdraw the recognition of a scheme under section 288(7); or
- b) a notice of the proposed winding up of a scheme under section 29(1) of the SFA.

K. Tax issues/Tax treatment on ASEAN CIS

Tax considerations for ASEAN CIS/Qualifying CIS Operator

The offering/marketing of an ASEAN CIS in Singapore, assuming no other activities of the fund or fund manager is conducted in Singapore, would generally not give rise to a Singapore tax exposure for the ASEAN CIS. Similarly, if the Qualifying CIS Operator's activities in Singapore is restricted to just the offering/marketing an ASEAN CIS in Singapore, such activities of the Qualifying CIS Operator should not be exposed to Singapore tax.

Tax Considerations for investors of an ASEAN CIS

*Distributions*

Tax is imposed on income accruing in or derived from Singapore. Foreign-sourced income would only be taxable in Singapore if it is received or deemed received in Singapore from outside Singapore. That said, there are exemptions in respect of foreign-sourced income received by a Singapore tax resident individual (other than income received through a partnership) and a Singapore tax resident non-individual.

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<sup>6</sup> The reason to include I. in the national regulations is that the ACMF specify that where valuation errors happen, the compensation of a CIS operator must be made in compliance with the rules specified by the Home Regulator.

*Sale and redemption of units*

Where the sale and redemption of units is regarded as a trading gain, the profit from such a transaction would be regarded as a taxable trading gain and would be subject to tax. Conversely, where the sale and redemption of units is regarded as a capital gain, the profit from such a transaction would not be subject to tax.

The assessment of the nature of the income would depend on the facts and circumstances surrounding the case.

Note: This does not constitute tax advice and investors should seek guidance from the tax professionals.

L. Foreign Exchange Control issues/ impact on ASEAN CIS

Not applicable.

# THAILAND

Information on the relevant laws, regulations which are specifically relevant to the offer of ASEAN CIS in Thailand (as a Host Jurisdiction)

The contents in this section of the Handbook seek to provide guidance to CIS Operators or CIS (in the case of a CIS with a corporate structure) who are interested in offering collective investment scheme (“CIS”) under the ASEAN CIS. This section sets out the steps the CIS Operators need to take in order to obtain approval from the Securities and Exchange Commission of Thailand (“SEC”) as well as the legislative and regulatory requirements which are applicable to the offerings of ASEAN CIS to public in Thailand. Nevertheless, the CIS Operators or interested parties should refer to related regulations and seek the necessary advice to ensure that their offerings are in compliance with all applicable laws and regulations in Thailand.

The offering of ASEAN CIS to investors in Thailand are regulated under the Securities and Exchange Act B.E. 2535 and the following notifications :

1. Notification of the Capital Market Supervisory Board, [No. TorJor. 4/2561](#), Re: Conditions on Offering of Units of Foreign Collective Investment Schemes (“Notification No. TorJor. 4/2561”);
2. Notification of the Capital Market Supervisory Board, [No. TorThor. 8/2561](#), Re: Rules, Conditions and Procedures for Selling, Repurchasing and Redeeming Units of ASEAN Collective Investment Schemes and Asia Region Funds Passport (“Notification No. TorThor. 8/2561”);
3. Notification of the Office of the Securities and Exchange Commission, [No. SorJor. 4/2561](#), Re: Additional Conditions on Selling, Repurchasing and Redeeming Units of Foreign Collective Investment Schemes (“Notification No. SorJor. 4/2561”);
4. Notification of the Office of the Securities and Exchange Commission, No. SorMor. 6/2561, Re: Fees for filing reports, registration statement, and other applications (“Notification No. SorMor. 6/2561”)
5. Notification of the Office of the Securities and Exchange Commission, No. SorNor. 88/2558, Re: Prospectus and offering documents of Mutual Funds, Accredited Investors Funds, and Non-retail Funds (“Notification No. SorNor. 88/2558”);
6. Notification of the Capital Market Supervisory Board, No. TorThor. 35/2556, Re: Standard Conduct of Business, Management Arrangement, Operating Systems, and Providing Services to Clients of Securities Companies and Derivatives Intermediaries (“Notification No. TorThor. 35/2556”);
7. Notification of the Office of the Securities and Exchange Commission Notification, No. TorNor. 11/2564, Re: Rules, Conditions and Procedures for Management of Mutual Funds, Accredited Investors Funds, Institutional Investors Funds, and Private Funds (“Notification No. TorNor. 11/2564”).
8. Notification of the Office of the Securities and Exchange Commission Notification, No. SorNor. 9/2564, Re: Rules, Conditions and Procedures for Management of Mutual Funds, Accredited Investors Funds, and Institutional Investors Funds (“Notification No. SorNor. 9/2564”); and
9. Notification of the Office of the Securities and Exchange Commission Notification, No. SorNor. 10/2564, Re: Rules, Conditions and Procedures for Management of Mutual Funds, and Private Funds (“Notification No. SorNor. 10/2564”);

The CIS Operator or CIS (in the case of a CIS with a corporate structure) shall not make an offer of ASEAN CIS to investors in Thailand unless the ASEAN CIS has been verified by the SEC. Furthermore, an offer of ASEAN CIS may not be made unless the ASEAN CIS factsheet is prepared in accordance with the fact sheet template provided on the SEC’s website and verified by the SEC.

- A. How to apply for streamlined authorisation as the ASEAN CIS (established in foreign country) offering into Thailand (as a Host Jurisdiction).

#### Method for submitting applications

The application letter for verification of units or shares, as the case may be, of foreign collective investment schemes (“**Application Letter**”) and supporting documents shall be submitted to the SEC in the form of hard copies as well as via electronic form.

The electronic version shall be sent to the following email addresses: [aseancis@sec.or.th](mailto:aseancis@sec.or.th) and copied to [impd@sec.or.th](mailto:impd@sec.or.th) and [sireetho@sec.or.th](mailto:sireetho@sec.or.th).

