

Handbook for CIS Operators of ASEAN CISs

August 25, 2014

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Introduction

Background

At the 13th 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 12th 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 October 2013, ACMF announced that the Securities Commission Malaysia, the Monetary Authority of Singapore and the Securities and Exchange Commission, Thailand have signed a Memorandum of Understanding (“MOU”) to establish an ASEAN CIS framework for cross-border offerings of CIS (“ASEAN CIS Framework”). The ASEAN CIS Framework allows the units 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/ACMF/upload/standards_of_qualifying_cis.pdf.

As the ASEAN CIS Framework is a new initiative, 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 who are seeking to offer their CIS under the ASEAN CIS Framework. It covers:

- the steps that CIS Operators 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 a 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
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 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 a 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 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 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, 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 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 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 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 must first apply to the Host Regulator for the ASEAN CIS to be Approved for public offer in that jurisdiction.

The Qualifying CIS Operator 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 and the trustee/fund supervisor; 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 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 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

The ASEAN CIS Application Form and all accompanying documents submitted to the Host Regulator must be in, or translated into, English. and where applicable, must be the latest versions. (unless the Host regulator requires such documents to be translated into official language of the Host Jurisdiction). 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 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 for documents that are translated into English from another language (or the official language of the Host Jurisdiction, as the case may be) or vice versa. Where required, the Host Regulators may also require the Qualifying CIS Operator 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 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 subject to the Host Regulator's discretion.

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. The expected timeframe to review the application under the ASEAN CIS Framework in each Host

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

Box 8: The right of refusal by Host Regulator

A Host Regulator retains the right to decline an application from a Qualifying CIS Operator.

Explanatory text

The Host Regulator may decline/reject an application from a Qualifying CIS Operator 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 submits or has been found to have submitted false or misleading information to either the Home Regulator or Host Regulator;
- the Qualifying CIS Operator 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 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 the trustee/ fund supervisor of the CIS fails or has been found to have failed to comply with any resolution passed by unitholders; or
- the Qualifying CIS Operator 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 of the ASEAN CIS to appoint a local representative who is regulated by or acceptable to the Host Regulator.

Explanatory text

The Qualifying CIS Operator 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 regulated by or acceptable to, the Host Regulator. The local representative is responsible for various functions which may include:

- facilitating dealing in units;
- publishing of unit prices;
- sending of reports to unitholders;
- inspection of constitutive documents;
- maintaining a register of unitholders in the Host Jurisdiction; and
- representing the Qualifying CIS Operator in any dispute resolution scheme in the Host Jurisdiction.

The Qualifying CIS Operator 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 is expected to keep the ASEAN CIS' offering document/prospectus accurate and up-to-date.

Where a Qualifying CIS Operator 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 should ensure that the offering document/prospectus and the information of an ASEAN CIS are up-to-date.

In addition, a Qualifying CIS Operator 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 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 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 Audit

A Qualifying CIS Operator is required to appoint an independent auditor to conduct an annual audit of the Qualifying CIS Operator covering, at a minimum, the compliance with the Standards of Qualifying CIS. The Qualifying CIS Operator should provide the auditor's report to the trustee / fund supervisor, the Home Regulator and the Host Regulator.

Explanatory text:

Under the Standards of Qualifying CIS, a Qualifying CIS Operator is required to appoint an independent auditor to conduct an annual audit of the Qualifying CIS Operator covering, at a minimum, the compliance with the Standards of Qualifying CIS. In addition, the Qualifying CIS Operator is required to provide the independent auditor's report to the trustee/fund supervisor of the ASEAN CIS, the Home Regulator and the Host Regulator.

The annual audit must be performed in the Home Jurisdiction by an auditor who is regulated or registered with the accounting regulatory body or Home Regulator (where applicable) in that Home Jurisdiction.

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 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 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 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

Standard letter issued by the Home Regulator to a Qualifying CIS Operator

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.

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

EITHER unit trust OR legal entity¹ OR any other structure
acceptable to participating jurisdictions

* Please delete where inapplicable.

¹ **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

(name and address of the Qualifying CIS Operator)

and by the sub-manager (if applicable)

(name and address of the sub-manager)

Signature: _____

(Name of Authorised Signatory of ASEAN Home Regulator)

(Designation of Authorised Signatory)

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 entity² unit trust 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

The investment objective of the ASEAN CIS:

² **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.

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:

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’s representative

Arrangement for distribution

Units 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) :

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:

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

- Yes No

Registered office and the address:

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:

Part D: Trustee/ Fund supervisor

Name of Trustee/ Fund supervisor:

Address of registered office:

Email address: _____

Tel No.: _____ Fax No.: _____

Part E: Custody of Assets

Same as Trustee/Fund supervisor
information below]

No [if answer “no”, please provide further

Name of custodian

Address of registered office:

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)

(* The application form shall be signed by an authorised signatory of the Qualifying CIS Operator of the ASEAN CIS. 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 and the trustee/fund supervisor 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/trustee/fund supervisor)

_____ 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 documents³ 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.