#### Place and time for submitting the application

Hard copies of the application and all supporting documents shall be submitted to the Document Centre on the Ground floor of the SEC and shall be addressed to:

**Secretary-General**

**The Office of the Securities and Exchange Commission of Thailand  
333/3 Vibhavadi-Rangsit Road, Chomphon, Chatuchak, Bangkok 10900, Thailand**

Please kindly specifying on top of the envelop:

***“ASEAN CIS” - Investment Management Policy Department***

Official hours for submitting the applications is as follows:

**Monday to Friday (business days) from 8.30 a.m. to 4.30 p.m.**

#### Supporting documents

The CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure), or its local representative who wishes to request for a streamline authorisation of Qualifying CIS (hereafter called “ASEAN CIS”) shall submit an application to the SEC in writing with the following supporting documents :

- (1) ASEAN CIS Application Form according to Form 35 – retail ASEAN CIS provided on the SEC’s website (*completed by Qualifying CIS Operator or Qualifying CIS, in the case of a CIS with a corporate structure*);
- (2) A registration statement according to Form 69 – CIS full (*completed by Qualifying CIS Operator or Qualifying CIS, in the case of a CIS with a corporate structure*)\*;
- (3) Standard letter issued by the Home Regulator to a Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure) as per **Appendix I** of this Handbook;
- (4) ASEAN CIS Application Form as per **Appendix II** of this Handbook;
- (5) Undertaking to submit to the non-exclusive jurisdiction of the Host Jurisdiction’s courts, as per **Appendix III** of this Handbook;
- (6) Evidence on the appointment of a securities company to perform duty as local intermediary in Thailand (*issued by Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure)*);
- (7) Evidence on the appointment of a local representative in Thailand as the agent of the Qualifying CIS Operator (*issued by Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure)*);
- (8) Evidence on the appointment of an authorised person of the Qualifying CIS Operator (*issued by Qualifying CIS Operator or Qualifying CIS (in the case of a CIS with a corporate structure)*);
- (9) Master fund’s prospectus and fact sheet/ product highlight sheet (required only for an application of a feeder fund)

\* Remark : As part of the application form, the CIS Operator or CIS (in the case of a CIS with a corporate structure) must also submit a completed and signed **registration statement** (or **Form 69 – CIS full**) which includes the following supporting documents (in hard copies):

- (1) Fund Fact Sheet/ Product Highlight Sheet;
- (2) Key Information comprising the registration statement and prospectus;
- (3) Certification of Information Accuracy; and
- (4) Evidence on the appointment of an authorised person of CIS Operator or CIS (in the case of a CIS with a corporate structure).

Please note that **Form 35 – retail ASEAN CIS** and **Form 69 – CIS full** can be found online at the SEC website,

<https://www.sec.or.th/TH/Pages/LawandRegulations/ASEANCollectiveInvestmentSchemes.aspx#form>

Related regulations :

- Notification No. TorJor. 4/2561
- Notification No. SorJor. 4/2561

Language of documents submitted by CIS Operator or CIS (in the case of a CIS with a corporate structure)

Documents which the CIS Operator or CIS (in the case of a CIS with a corporate structure) submitted to the SEC may be in Thai or English language.

Please note that Notification *No. TorJor. 4/2561* requires consistency in the choice of language used in the documents submitted to the SEC. The first used language in the documentation submitted to the SEC shall be used for the subsequent documentation submitted to the SEC thereafter, unless a waiver is granted by the SEC under acceptable circumstances.

Furthermore, in case the documents filed with the SEC are in English but CIS Operator would like to distribute the offering documents (prospectus) to the investors in Thai, CIS Operator must attached such documents to Form 69 – CIS full as supporting documents too.

Related regulations :

- Notification *No. TorJor. 4/2561*

Signed declaration/ Certification of documents

The SEC requires the CIS Operator or CIS (in the case of a CIS with a corporate structure) or its local representative to sign all supporting documents which are attached to the application letter to certify that the versions filed with the SEC are the latest versions that have been approved by, registered, or filed with the Home Regulator. The CIS Operator or CIS (in the case of a CIS with a corporate structure) or its local representative must also certify that the translated documents (if any) are true and accurate translations of the original documents.

Important note: *The authorised signatures/initials of the CIS Operator or CIS (in the case of a CIS with a corporate structure) or its local representative must be placed on each page of the supporting documents, including the prospectus and factsheet, upon filing the application with the SEC.*

Application fee

The application fee is 100,000 baht (One Hundred Thousand Baht) net of VAT (7%). Payment can be made via bank transfer. The SEC's banking details are as follows:

Bank Name	Krung Thai Bank Public Company
Bank Branch	Securities and Exchange Commission Branch
Bank Address	333/3 Vibhavadi-Rangsit Road, Chomphon, Chatuchak, Bangkok 10900 Thailand

Bank Tel No.	+66-2272-2489 and +66-2272-2490
Bank Fax No.	+66-2272-2491
SWIFT CODE / Routing No.	KRTHTHBK
Account Name	THE OFFICE OF THE SECURITIES AND EXCHANGE COMMISSION
Beneficiary address	333/3 Vibhavadi-Rangsit Road, Chomphon, Chatuchak, Bangkok 10900 Thailand
Account No.	9814747688

Receipt of payment will be emailed to the email addresses provided in the application letter within 2 working days.

Notes:

- 1) Prior to making any bank transfer payment, CIS Operator should contact the SEC to obtain the invoice where its reference number should be specified when making payment at the bank; and
- 2) International bank transfer may take longer than national bank transfer. CIS Operator should allow sufficient time for such a transaction. Please note that payment must be received by the SEC prior to or at the date of filing the application.

Related regulations :

- Notification No. *TorJor. 4/2561*
- Notification No. *SorMor. 6/2561*

Confirmation of streamlined authorisation

The timeframe for reviewing the application for streamlined authorisation of the ASEAN CIS is within 21 days from receipt of a complete application by the SEC, except for application of ASEAN CIS to be listed on the Stock Exchange of Thailand.

If the application is successful, the SEC will issue a letter to the CIS Operator or CIS (in the case of a CIS with a corporate structure) or its local representative to inform its decision. An email notification will be sent to the email addresses provided in the application letter to inform the CIS Operator or CIS (in the case of a CIS with a corporate structure) or its local representative to collect the hard copy of the letter from the Document Centre of the SEC.

Related regulations :

- Notification No. *TorJor. 4/2561*

B. Details of the information in the offering document required to be disclosed to investors  
Full prospectus

The offer of the ASEAN CIS in Thailand must be accompanied by a prospectus which complies with the rules specified under (i) Notification *No. TorJor. 4/2561*; and (ii) Notification *No. SorNor. 88/2558*.

In this regard, the CIS Operator or CIS (in the case of a CIS with a corporate structure) must prepare and submit the latest version of the prospectus as approved by, registered, or filed with the Home Regulator together with a **wrapper**, which contains additional information required to be disclosed to investors under the aforementioned notifications, to the SEC upon filing the application.

Alternatively, instead of a wrapper, the CIS Operator or CIS (in the case of a CIS with a corporate structure) may wish to prepare a **supplementary prospectus** (in addition to the original prospectus approved by, registered or filed with the Home Regulator) which complies with the rules as specified by the SEC's Notifications.

Related regulations:

- Notification *No. TorJor. 4/2561*
- Notification *No. SorNor. 88/2558*

Simplified prospectus/ Key Information Document/ Product Highlights Sheet/ Fund fact sheet

Notification *No. TorJor. 4/2561* specifies that the fund fact sheet discloses to Thai investors must be prepared by the CIS Operator or CIS (in the case of a CIS with a corporate structure) of the ASEAN CIS wherein the contents and format of the fund fact sheet shall be prepared in accordance with the template provided on the SEC's ASEAN CIS website ([click here](#)).

Important Note:

- The fund fact sheet of the ASEAN CIS must be prepared and certified the correctness by the CIS Operator or CIS (in the case of a CIS with a corporate structure) or its local representative in Thailand upon filing the application with the SEC.

Related regulation:

- Notification *No. TorJor. 4/2561*

C. Lodgement fee

Not applicable for Thailand.

D. Requirements for any documents to be disclosed on an on-going basis with the SEC Thailand (as the Host Regulator) or distributed to investors

Under Notifications *No. TorJor. 4/2561* and *SorJor. 4/2561*, the followings are on-going requirements for CIS Operator or CIS (in the case of a CIS with a corporate structure) who makes public offerings of ASEAN CIS in Thailand :

1. The CIS Operator or CIS (in the case of a CIS with a corporate structure) is required to submit a hard copy of a completed and signed “Form 69 – CIS annually update” to the SEC Office within 1 year after the effective date of the previously submitted registration statement, either “Form 69 – CIS full” or “Form 69 – CIS annually update”, as the case may be.
2. In case where there is a material change to the information specified in the effective registration statement and such change has been notified and approved by Home Regulator, the CIS Operator or CIS (in the case of a CIS with a corporate structure) is required to submit a hard copy of a completed and signed “Form 69 – CIS material update” to the SEC Office within 10 days after Home Regulator approved such material change (excluding weekends or statutory holidays in Home Jurisdiction).
  - Please [click here](#) to download “Form 69 – CIS annually update” and [click here](#) to download “Form 69 – CIS material update”.
3. In addition, the CIS Operator is required to prepare sales report for the sale of units of the ASEAN CIS offered in Thailand (as the case may be). This report shall be lodged with the SEC Office within 45 days after the last official day of the year that such solicitations occurred.
  - Please [click here](#) to download “Sales Report Form”.

CIS Operator is required to disclose the documents according to rules specified by Notification *No. TorJor. 4/2561* and Notification *No. SorNor. 87/2558* as follows:

1. Information in which the CIS Operator has the duty to deliver to investors as stipulated by Home Jurisdiction. The CIS Operator must ensure that such information is delivered to investors in Thailand within the same period as stipulated by Home Jurisdiction;
2. Information in which the SEC requires the CIS Operator to disclose to investors on a **monthly basis** on the CIS Operator's website includes:
  - 2.1 Investments by CIS, which must contain the following information:
    - 2.1.1 For CIS which mainly invest in equity securities:
      - The names of the top 5 equity securities hold by the CIS and their respective sectors; and
      - The weight (% of NAV) in which the CIS invests in each securities and in that particular sector.
    - 2.1.2 For CIS which mainly invest in fixed-income securities:
      - The names of the top 5 fixed-income securities hold by the CIS;

- The credit rating of each of the top 5 securities; and
  - The weight (% of NAV) in which the CIS invests in each securities.
- 2.1.3 For CIS which invest in a mixture of equity and fixed-income securities:
- The name of the top 5 securities holds by the CIS;
  - The weight (% of NAV) in which the CIS invests in each securities; and
  - If the top 5 securities include any fixed-income securities, their credit ratings should also be disclosed accordingly.
- 2.1.4 For CIS which invests in other foreign CIS more than 20% of the fund's NAV:
- Information on the investment by foreign CIS that is publicly available or could be accessible by the CIS Operator must be disclosed to the investors.

The information prescribed in 2.1.1 – 2.1.3 should be disclosed within 15 days after the end of each month. Except for 2.1.4, the information should be disclosed within 15 days since the date foreign CIS which ASEAN CIS invested in disclose such information.

2.2 An **annual-report** prepared at the end of each accounting year with at least the following contents:

- 2.2.1 Audited Balance Sheet, Profit & Loss Statement, and Supplementary Statements;
- 2.2.2 Information on investments, borrowings, and obligations that must be consistent with the fund investment objectives;
- 2.2.3 Performance of the CIS that must be prepared in accordance with the rules specified by the Home Jurisdiction;
- 2.2.4 Trading costs;
- 2.2.5 Total expenses;
- 2.2.6 Portfolio turnover ratio;
- 2.2.7 Management Discussion and Analysis;
- 2.2.8 Trustee's opinion concerning the management of assets by the CIS Operator;
- 2.2.9 Information on Related Parties Transactions, if any;
- 2.2.10 The details/information on bad debts in case the issuers/borrowers of debt securities have defaulted, if any;
- 2.2.11 Information on pay in kind, if any; and
- 2.2.12 Information on proxy voting in the annual meeting on behalf of the CIS.
- 2.2.13 Name of fund managers

2.3 A **semi-annual** report with the contents as outlined above from 2.2.1 to 2.2.8.

2.4 The semi-annual and annual report shall be available upon request at the CIS Operator's local representative office as well as at every appointed local intermediaries' premises.

Related regulation :

- Notification No. *TorJor. 4/2561*
- Notification No. *SorNor. 9/2564*
- Notification No. *SorNor. 10/2564*

E. Disclosure requirement on the NAV

**Calculation**

Except where otherwise specified, the CIS Operator shall **calculate** the net asset value (“NAV”) and the value of investment units of ASEAN CIS in accordance with the rules specified by Home Jurisdiction.

**Announcement**

The CIS Operator shall perform the following tasks as outlined in Notification No. *SorNor. 10/2564* with regards to the disclosure requirements:

1. Announce the NAV, the value of investment units, the selling price, the redemption price, and the number of units of ASEAN CIS to the public at the end of every dealing day. The number of decimal places used in the announcement shall be in accordance with the rules specified by Notification No. *SorNor. 10/2564*;
2. The NAV of ASEAN CIS shall be expressed in the currency of offering in addition to Thai Baht. The exchange rate used for conversion shall be the market (spot) exchange rate announced publicly by commercial bank and comply with the information in which the CIS Operator has informed the investors in the offering documents;
3. The NAV and the value of investment units of ASEAN CIS to be announced to the public shall be certified by an independent party.
4. Manage by any means to ensure that the investors will be informed via acceptable and appropriate channel regarding the NAV, the value of investment units, the selling price, and the redemption price of ASEAN CIS. This is, for example, via newspaper or website. In addition, the information must be posted or displayed at every office of the local intermediaries who are responsible for selling, repurchasing, and redeeming units of ASEAN CIS in Thailand. Importantly, the investors must be informed within the suitable timeframe such that they are able to use the information for making investment decisions.