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/trustee/fund supervisor)

the Board of Directors of the said corporation on _____.
(date of resolution)

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

Dated this _____ day of _____ 20____ .

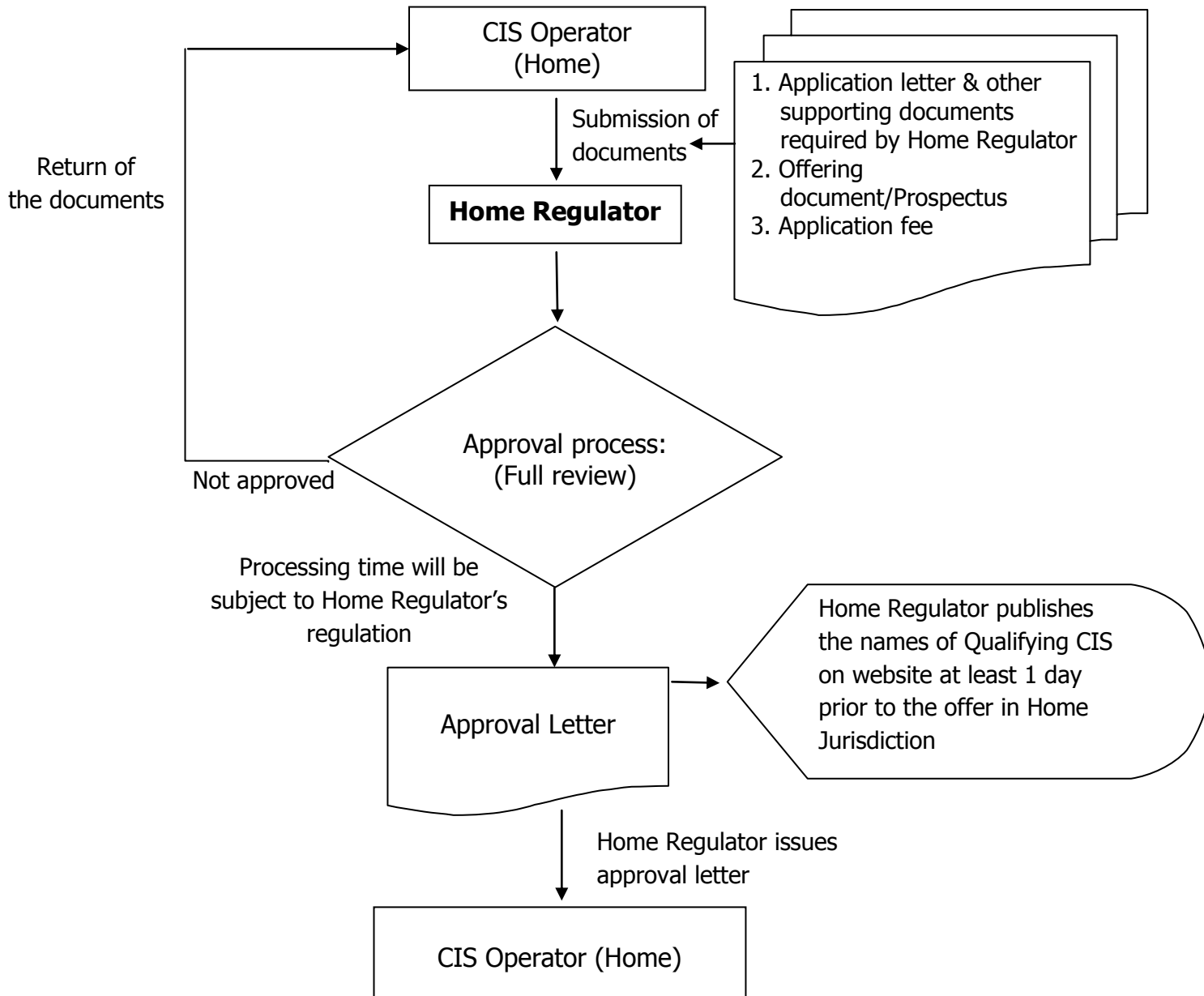
Signature: _____

Name: _____

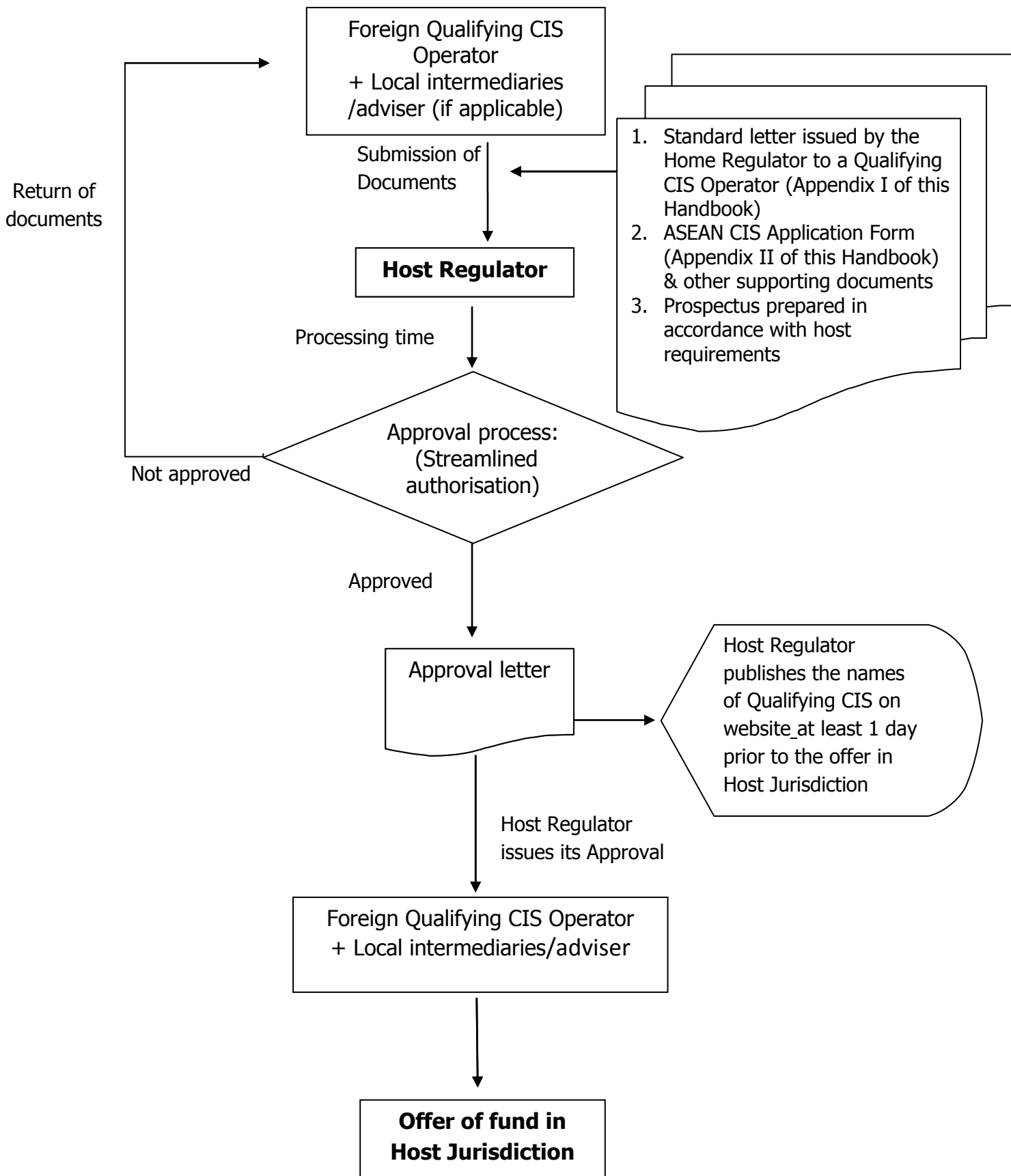
* Please delete where inapplicable.

ASEAN CIS approval process

A. Home Regulator



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.

(Host Jurisdiction)

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

(Host Jurisdiction)

Method for submitting applications

Application to Securities Commission Malaysia (SC) must be made by submitting hardcopies of the relevant documents.

Place and time for submitting the application

1) Submission of an application must be addressed to–

The Chairman

Securities Commission Malaysia

3 Persiaran Bukit Kiara

Bukit Kiara

50490 Kuala Lumpur

(Attention: Executive Director, 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 after 5.00.p.m. will be deemed to be received on the following business day.

Supporting documents

The following documents must be submitted to SC:

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

1) *Standard letter* issued by the Home Regulator to a Qualifying CIS Operator (as per Appendix I of this Handbook);

2) *ASEAN CIS Application Form* (as per Appendix II of this Handbook);

3) Undertaking to submit to the non-exclusive jurisdiction of the Host Jurisdiction's courts (as per Appendix III of this Handbook);

4) *SC/FF – New Form**;

- 5) A cover letter (as per paragraph 8.11(a) of the OMD Guidelines*);
- 6) 2 copies of constitutive document (as per paragraph 8.11(b) of the OMD Guidelines);
- 7) A declaration letter (as per paragraph 8.11(c) of the OMD Guidelines);
- 8) An undertaking (as per 8.11(d) of the OMD Guidelines);
- 9) A copy of letter appointing the representative and registered distributor for the fund (as per paragraph 8.11(g) of the OMD Guidelines);
- 10) An undertaking from the representative to SC (as per paragraph 8.11(h) of the OMD Guidelines);
- 11) A duly completed *Submission Checklist –UFF (for unlisted foreign fund) or LFF (for listing of foreign fund)**

B) Application to register the prospectus of the fund under Section 232 of the CMSA.