Related regulations :

- Notification No. *SorNor. 9/2564*
- Notification No. *SorNor. 10/2564*

F. The requirements to notify the significant changes or breaches

Significant changes

CIS Operator is required to notify the SEC and investors of any incident which affects or is likely to affect the rights and interests of unit holders or the decision-making on investment or the change in the unit price of the ASEAN CIS.

**Significant changes to CIS Operator**

The followings are example of the changes that are required to notify the SEC and investors as soon as possible or at the same instant as when such changes have been communicated to the regulators and investors in the Home Jurisdiction:

1. Any regulatory changes in the Home Jurisdiction that affect the operations or activities of CIS Operator, i.e. changes in investment/supervision regulations;
2. Any changes in financial resources, management, or systems and controls of the CIS Operator, i.e. changes of CEO / key personals, or, the significant reduction of capital adequacy;
3. Any enforcement, regulatory action, or sanction imposed by the Home Regulator on the CIS Operator, i.e. the revocation, suspension of relevant licenses or registration of the CIS Operator, or the CIS Operator not being in the process of submitting the required document to investors or Home Regulator; and
4. Any changes in the operating environment, i.e. merger and acquisition, relocation of CIS Operator/local representative's office, or changes made to the contact details.

**Significant changes to ASEAN CIS**

The CIS Operator is required to notify the SEC and the investor in Thailand on the significant changes made to ASEAN CIS which may affect the benefit of unit holders, for example :

1. Merger and acquisition of CIS;
2. Changes to investment policies;
3. Changes to purchase / redemption policies;
4. Changes to dividend policies;
5. Postponement of payment period;
6. Cease to sell or accept the purchase order of CIS; and
7. Any enforcement, regulatory action, or sanction imposed by the Home Regulator on the CIS.

The CIS Operator must notify the abovementioned changes to the SEC and investors in Thailand without delay or at the same instant as when such significant changes have been communicated to the regulators and investors in the Home Jurisdiction.

## Breaches

The CIS Operator shall inform the SEC in advance (where practicable) or as soon as possible thereafter, of any:

1. Act or omitting any act which causes damage to the ASEAN CIS and may have an adverse effect on the interests of unit holders as a whole or failure to perform its duties in accordance with the laws and regulations in the Home Jurisdiction;
2. Disciplinary, enforcement, or regulatory action/sanction against the CIS Operator in any jurisdiction such as probation, public reprimand, fine, and restriction of operation;
3. Suspension, withdrawal, or revocation of relevant licenses or the approval concerning the ASEAN CIS;
4. Suspension, withdrawal, or revocation of relevant licensing or registering concerning the CIS Operator; and
5. Order of the Home Regulator to conduct any special audit and any findings drawn from such audit.

### Procedures for Breach of investment restrictions:

Where a breach of investment restrictions occurs, the CIS Operator shall proceed according to the procedures specified under *Part II : The Products Restrictions of Qualifying CIS* as prescribed in *Appendix C : Standards of Qualifying CIS of the Memorandum of Understanding on Streamlined Authorisation Framework for Cross-border Public Offers of ASEAN Collective Investment Schemes* as follows:

1. In case of breach of the investment restrictions that is **not the consequence of an investment decision**, the CIS Operator must perform the following tasks:
  - 1.1 Inform the trustee/fund supervisor/ Independent Oversight Entity within 3 business days, but not longer than 3 business days after it becomes aware of any breach of the investment restrictions;
  - 1.2 Rectify such breach as soon as practicable, but not longer than 3 months from the date of the breach. Note that during the period of the breach, the CIS Operator cannot make additional investment in such asset, but can still offer the units of ASEAN CIS in Thailand; and
  - 1.3 Ask the trustee/fund supervisor/ for an extension period if the CIS Operators expects that the breach cannot be rectified within the given 3 months period. This is given that the trustee/fund supervisor is satisfied that it is in the best interest of unit holders for this period to be extended.
    - 1.3.1 If the trustee/fund supervisor allows the CIS Operator to extend beyond the given 3 months period, the CIS Operator must also notify this to the unit holders in Thailand and be subjected to a monthly review by the trustee/fund supervisor.

1.3.2 If the trustee/fund supervisor does not allow the CIS Operator to extend beyond the 3 months period and the CIS Operator still cannot rectify the breach, the SEC has the right to order the CIS Operator to stop the offering of units of ASEAN CIS in Thailand regardless of whether or not the Home Regulator allows further offering in the Home Jurisdiction.

2. In case of breach of the investment restrictions that is **as a consequence of an investment decision**, the CIS Operator must inform the Home Regulator and trustee/fund supervisor/ Independent Oversight Entity within 3 business days after it becomes aware of any breach of the investment restrictions.

In case the CIS Operator cannot rectify the breach, the SEC has the right to order the CIS Operator to stop the offering of units of ASEAN CIS in Thailand although the Home Regulator allows further offerings in the Home Jurisdiction.

## G. Appointing local intermediaries

### **Local intermediaries**

The entities whom the SEC permits to be local intermediaries of an ASEAN CIS must be entities who have been granted license type:

- A (i.e. securities /brokerage companies);
- C\* (i.e. asset management companies);
- D (i.e. commercial banks); or
- Limited brokerage, dealing and underwriting of investment units (LBDU).

\* Entities obtained license type C must have in place proper operational system and received approval from the SEC before being recognised as qualified distributor.

The list of securities companies in Thailand who has obtained such licenses could be found on the SEC's website ([click here](#)).

Moreover, the SEC requires that there is an Investment Consultant, who has been approved by the SEC, to give investment advice in the offering of units of ASEAN CIS to investors in Thailand.

### **Sales Conduct**

The **sales conduct** stipulated by Notification *No. TorThor. 35/2556* include:

1. The local intermediaries shall provide the service of selling, repurchasing, and redeeming units of ASEAN CIS to clients on condition that the units are in the announced list on the SEC's ASEAN CIS website which have been verified by the SEC under the Notification *No. SorJor.4/2561*.
2. Prior to accepting to be an agent for selling, repurchasing, and redeeming units of ASEAN CIS, the local intermediaries shall arrange to have a written agreement with the CIS Operator which covers at least the following matters:

- 2.1 In case where there is significant impact on the ASEAN CIS or affect the interests of investors, the CIS Operator must inform the local intermediaries and the investors in Thailand as soon as possible;
  - 2.2 The CIS Operator has to deliver the information under 2.1 to the local intermediaries within the same timeframe as having the duty to deliver such information to investors in the Home Jurisdiction or submit to the Home Regulator, as the case may be; and
  - 2.3 The local intermediaries shall submit the information under 2.1 to the SEC as soon as possible after it has received the information from the CIS Operator.
3. Prior to selling units of ASEAN CIS, local intermediaries shall at least undertake the following steps:
- 3.1 Sending or distributing the following documents, which contain the same material information no different from the draft filed with the SEC, to the investors according to the rules specified by Notification *No. TorThor. 8/2561*.
    - (a) Fund fact sheet (according to the format specified by the SEC on the SEC's ASEAN CIS website) and the annual report (if any); and
    - (b) Any supplementary information and documents used in the offering of units of ASEAN CIS, which are prepared and distributed to investors in the Home Jurisdiction. Such information shall be kept at the office or on the website of the local intermediaries and deliver to investors upon request.
4. In providing the services of selling, repurchasing, and redeeming units of ASEAN CIS, the local intermediaries shall comply with the following requirements:
- 4.1 Receiving sale, repurchase, or redemption order during hours and days as specified in the offering circular disseminated in the Home Jurisdiction, unless such hours and days are not business hours and days of the local intermediaries. Please note that the local intermediaries must inform the investors in advance regarding the hours and days on which such orders will not be placed; and
  - 4.2 Complying with the requirements as specified by the Notification *No. TorThor. 35/2556* concerning the standard conduct of business, management arrangement, operating systems, and providing services to clients of securities companies and derivatives intermediaries.
5. The local intermediaries shall not provide the services relating to selling, repurchasing, and redeeming units of ASEAN CIS managed by the CIS Operator who fails to comply with the agreement made with the local intermediaries.
6. Local intermediaries shall supervise its personnel to comply with Notification *No. TorThor. 8/2561* and operational guidance prepared by the local intermediaries.
7. In case where the SEC finds that any local intermediaries violate or fail to comply with Notification *No. TorThor. 8/2561* or has inappropriate conduct in performing duty of giving investment advice and providing the services relating to selling, repurchasing, and redeeming units of ASEAN CIS, the SEC may order the local intermediaries to rectify,

act, or refrain from any action for the purpose of complying with the mentioned Notification.

Related regulations:

- Notification No. *TorThor. 35/2556*
- Notification No. *TorThor. 8/2561*
- Notification No. *SorJor. 4/2561*

#### H. Appointing a local representative

According to Notification No. *ThorJor. 4/2561*, the purpose of appointing a local representative in Thailand is for coordinating and facilitating the following matters:

- a) Disclosing and sending information of ASEAN CIS as required by law or regulations of Home Regulator to investors or any other information related to ASEAN CIS in which the CIS Operator intends to disclose to investors;
- b) Receiving notice, order, and warrant or any other documents on behalf of the CIS Operator or ASEAN CIS;
- c) Verifying the details of constitutive document for ensuring that ASEAN CIS has conformed to Notification No. *ThorJor. 4/2561*; and
- d) Contacting with the ASEAN CIS registrar on behalf of unit holders in Thailand.

Thus, the liability of local representative is limited to clause a) to d) as noted above. The entity whom the SEC permits to be a local representative of an ASEAN CIS must be either (i) the entity that has been granted securities licenses from the Ministry of Finance (upon the recommendation from the SEC); or, (ii) the entity that acts as a representative office according to Section 93 of the Securities and Exchange Act B.E. 2535. Accordingly, the entity that satisfies the first criteria may include the following entities, provided that they have obtained the securities licenses:

1. Securities companies (Brokerage and Asset Management Companies)
2. Commercial banks;
3. Life Insurance companies;
4. Limited brokerage, dealing and underwriting of investment units (LBDU); and
5. Other financial institutions as specified in the notification of the SEC;

As for the second criteria, the entities that fall under Section 93 of the Securities and Exchange Act B.E. 2535 refer to the case where the CIS Operator seeks approval from the SEC in establishing their representative offices in Thailand. In such a case, the representative office must be an entity incorporated under the Thai Law with the sole purpose of acting as the representative office for the CIS Operator. And, for that reason, the representative office's revenue may only come from the CIS Operator and not from any other sources of revenue.

Related regulations:

- Notification No. TorJor. 4/2561

I. Compensation where valuation errors happen<sup>7</sup>

Where a valuation error/incorrect pricing occurs, *Part I : Qualifications of the CIS Operator, Trustee/Fund Supervisor/Independent Oversight Entity, and requirements relating to Approval, Valuation, and Operational Matters* as prescribed in *Appendix C : Standards of Qualifying CIS of the Memorandum of Understanding on Streamlined Authorisation Framework for Cross-border Public Offers of ASEAN Collective Investment Schemes* specifies the rules regarding **compensation** in which the CIS Operator must perform as follows:

1. Compensate the affected investors and notify them of the compensation made.
2. Compensate the scheme for any losses incurred as a result of the valuation error.

The aforesaid compensation must be made in compliance with **the rules specified by Home Regulator**.

J. Termination of offering of units of ASEAN CIS in Thailand (as a Host Jurisdiction).

1. The conditions that would lead to the termination of units of ASEAN CIS in Thailand include, but not limited to:

- (1) The termination of units of ASEAN CIS by Home Regulator;
- (2) Any breaches occurred in the Home Jurisdiction that causes the confirmative letter of the ASEAN CIS, as per Appendix I of this handbook, to be revoked by the Home Regulator; and
- (3) Any breaches occurred in the Home Jurisdiction or in Thailand where, after the given rectification period, such breaches have not been rectified or proved satisfy by the Home Regulator or the SEC, respectively, which consequently caused the CIS to be removed from the list of Qualifying CIS.

2. In case where the termination of units of ASEAN CIS can be anticipated or is foreseeable due to any circumstances, the CIS Operator must notify the SEC and investors in Thailand without delay or at the same instant as when such information has been communicated to the regulators and investors in the Home Jurisdiction.

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<sup>7</sup> The reason to include I. in the national regulations is that the ACMF specify that where valuation errors happen, the compensation of a CIS Operator must be made in compliance with the rules specified by the Home Regulator.

## K. Tax issues/Tax treatment on ASEAN CIS

### **Tax consideration for fund manager of an ASEAN CIS:**

Whether the fund manager of ASEAN CIS has the duty to pay tax in Thailand or not will depend on the terms and conditions under the Thai Revenue Code as well as the terms and conditions laid down in the DTA signed between the Home Jurisdiction and Thailand. Therefore, the fund manager needs to verify this independently with the Revenue Department of Thailand.

### **Tax Considerations for investors of an ASEAN CIS:**

- For a **Thai local investor** which refers to any investor who stays in Thailand for a period aggregating to 180 days or more in a tax year, or, a **local corporate** who receives dividend income or capital gain from the ASEAN CIS, the following tax treatments shall apply :
  - For local investor, the dividend income and capital gain are required to be included in the gross income when calculating the year-end personal income tax; and
  - For local corporate, the dividend income and capital gain are includable in the net profit computation for corporate income tax purposes.
- **Foreign investor** and **foreign corporate** (established or registered in foreign jurisdiction) who receive dividend income or capital gain from the ASEAN CIS have no duty to pay tax according to the Thai law.