- 1) Documents as stipulated in Part IV of the CIS Prospectus Guidelines*
- 2) Registrable prospectus prepared in accordance with the CIS Prospectus Guidelines.
- 3) A duly completed *Prospectus Registration Checklist – UF (for unlisted foreign fund) or LF (for listing of foreign fund)**

POST APPROVAL

C) Lodgement of prospectus (the prospectus of the fund must be lodged with the SC before the date of issue of the prospectus)

- 1) Documents as stipulated in Chapter 4 - Part IV of the CIS Prospectus Guidelines*
- 2) A duly completed *Lodgement Checklist - Prospectus**

D) Product Highlights Sheet (PHS)

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

E) Fees for A), B), C) and D) above

- 1) A duly completed *Fee Computation Checklist**
- 2) Cheque payable to “Securities Commission” or ‘Suruhanjaya Sekuriti’.

Note:

* indicates that a softcopy can be obtained from www.sc.com.my

- CMSA refers to the Capital Markets and Services Act 2007

- OMD Guidelines refers to the *Guidelines for the Offering, Marketing and Distribution of Foreign Funds*.

- CIS Prospectus Guidelines refers to the *Prospectus Guidelines for Collective Investment Schemes*.

- Sales Practices Guidelines refers to the *Guidelines on Sales Practices of Unlisted Capital Market Products*.

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.

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

Application fee

Please refer to *Capital Markets and Services (Fees) Regulations 2012** 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 highlighted under “Application fee” section

D. Requirements for any documents to be disclosed on an on-going basis with
Malaysia or distributed to investors
(the host regulator)

The SC does not prescribe the types nor the format of the report of a foreign fund to unit holders e.g. annual or interim report. The SC will rely on the requirements of the home regulator of the fund and expects such reports produced for the fund to be delivered to unit holders in Malaysia.

The relevant requirements for disclosure to unit holders and the SC are in the OMD Guidelines and are reflected as follows:-

Paragraph 6.06(e) of the OMD Guidelines requires information on the fund be provided to unit holders in a timely and efficient manner, including any periodic reports, notices and public announcements issued.

Paragraph 6.06(f) of the OMD Guidelines requires the same information to be sent to SC concurrently.

Chapter 9 of the OMD Guidelines requires statistical reporting on the fund to SC on a monthly basis.

E. Disclosure requirement the NAV

Paragraph 6.06(k) of the OMD Guidelines requires the NAV per unit of the fund to be made publicly available daily. The SC 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

In this regards, the SC does not have an exhaustive list of significant changes/events where unit holders/investors and/or SC must be informed. A Qualifying CIS Operator is responsible to ensure compliance with the requirements under the CMSA.

Paragraph 6.06(h) of 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 by the operator are permitted to offer, market or distribute the fund in Malaysia (as per paragraph 7.01 of the OMD Guidelines).

H. Appointing a local representative

The following persons have currently been expressly specified under paragraph 6.04 of the OMD Guidelines as eligible to be appointed as a local representative to the fund:

- (a) Holder of a CMSL;
- (b) Registered distributor;
- (c) Audit firm registered with the Audit Oversight Board;
- (d) Trustee registered pursuant to guidelines issued by the SC.

I. Compensation where valuation errors happen⁴

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

“Incorrect Valuation/Pricing

⁴ 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 strictest regulation stipulating the threshold to compensate to investors of the jurisdictions where the ASEAN CIS is offered.

10.42 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.

10.43 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.

10.44 Notwithstanding clause 10.43, 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.”

As prescribed by the Federation of Investment Managers Malaysia (FIMM) (Malaysia’s unit trust industry self-regulatory body), 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 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.

J. Termination of offering of units of ASEAN CIS in Malaysia
(the host country)

A foreign CIS Operator or its representative must inform unit holders 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.

- Effective 1 April 2015, Goods and Services Tax will be implemented in Malaysia and foreign CIS Operator and foreign ASEAN CIS are advised to seek the opinion of GST experts with regards to its implications

L. Foreign Exchange Control issues/ impact on ASEAN CIS

The proceeds raised from the offering of a RM denominated ASEAN CIS in Malaysia (“RM CIS”) can be fully utilised abroad subject to the following requirements set by the Central Bank of Malaysia (Bank Negara Malaysia)

- 1) RM CIS must be offered only in Malaysia;
- 2) All RM settlement and management of RM exposure arising from the issuance of CIS shall be undertaken with an onshore bank;
- 3) Where proceeds from the RM CIS will be invested abroad, such proceeds shall be converted to foreign currency with an onshore bank before remittance abroad;
- 4) Proceeds from the RM CIS shall not be used for investment in RM derivatives or RM instruments offered offshore;
- 5) Resident and non-resident fund managers meet the following eligibility criteria as set out by SC to fully utilise the RM CIS proceeds for investment abroad:
 - (i) CIS is offered in at least 2 other foreign jurisdictions;
 - (ii) 2/3 of CIS is raised outside of Malaysia;
 - (iii) The requirement in (ii) to be complied at all times; and
 - (iv) Submit a compliance report on a monthly basis to SC.