Note: The aforesaid tax treatments also depend on the DTA signed with Thailand

Source : Revenue Department, Thailand, Taxation on Investment in Securities (in Thai)

Note : Contents of this section are provided for preliminary information purposes only, and are not to be construed as advice or recommendations. The SEC accepts no liability, direct or indirect, for decisions made based on the information contained.

## L. Foreign Exchange Control issues/ impact on ASEAN CIS

1. Both institutional and retail investors could invest in ASEAN CIS without limitation imposed at personnel/individual level.
2. The CIS Operator may offer the units of ASEAN CIS in Thailand in either Thai baht (“**THB**”) or foreign currencies. However, the BOT has a strict policy on the transferring of THB to foreign jurisdictions. Therefore, if the CIS Operator chooses to offer ASEAN CIS in THB, the local intermediaries or the corresponding banks holding Foreign Exchange license granted by the BOT shall convert THB to foreign currencies in the amount equivalent to that being raised in Thailand upon remittance. Please note that ASEAN CIS denominated in THB must be offered in Thailand only.

# PHILIPPINES

Information on the relevant laws, regulations which are specifically relevant to the offer of ASEAN CIS in the Philippines (as a Host Jurisdiction)

**This is a Guide only and not a legal advice. The contents in this section are intended to provide general information. Users or interested parties should refer to the Securities Regulation Code (SRC) or Republic Act No. 8799, Investment Company Act (ICA) or Republic Act No. 2629 and their respective Implementing Rules and Regulations (IRR) and where appropriate seek the necessary advice to ensure that their offering is in compliance with all applicable laws and regulations in the Philippines.**

The offering of collective investment schemes to investors in the Philippines are regulated under the SRC, ICA, their respective IRR and Memorandum Circulars issued by the Securities and Exchange Commission Philippines (Commission).

The SRC, ICA and its respective IRR's and other related Memorandum Circular may be accessed at:

- a. SRC (R.A No. 8799)  
[https://www.sec.gov.ph/wp-content/uploads/2019/11/2019Legislation\\_RA-8799-Securities-Regulation-Code-2000.pdf](https://www.sec.gov.ph/wp-content/uploads/2019/11/2019Legislation_RA-8799-Securities-Regulation-Code-2000.pdf)
- b. SRC IRR  
<https://www.sec.gov.ph/wp-content/uploads/2019/11/2015-SRC-Rules-Published-in-Phil-Star-Manila-Bulletin-October-25-2015.pdf>
- c. ICA (R.A No. 2629)  
<https://www.sec.gov.ph/wp-content/uploads/2019/11/Investment-Company-Act.pdf>
- d. ICA IRR  
<https://www.sec.gov.ph/wp-content/uploads/2019/11/2018IRRofInvestmentCompanyAct.pdf>
- e. SEC Memorandum Circular No.33, series of 2020 (Amendments to the Implementing Rules and Regulations of the Investment Company Act, as Amended)  
<https://www.sec.gov.ph/mc-2020/mc-no-33-s-2020/>
- f. SEC Memorandum Circular No.9, series of 2021 (Rules on Authorisation of An Investment Company As A Qualifying CIS And Recognition of a Foreign CIS under the ASEAN CIS Framework)  
<https://www.sec.gov.ph/mc-2021/mc-no-09-s-2021/>

- A. How to apply for streamlined authorisation as the ASEAN CIS (established in a foreign country) offering into the Philippines (as a Host Jurisdiction)

#### Method for submitting applications

An application to the Commission for the recognition of a foreign CIS to be offered in the Philippines must be made by the CIS Operator or local representative of such foreign CIS by submitting a duly completed SEC- FCIS Form (*Annex A of SEC M.C. No. 9, s. 2021*)

The application and other relevant documents shall be submitted to the Commission in the form of hard (physical) copies as well as via electronic form (soft copies).

The electronic version shall be sent to the following email addresses: cgfd@sec.gov.ph and cgfd\_ld@sec.gov.ph or any other email as may be defined by the Commission.

*Note: The submission via electronic form is for information purposes only. The application shall be deemed to have been acquired by the Commission on the date the hard copies were received.*

#### Place and time for submitting the application

1) Submission of hard copies of an application must be addressed to–

The Chairperson

Securities and Exchange Commission Philippines

(Attention, Director, Corporate Governance and Finance Department)

North Wing Hall, Secretariat Building, PICC Complex, Pasay City 1307

The hard copy must be placed in an envelope with the following label on top: **“ASEAN CIS” – Corporate Governance and Finance Department**

2) Submission of applications can be made on a business day in the Philippines between 8:00 a.m. to 5:00 p.m. Philippine time. Any submission received by the Commission after 5:00 p.m. will be deemed to be received on the following business day.

## Supporting documents

The CIS Operator or its authorized representative who wishes to request for a streamline authorisation of Qualifying CIS (“ASEAN CIS”) shall submit an application to the Commission in writing with the following supporting documents:

- 1) An application to the Commission for the recognition of a foreign fund or collective investment scheme to be offered in the Philippines by submitting a duly completed SEC- FCIS Form (**Annex A** of SEC M.C. No. 9, s. 2021)
- 2) Prospectus for an offer for sale of units of a foreign fund or collective investment scheme according to SEC Form – ASEAN CIS Prospectus (**Annex B** of SEC M.C. No. 9, s. 2021) which includes a Product Highlight Sheet (**Annex C** of SEC M.C. No. 9, s. 2021)
- 3) Certification of True Documents and Data Accuracy (**Annex D** of SEC M.C. No. 9, s. 2021)
- 4) Standard letter issued by the Home Regulator to a Qualifying CIS Operator as per **Appendix I** of ASEAN CIS Handbook;
- 5) ASEAN CIS Application Form as per **Appendix II** of ASEAN CIS Handbook;
- 6) Undertaking to submit to the non-exclusive jurisdiction of the Host Jurisdiction’s courts, as per **Appendix III** of the ASEAN CIS Handbook;
- 7) A copy of the contract or similar evidence on the appointment of a local representative and distributor/s for the foreign CIS in the Philippines.

## Language of documents submitted by CIS Operator

All forms shall be completed in the English language. In addition, where a person submits to the Commission a document which is not in English, the person shall also submit to the Commission, as the case may be, an accurate translation thereof in the English language.

## Signed declaration/ Certification of documents

The Commission requires the CIS Operator to certify that all supporting documents which are attached to the application letter filed are the true latest versions that have been approved by, registered, or filed with the Home Regulator. The CIS Operator must also certify that the translated documents (if any) are true and accurate translations of the original documents.