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 -

<http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=DocId%3A%2225de2ec3-ac8e-44bf-9c88-927bf7eca056%22%20Status%3Ainforce%20Depth%3A0;rec=0;whole=yes>

SFR-

<http://statutes.agc.gov.sg/aol/search/display/view.w3p;ident=dbc9e2c8-fc3e-49c1-9453-ded843d0789d;page=0;query=CompId%3A57ad6ce5-8ee3-4bf7-b755-44c69531ad77%20ValidTime%3A20130710000000%20TransactionTime%3A201307100000;rec=0#Sc3->

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 website at <http://www.mas.gov.sg> (under OPERA) or at <http://wwwopera.mas.gov.sg>. 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: http://www.mas.gov.sg/~media/resource/legislation_guidelines/securities_futures/sub_legislation/CIS%20Practice%20Note%20%20amended%20for%20OPERA%20%2029%20Jul%202014.pdf.

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 (as set out in Appendix I of this Handbook);
- 4) duly signed copy of the undertaking by the Qualifying CIS Operator and the trustee/fund supervisor 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

In relation to offers of units in an unlisted CIS and exchange-traded fund, a Product Highlights Sheet should be prepared by issuers and furnished to investors. Please refer to the Guidelines on the Product Highlights Sheet for guidance in preparing a Product Highlights Sheet. The Guidelines may be accessed at:

http://www.mas.gov.sg/~media/resource/legislation_guidelines/securities_futures/sub_legislation/GuidelinesOnPHS.pdf

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 operator of a recognised scheme 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 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 requirement 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 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 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

As set out in the Second Schedule to the Financial Advisers' Act (Cap. 110) ("FAA"), the distribution / marketing of CIS is a regulated activity under the FAA. Under section 6 of the FAA, corporations which distribute or market CIS are required to hold a financial adviser's ("FA") licence under the FAA unless otherwise exempted (as specified in section 23 of the FAA). A list of holders of FA licence and exempt financial advisory firms can be found on MAS' financial institutions directory which is available on MAS website (<https://secure.mas.gov.sg/FID/>).

Individuals who are employed by or acting for a corporation authorised to distribute / market CIS are required to be an appointed or provisional representative of the corporation under section 23B of the FAA.

Licensed / exempt financial advisers and their representatives are subject to the relevant business conduct rules as set out in the FAA as well as the Regulations, Notices and Guidelines issued under the FAA. The links to the FAA and Regulations are appended below:

FAA

<http://statutes.agc.gov.sg/aol/search/display/view.w3p?page=0;query=DocId%3Ab2d0479b-1890-4957-8e00-7b87fc413495%20Depth%3A0%20Status%3Ainforce;rec=0;whole=yes#pr23D-he->

Financial Advisers Regulations

<http://www.mas.gov.sg/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Financial-Advisers/Regulations/2013/Financial-Advisers-Regulations.aspx>

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 CIS 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 happen⁵

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 units of ASEAN CIS in Singapore (the Host Jurisdiction)

Where a CIS 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 295(1) of the SFA.

K. Tax issues/Tax treatment on ASEAN CIS

Tax considerations for ASEAN CIS/Qualifying CIS Operator

The offering/marketing of a 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.

⁵ The reason to include G. 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 strictest regulation stipulating the threshold to compensate to investors of the jurisdictions where the ASEAN CIS is offered.

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.

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 who are interested in offering collective investment scheme (“CIS”) under the ASEAN CIS Framework and 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 offer of an ASEAN CIS 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 regulation in Thailand.

Offers 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 Securities and Exchange Commission, [No. KorChor. 3/2557](#), Re: Rules on Units of Foreign Collective Investment Scheme Exempted from the Provisions of Public Offering for Sale of Securities;
2. Notification of the Capital Market Supervisory Board, [No. TorThor. 7/2557](#), Re: Rules, Conditions and Procedures for Selling, Repurchasing and Redeeming Units of Foreign Collective Investment Scheme;
3. Notification of the Office of the Securities and Exchange Commission, [No. SorOr. 6/2557](#), Re: Verification of Foreign Collective Investment Scheme and Announcement of Qualifying Scheme;
4. Notification of the Office of the Securities and Exchange Commission, [No. SorNor. 3/2556](#), Re: Prospectus and offering documents for Mutual Fund; and
5. Notification of the Office of the Securities and Exchange Commission Notification, [No. SorKhor/Nor. 23/2552](#), Re: Rules, Conditions and Procedures for Management of Funds.

The CIS could not be offered to investors in Thailand unless it has been approved by the SEC. Furthermore, the CIS Operator must prepare the ASEAN CIS fact sheet in accordance with the Notification of the Office of the Securities and Exchange Commission, *No. SorNor. 3/2556* (“**Notification No. SorNor. 3/2556**”) and it must be approved by the SEC prior to the offering of ASEAN CIS in Thailand.

- 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 of Foreign Collective Investment Schemes (“**Application Letter**”) and the supporting documents shall be submitted 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 and copied to rashnee@sec.or.th and sireetho@sec.or.th .

Place and time for submitting the application

Hard copies of the applications 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” - Corporate Finance Debt and Other Products 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 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 supporting documents as outlined under Clause 5 (1) and (2) of the Notification of the Office of the Securities and Exchange Commission, *No. SorOr. 6/2557* (“**Notification No. SorOr. 6/2557**”).

For ease of reference, the supporting documents specified by Notification *No. SorOr. 6/2557* includes:

- (1) Confirmative letter issued by Home Regulator which demonstrates that ASEAN CIS is legally established under the law of the Home Regulator’s jurisdiction and certified for (i) the correctness of the information which is in accordance with *Part I : Qualifications of the CIS Operator, Trustee/Fund Supervisor, and requirements relating to Approval, Valuation, and Operational Matters* and *Part II : The Product 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*; and (ii) obtaining an approval from the Home

Regulator for offering for sale of the units of ASEAN CIS to general investors in the jurisdiction where the ASEAN CIS is established. The sample of this letter could be found in **Appendix I** of this Handbook;

- (2) Application Letter issued by the CIS Operator as per **Appendix II** of this Handbook;
- (3) The letter issued by the CIS Operator which certifies that the units of ASEAN CIS have been or would be offered for sale in Home Regulator's jurisdiction, and have not been under the banning order of sale;
- (4) The affirmative letter by the CIS Operator that the documents used for offer for sale of units of ASEAN CIS will be disclosing and distributing to investors in Thailand at the same time as those being distributed in the Home Regulator's jurisdiction;
- (5) Evidence issued by CIS Operator on the appointment of (i) a brokerage firm to perform duty as local intermediary responsible for selling, repurchasing and redeeming units of ASEAN CIS in Thailand and (ii) a local representative in Thailand as the agent of CIS Operator to perform duty as specified by the Notification of the Office of the Securities and Exchange Commission, *No. KorChor.3/2557* ("**Notification No. KorChor. 3/2557**"). Please also see Part H and G of this Handbook for further details;
- (6) Fact sheet of ASEAN CIS prepared by a local intermediary, who is responsible for selling, repurchasing and redeeming units of ASEAN CIS in Thailand. The fact sheet must be prepared in Thai language and in accordance to the format required by Notification *No. SorNor. 3/2556* (click [here](#)). In addition, it must be certified by the CIS Operator or its local representative upon filing the application to the SEC; and
- (7) Documents in which the CIS Operator uses for the offering of units of ASEAN CIS (Prospectus) under the law of the jurisdiction wherein the Home Regulator is established. *[Please note that by virtue of Section 117 of the Securities and Exchange Act B.E. 2535 and Notification No. KorChor. 3/2557, **disclosure requirement** is subjected to the rules specified by the SEC. Please also see Part B. Full prospectus for further details.]*

In addition, the Undertaking to submit to the non-exclusive jurisdiction of the Host Jurisdiction's courts, as per **Appendix III** of this Handbook, shall also be submitted upon filing the application with the SEC.

Related regulations :

- Notification [No. SorOr. 6/2557](#)
- Notification [No. KorChor. 3/2557](#)
- Notification [No. SorNor. 3/2556](#)

Language of documents submitted by CIS Operator

Application Letter, as per **Appendix II**, of this Handbook shall be in English.

The offering and supporting documents which the CIS Operator submitted to the SEC may be in Thai or English language. However, it is essential that the fact sheet of ASEAN CIS which is to be distributed to the investors must be prepared in Thai language.

Signed declaration/ Certification of documents

The SEC requires the CIS Operator or its local representative to sign all supporting documents which are attached to the application letter in order 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 its local representative must also certify that the translated documents (if any) are true and accurate translations of the original documents.

Specifically, two particular documents, namely, the fund prospectus and fact sheet of ASEAN CIS, must be co-signed by the CIS Operator or its local representative and the local intermediary upon filing the application with the SEC.

Important note: The authorized signatures/initials must be placed on each and every page of the supporting documents submitted to the SEC.

Application fee

The application fee is 100,000 baht (One hundred thousand baht) net of VAT (7%). Payment can be made in the form of cash, bank cheques, or corporate cheques payable to “The Securities and Exchange Commission”.

Payments must be made in person at the Cashier's Office on the 13th Floor of the SEC Building with the official hours as follows:

Monday to Friday (business days)

Morning: 8.30 a.m. to 12.00 p.m. / Afternoon: 1.00 p.m. to 3.30 p.m.

Please specify the name of **ASEAN CIS**, which the payment is made for, to the cashier. A receipt will be provided. Please retain it for further reference.

Confirmation of streamlined authorisation

The timeframe for the review of application for streamlined authorization of the ASEAN CIS is 30 days after the completed documents have been received by the SEC.