## Application fee

The filing fee is provided under SEC Memorandum Circular No. 9, series of 2021

The foreign CIS shall be subject to the following fees:

Description	Fee
For every application to the Commission for recognition of a foreign collective investment scheme (includes Prospectus registration)	Php 135, 000.00
For registration of new <sup>8</sup> or updated prospectus	Php 35,000.00

## Confirmation of streamlined authorisation

CIS Operators will be informed in writing and electronic mail as to the outcome of an application for recognition. The email notification will be sent to the email addresses provided in the application letter.

## B. Details of the information in the offering document required to be disclosed to investors

### Full prospectus

The offering document of a foreign CIS must comply with the relevant disclosure requirements provided under (**Annex B** of SEC MC No. 9, Series of 2021) as well as other applicable disclosures under Rule 4.2 of ICA-IRR or any of its amendments.

The CIS Operator must prepare and submit to the Commission upon filing the application either:

- a. the latest version of the offering document/prospectus as approved by the Home Regulator together with a wrapper which contains the additional information required to be disclosed to investors under these Rules and any other applicable Philippine law or regulation; or
- b. another offering document/prospectus (in addition to the original offering document/prospectus approved by Home Regulator) which complies with the disclosure requirements under these Rules and any other applicable Philippine laws or regulations.

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<sup>8</sup> If the Prospectus has an expiry date, the CIS Operator should register a new prospectus

A Product Highlight Sheet should be prepared by the CIS Operator and furnished to investors. The contents and format shall be prepared in accordance with the template provided under **Annex C** of SEC MC No. 9, Series of 2021

C. Lodgement fee

Not applicable

D. Requirements for any documents to be disclosed on an on-going basis with the SEC Philippines (the Host Regulator) or distributed to investors

The CIS Operator or its authorized representative must submit the following reports to the Commission:

- 1) **Updated Prospectus** to be submitted within fifteen (15) calendar days from the time it was updated and/or approved by the Home Regulator or after lodgement with the Home Regulator (whichever is applicable)
- 2) **Annual Reports** and **Interim Reports** must be submitted in the same manner and within the same period that it is required to be filed with the Home Regulator.
- 3) A **current report** on **SEC Form 17-C**, as may be necessary, to make a full, fair and accurate disclosure to the public of every material fact or event that occurs which would reasonably be expected to affect the investors' decisions in relation to those securities within five (5) calendar days after the occurrence of the event reported, unless substantially similar information as that required by **SEC Form 17-C** has been previously reported to the Commission by the CIS Operator or its authorized representative.
- 4) A **monthly report** within the same period that it is required to be submitted to the Home Regulator. If not required in the Home Jurisdiction, within thirty (30) days from effectivity of the Order **recognizing** the Qualifying **CIS**, and within the first ten (10) days of every month thereafter, the CIS Operator or authorized representative shall submit to the Commission a Monthly Issuance and Redemption Report of units, showing the additional information below if not yet contained in the monthly report submitted to the Home Regulator.
  - a. The number of units outstanding at the beginning of the month;
  - b. The number and total amount/value of units sold during the month
  - c. The number and total amount/value of units redeemed during the month

- d. The number of units outstanding at the end of the month
- e. The percentage of the outstanding shares owned by Filipinos as of the end of the month
- f. Number of accounts or investors; and
- g. Average net asset value as of the end of the month.

For items (a-d) provide the information for Philippine investors only and include the percentage based on the total sales and redemptions for the month.

*Note: All reports to be submitted to the Commission must be in the English language. In case a foreign CIS, its CIS Operator or local representative submits to the Commission a document which is not in English, an accurate translation thereof in the English language must also be filed.*

#### E. Disclosure requirement the NAV

Rule V(B)(g) of SEC M.C No 9 of 2021 requires the NAV per unit/share of the foreign CIS be made publicly available on a daily basis. The Commission will rely on the requirements of the home regulator of a foreign fund in relation to the decimal places as well as the channels of disclosure.

#### F. The requirements to notify the significant changes or breaches

##### Significant changes

Pursuant to the Standards of Qualifying CIS, a Qualifying CIS Operator must use its best efforts to provide, without prior request, the Home Regulator and the Host Regulator with any information that it considers to be of assistance to the Home Regulator and the Host Regulator. In particular, the CIS Operator must inform the Home Regulator and the Host Regulator in advance (where practicable) or as soon as possible thereafter of:

- a) any material event that could adversely impact a Qualifying CIS or Qualifying CIS Operator. Such events include known changes in the operating environment, operations, financial resources, management, or systems and control of a Qualifying CIS or Qualifying CIS Operator;
- b) any regulatory changes that may have a significant impact on the operations or activities of a Qualifying CIS or a Qualifying CIS Operator; and
- c) any enforcement or regulatory action or sanction that has been or may be taken by the Home Regulator or the Host Regulator, including revocation, suspension of relevant licences, the Approval concerning the Qualifying CIS, and the licensing or registration concerning the Qualifying CIS Operator.

In addition, a Qualifying CIS Operator is required to inform existing participants of any significant changes to be made to the ASEAN CIS no later than one month before the change is to take effect; where the change cannot be determined in advance, unitholders must be informed as soon as practicable.

## Breaches

The Commission should be notified of any breach for which the Home Regulator and trustee/fund supervisor have been notified

## G. Appointing local intermediaries

*SEC MC No. 9, Series of 2021* provides that the CIS Operator must appoint one or more local distributors for the purpose of offering, marketing or distributing a foreign fund that is to be offered in the Philippines under the ASEAN CIS Framework.

Any of the following can be appointed by the CIS Operator as the Local Distributor provided each local distributor has at least one (1) Certified Investment Solicitor (CiSol):

<b>Local Distributor</b>	<b>Description</b>
1. Mutual Fund Distributor	A juridical person duly licensed or authorized by the Commission to distribute shares or units of an Investment Company
2. Fund Manager	A registered entity with an Investment Company Adviser license and a separate license as a Mutual Fund Distributor.
3. Securities Broker/Dealer	An entity duly registered with the Commission as securities broker/dealer

*Note: A single entity can act both as local representative and distributor provided it possesses all the licenses required as mentioned above.*

### **Role and functions of a local distributor**

The responsibility of the local distributor is to offer, market or distribute the foreign CIS in the Philippines and will be required to keep a register of investors that will be readily available to the Commission.

The local distributor should ensure compliance with the Suitability Rule under Rule 5.2.4 of the ICA-IRR.

## H. Appointing a local representative

SEC M.C. No. 9, series of 2021 requires the CIS Operator to appoint a local representative in the Philippines in relation to each foreign CIS that is to be offered, marketed and distributed in the Philippines.