If the application is successful, the SEC will issue an Approval Letter to the CIS Operator or its local representative. The hard copy of the Approval Letter can be collected from the Document Centre of the SEC. In this regard, the Approval Unit of the Corporate Finance – Debt and other products Department will notify the CIS Operator or its local representative via email once it is ready for collection. This email notification will be sent to the email addresses that have been provided in the Application Letter.

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. KorChor. 3/2557*, by virtue of Section 117 of the Securities and Exchange Act B.E. 2535; and, (ii) Notification *No. SorNor. 3/2556*.

In this regard, the CIS Operator, local representative, or local intermediary 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 the additional information required to be disclosed to investors under the two aforementioned notifications, to the SEC upon filing the application.

Alternatively, instead of a wrapper, the CIS Operator, local representative, or local intermediary may wish to prepare **another 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. KorChor. 3/2557](#)
- Notification [No. SorNor. 3/2556](#)

Simplified prospectus/ Key Information Document/ Product Highlights Sheet/

Fund fact sheet

Clause 5 and 7 of Notification *No. SorOr. 6/2557* specifies that the fund fact sheet to be disclosed to Thai investors must be prepared in Thai language by the appointed local intermediary who is responsible for selling, repurchasing, and redeeming units of the ASEAN CIS. The format of the fund fact sheet shall be in accordance with the rules specified by the SEC, Notification *No. SorNor. 3/2556*. The sample of the format is available on the SEC's ASEAN CIS website (click [here](#)).

For ease of reference, Notification *No. SorNor. 3/2556* specifies that the information to be disclosed in the fund fact sheet must include, but not limited to, the following information:

1. General information:

- 1.1 Type of the ASEAN CIS;
- 1.2 Date on which the ASEAN CIS is established according to the law of the jurisdiction wherein the Home Regulator is established;
- 1.3 Home Regulator of the ASEAN CIS;
- 1.4 Name and contact address of the person responsible for undertaking of the ASEAN CIS;
- 1.5 Names and contact addresses of local representative in Thailand and the brokerage firm which performs duty as local intermediary responsible for selling, repurchasing and redeeming units of the ASEAN CIS;
- 1.6 Trading Frequency of the ASEAN CIS;

- 1.7 Dividend payment policy;
- 1.8 Guarantor of the ASEAN CIS (if any);
- 1.9 Total expenses which are collected from investors; and
- 1.10 Maturity of the ASEAN CIS (if any).
2. Flow chart demonstrating risk spectrum of the ASEAN CIS;
3. Investment policy:
 - 3.1 Assets wherein the ASEAN CIS invests, investment proportion and the top five highest investments;
 - 3.2 Strategies in managing the ASEAN CIS;
 - 3.3 Factors that have impacts on returns of the ASEAN CIS; and
 - 3.4 Benchmark of the ASEAN CIS.
4. Types of investors for whom the ASEAN CIS is appropriate;
5. Key risk factors including foreign exchange rate risk and country risk of the jurisdiction wherein the ASEAN CIS is established;
6. Past performances since the establishment of the ASEAN CIS;
7. Warnings relating to investment in the ASEAN CIS;
8. Warnings relating to the language used in the documents which are delivered or distributed to investors in case all documents are prepared in the English language and only the fact sheet of the ASEAN CIS is prepared for investors in the Thai language; and
9. Fee.

Important Note:

- The fund fact sheet of the ASEAN CIS must be prepared and certified the correctness by at least one appointed local intermediary upon filing the application with the SEC; and
- The local intermediaries are required to distribute the fund fact sheet to investors in Thailand, which must not be different from the draft filed with the SEC.

Related regulation :

- Clause 5 and 7 of [Notification No. SorOr. 6/2557](#)
- Notification No. SorNor. 3/2556, click [here](#) (format of the fund fact sheet)

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

By virtue of Section 117 of the Securities and Exchange Act B.E. 2535 and Notification No. KorChor. 3/2557, the SEC requires the CIS Operator to disclose the documents according to rules specified by the Office of the Securities and Exchange Commission Notification, No. SorKhor/Nor. 23/2552 (“**Notification No. SorKhor/Nor. 23/2552**”) 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**. This information 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 debt securities:
 - The names of the top 5 debt 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 debt 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 debt 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.
 - 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 Management Discussion and Analysis;

2.2.7 Trustee's opinion concerning the management of assets by the CIS Operator;

2.2.8 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.

2.3 A **semi-annual** report with the contents as outlined above from 2.2.1 to 2.2.7.

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 distributor's premises.

Related regulation :

- Notification [No. KorChor. 3/2557](#)
- Clause 40, 40/1, 40/2 and 43 of Notification [No. SorKhor/Nor. 23/2552](#)

E. Disclosure requirement 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

By virtue of Section 117 of the Securities and Exchange Act B.E. 2535 and Notification *No. KorChor. 3/2557*. The CIS Operator shall perform the following tasks as outlined in Clause 19 of Notification *No. SorKhor/Nor. 23/2552* 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 the Home Jurisdiction;
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. KorChor. 3/2557](#)
- Clause 19 of Notification [No. SorKhor/Nor. 23/2552](#)

F. The requirements to notify the significant changes or breaches

Significant changes

According to the Notification of the Capital Market Supervisory Board No. TorThor. 7/2557 (“**Notification No. TorThor. 7/2557**”), the CIS Operator is required to notify the SEC and the investors in Thailand of significant changes that are related to both the CIS Operator and the ASEAN CIS.