Any of the following can be appointed by the CIS Operator as its representative:

<b>Representative</b>	<b>Description</b>
1. Mutual Fund Distributor	A juridical person duly licensed or authorised by the Commission to distribute shares or units of an Investment Company
2. Fund Manager	A registered entity with an Investment Company Adviser license
3. Securities Broker/Dealer	An entity duly registered with the Commission as securities broker/dealer

### **Role and functions of a local representative**

To represent and act on behalf of the foreign CIS and its CIS Operator for all matters relating to that foreign CIS such as, but not limited to, the following:

- a. Submit or make available to the Commission and investors any report or information relating to the foreign CIS, the CIS Operator and any other information as may be required by the Commission from time to time
- b. Facilitate communication between the investors and CIS Operator/trustee/fund supervisor/custodian
- c. Inform and provide investors and the Commission with relevant reports, documents, and information involving the foreign CIS
- d. Keep a consolidated registry of investors in the Philippines which should be readily available to the Commission
- e. Make available for the Commission and public inspection at its registered office in the Philippines, the following:
  - i. The current offering document and constitutive document of foreign CIS
  - ii. The audited financial statements for the last two financial years and the latest interim financial statements (if applicable)
  - iii. Each material contract and any other document involving the foreign CIS
- f. Notify the Commission within five (5) calendar days from the occurrence of the event of any of the following:

- i) any material change involving the foreign CIS or parties involved in the foreign CIS
  - ii) any material action or order taken by the Home Regulator against the parties involved in the foreign CIS
  - iii) any instance of Home Regulator's order to suspend the redemption or dealing of units in the CIS
  - iv) revocation of authority or license to offer the CIS in the Home Jurisdiction
  - v) commencement and completion of the termination or winding up of the foreign CIS
  - vi) any change in the registered address or any other contact details of the foreign CIS
  - vii) any other material information involving the foreign CIS and parties involved in its operation
- g. Ensure that the NAV per unit/share of the foreign CIS is made publicly available on a daily basis
- h. Represent the operator of the foreign CIS in any dispute resolution scheme that the said operator may be subject to

**Replacement of representative**

- 1) If the position of the local representative becomes vacant, the offering, marketing or distribution of the foreign fund must immediately cease and such fact must be immediately reported to the Commission within seven (7) business days from the occurrence of the event.
- 2) The CIS operator must appoint a new local representative within 30 calendar days from the date of the vacancy, or any such period as may be allowed by the Commission.
- 3) The CIS operator must immediately notify the Commission of such appointment.

**I. Compensation where valuation errors happen<sup>9</sup>**

A foreign CIS operator of an ASEAN CIS must comply with the requirements under the Standards of Qualifying CIS regarding valuation errors

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<sup>9</sup> The reason to include I. in the national regulations is that the ACMF specify that where valuation errors happen, the compensation of a CIS operator must be made in compliance with the rules specified by the Home Regulator.

J. Termination of offering of units of ASEAN CIS in the Philippines (the Host Jurisdiction)

Within five (5) days from approval of termination of offering of units, a foreign CIS Operator or its representative must inform the unit holders of an ASEAN CIS and the Commission on the termination of offering of units of the ASEAN CIS in the Philippines pursuant to SEC M.C No. 9 series of 2021.

K. Tax issues/Tax treatment on ASEAN CIS

**Tax Considerations for Qualifying CIS Operator:**

A foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines.

The terms and conditions provided in the Double Taxation Agreements (DTA) by the Philippines and the Home Jurisdiction may also affect the taxability of the CIS Operator. Hence, the CIS Operator is advised to independently verify the matter with the Bureau of Internal Revenue (BIR).

**Tax Considerations for investors of an ASEAN CIS:**

*General Principles of Income Taxation in the Philippines* (Sec. 23 of Republic Act No. 8424, as amended)

- A resident citizen of the Philippines is taxable on all income derived from sources within and without the Philippines
- A nonresident citizen is taxable only on income derived from sources within the Philippines
- An alien individual, whether a resident or not of the Philippines, is taxable only on income derived from sources within the Philippines;
- A domestic corporation is taxable on all income derived from sources within and without the Philippines; and
- A foreign corporation, whether engaged or not in trade or business in the Philippines, is taxable only on income derived from sources within the Philippines.

The terms and conditions provided in the Double Taxation Agreements (DTA) by the Philippines and the Home Jurisdiction may also affect the taxability of the investor. Hence, the CIS Operator is advised to independently verify the matter with the Bureau of Internal Revenue (BIR).

*Note: This does not constitute tax advice and investors should seek guidance from the tax professionals.*

L. Foreign Exchange Control issues/ impact on ASEAN CIS

**1. Outward Investments**

Philippine residents may invest in any instrument issued by non-residents requiring settlement in Foreign Exchange (FX) without prior Bangko Sentral ng Pilipinas (BSP), where such investments are funded with:

- (a) the investors' own FX deposited in their foreign currency deposit accounts (whether offshore or onshore); and/or
- (b) FX obtained from sources other than authorized agent banks (AABs) and/or their subsidiary/affiliate forex corporations (AAB forex corps), pursuant to Section 43 of the Manual of Regulations on Foreign Exchange Transactions (FX Manual), as amended.

For amounts in excess of USD60 million or its equivalent in other foreign currency per investor per year or per fund per year, purchase of FX for outward investments shall be subject only to submission of prior notification to the BSP.

With regard to non-residents (including aliens who are living in the Philippines for less than a year), please be advised that their outward investments may not be funded by FX resources of the banking system as they are expected to have their own FX to finance their transactions.

## **2. Cross Border Transfer of Local Currency**

Under Section 4 (1) of the FX Manual, a person may import or export, or bring with him into or take out of the country, or electronically transfer, legal tender Philippine notes and coins, checks, money order and other bills of exchange drawn in pesos against banks operating in the Philippines in an amount not exceeding PHP50,000 without prior authorization by the BSP.

Amounts in excess of said limit shall require prior written authorization from the BSP.

The term "electronic transfer" as used herein shall mean a system where the authority to debit or credit an account (bank, business or individual) is provided by wire, with or without a source document being mailed to evidence the authority.

For more information and for a copy of the BSP's Manual of Regulations on Foreign Exchange Transactions as of December 2020, please visit the link below:

<https://www.bsp.gov.ph/Regulations/MORFXT/MORFXT.pdf>

*Note: It is important that the Qualifying CIS or CIS Operator keep abreast and be updated of any amendments or changes on the regulations as may be issued by the Bangko Sentral ng Pilipinas (BSP) regarding the foreign exchange transactions as mentioned above.*

## Appendix VI

### List of ACMF members' websites

- Malaysia - [www.sc.com.my](http://www.sc.com.my)
- Singapore - [www.mas.gov.sg](http://www.mas.gov.sg)
- Thailand - [www.sec.or.th](http://www.sec.or.th)
- Philippines - [www.sec.gov.ph](http://www.sec.gov.ph)