Significant changes to CIS Operator

The followings are example of the changes that are required to notify the SEC 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.

Related regulations:

- Notification [No. TorThor. 7/2557](#)

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 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 Operator 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 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 regardless of whether or not the Home Regulator allows further offering in the Home Jurisdiction.

G. Appointing local intermediaries

Local intermediaries

The person whom the SEC permits to be local intermediaries of an ASEAN CIS must be entities who have been granted a brokerage license. The list of securities companies in Thailand who has obtained such a license 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. 7/2557* include:

1. The local intermediaries shall provide the service of selling, repurchasing, and redeeming units of ASEAN CIS to a client on condition that the units are in the announced list on the SEC's ASEAN CIS website which has been verified by the SEC under the Notification *No. SorOr. 6/2557*.
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 to the 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 period 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. SorOr. 6/2557*:
 - (a) Fund fact sheet (in Thai language and in the format specified by the SEC) and the annual report; and
 - (b) 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 order will not be placed; and
 - 4.2 Complying with the requirements as specified by the Notification of the Capital Market Supervisory Board, *No. TorThor. 35/2556* concerning the rules on giving investment advice and providing services related to selling, repurchasing, and redeeming of investment units. Please note that this Notification will come into force on 1st January 2015.
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. 7/2557* 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. 7/2557* 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.

8. The local intermediaries are required to disclose a comparison of CIS's performance and that of other CIS with the same investment objectives and in accordance with the rules specified by the SEC. Moreover, the highest, lowest, and average return of those funds, together with the fund's benchmark must also be disclosed. This regulation will come into force on 1st January 2015.

Related regulations:

- Notification [No. TorThor. 35/2556](#)
- Notification [No. TorThor. 7/2557](#)
- Notification [No. SorOr. 6/2557](#)

H. Appointing a local representative

According to Notification *No. KorChor. 3/2557*, 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. KorChor. 3/2557*; and
- d) Contacting with the ASEAN CIS registrar on behalf of unit holders in Thailand.

Thus, 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; and
4. 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. KorChor. 3/2557](#)

I. Compensation where valuation errors happen⁶

Where a valuation error/incorrect pricing occurs, *Part I : Qualifications of the CIS Operator, Trustee/Fund Supervisor, 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 strictest regulation/law** stipulating the threshold to compensate to investors of the jurisdictions in which the ASEAN CIS is offered.

Hence, the CIS Operator must compare the rules specified by Home Jurisdiction and that of the SEC to determine which is the strictest one.

For ease of reference, the **rules specified by the SEC**, Notification *No. SorKhor/Nor. 23/2552*, require the local CIS Operator to perform the following tasks where valuation errors occur:

1. In case where the selling price or redemption price of investment units is incorrect, if such error is **less than 0.01 Baht, or, 0.5 per cent** of the correct value or price, the CIS Operator shall prepare and submit the report to trustee/fund supervisor with the content and procedure as specified by the aforementioned Notification.

In addition, in case that the cause of incorrect value of the selling price or redemption price of investment units affects the next calculation of the value, the CIS Operator shall rectify the value from the date the incorrect value has been acknowledged.

2. In case where the selling price or redemption price of investment units is incorrect and the error is **greater than 0.01 Baht, or, accounts for more than 0.5 per cent of the correct value or price**, the CIS Operator shall proceed, remedy, and report within the period specified by the aforementioned Notification.

Related regulations:

- Notification [*No. SorKhor/Nor. 23/2552*](#)

⁶ The reason to include G. 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 strictest regulation stipulating the threshold to compensate to investors of the jurisdictions where the ASEAN CIS is offered.

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.

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 are allowed to invest in ASEAN CIS without limitation imposed at personnel/individual level. However, the Bank of Thailand (“**BOT**”) has been granted the authorization to the SEC to allocate foreign investment allotment within 50,000 million United States Dollar (“**USD**”). Hence, foreign investment allotment, including ASEAN CIS for retail investors, must be approved by the SEC. Local intermediaries need to seek the SEC approval and report electronically via FIA system (Foreign Investment Allotment) for each of their clients.
2. The CIS Operator may offer the units of ASEAN CIS in Thailand in either Thai baht (“**THB**”) or USD currency. However, the BOT has a strict policy on the transferring of THB to foreign jurisdictions. Therefore, if the CIS Operator chooses to offer the units of ASEAN CIS in THB, the local distributors will convert THB to USD in the amount equivalent to that being raised in Thailand.

Appendix VI

List of ACMF members' websites

- Malaysia – www.sc.com.my
- Singapore – www.mas.gov.sg
- Thailand – www.sec.or.th