

ASEAN CIS Framework - now operational

On 25 August 2014, the ASEAN Capital Markets Forum (ACMF) announced that the ASEAN CIS Framework (Framework) for cross-border offerings of collective investment schemes (CIS) is now operational in Malaysia, Singapore and Thailand (member jurisdictions).

Qualified fund managers are now able to offer CIS¹ constituted and authorised in their home jurisdiction to retail investors in other member jurisdictions under a streamlined authorisation process.

Handbook for CIS Operators

The regulators of the member jurisdictions have published a handbook to guide fund managers on the operational aspects of the Framework.

Qualifying as an ASEAN CIS

Assessment to be an ASEAN CIS by the home regulator

A Qualifying CIS Operator¹ who intends to offer a CIS in a host jurisdiction under the Framework must first apply for the CIS to be approved by its home regulator. In

¹ "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.

completing its assessment, the home regulator will review the following:

1. the qualifications of the CIS operator and trustee/fund supervisor;
2. the custody arrangements for the CIS' assets; and
3. compliance with product restrictions specified in the Standards of Qualifying CIS which is a common set of standards for the Framework adopted by the member jurisdictions.

Application to a host regulator

After obtaining the necessary approvals from the home regulator, the Qualifying CIS Operator must thereafter submit an application to the host regulator for the CIS to be approved for public offer in the host jurisdiction. The host regulator will review the application under a streamlined authorisation process.

Summary of operational aspects

- Initial assessment will be carried out by the home regulator and thereafter by the host regulator.
- Documents submitted to a host regulator must be in English.
- Offering of a CIS in a host jurisdiction must be done through a local distributor duly licensed or regulated in the host jurisdiction.
- A CIS must comply with on-going notification and disclosure requirements in both the home and host jurisdictions.
- A Singapore approved CIS must comply with the new Chapter 10 of the Code on Collective Investment Schemes.

Documents to be submitted to the host regulator

The following documents must be submitted to the host regulator together with the application form:

1. letter issued by the home regulator approving the CIS as an ASEAN CIS;
2. offering documents (which must be in compliance with the host jurisdiction's laws and regulations);
3. an undertaking to submit to the non-exclusive jurisdiction of the host jurisdiction which must be signed by the Qualifying CIS Operator and the trustee/fund supervisor; and
4. any other documents that the host regulator requires.

Language

The ASEAN CIS Operator must submit the offering document/prospectus of the CIS to the host regulator and to investors in English. A host regulator may, however, require the offering document/prospectus to be translated into the official language(s) of the host jurisdiction.

Medium for submitting applications to host regulator

The host regulator will prescribe the manner in which the application form and documents must be submitted.

Assessment by host regulator

In addition to the review of the application for approval of the 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 jurisdiction's discretion.

A host regulator retains the right to decline an application from a Qualifying CIS Operator under the following (non-exhaustive) circumstances:

1. the laws and regulations of the host jurisdiction have not been fully complied with;
2. the Qualifying CIS Operator submits false or misleading information to either the home or host regulator;
3. the Qualifying CIS Operator misrepresents or defrauds investors;
4. the Qualifying CIS Operator, the trustee/fund supervisor or the Qualifying CIS contravenes any obligations or provisions in the constitutive documents that are applicable to them;
5. the Qualifying CIS Operator or the trustee/fund supervisor of the CIS fail to comply with any resolution passed by unitholders; or
6. the Qualifying CIS Operator contravenes any laws, regulations, Standards of Qualifying CIS or administrative provisions imposed in either the host or home jurisdiction.

Appointment of local distributors and local representatives

The offering of a 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 CIS to appoint a local representative who is regulated by, or acceptable to, the host regulator.

On-going notification and disclosure requirements

Updating of offering document/prospectus

The Qualifying CIS Operator is expected to keep the 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 (unless it is not required under the laws and regulations of the host jurisdiction) also update the offering document/prospectus used in the host jurisdiction and file the updated document without delay with the host regulator.

On-going reporting in host jurisdiction

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.

On-going reporting will ensure that investors in the host jurisdiction have access to adequate and timely information on the CIS.

It is therefore important that the Qualifying CIS Operators familiarise themselves with the relevant on-going reporting laws and regulations of each host jurisdiction.

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 CIS.

The host regulator may require the Qualifying CIS Operator to provide prior notification to investors of significant changes to the CIS (e.g., 1 month).

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 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 CIS, the

home regulator and the host regulator.

New Chapter 10 of the Code of Collective Investment Schemes

In Singapore, the Monetary Authority of Singapore (MAS) introduced a new Chapter 10 of the Code on Collective Investment Schemes to implement the Framework in Singapore.

The MAS has prescribed, in the new Chapter 10 of the Code on Collective Investment Schemes, the requirements imposed on (i) a manager who wishes to offer a CIS in other member jurisdictions pursuant to the Framework; and (ii) a foreign

manager who wishes to offer a CIS in Singapore pursuant to the Framework.

Conclusion

After years of waiting for an Asian equivalent of Europe's successful UCITS platform for mutual funds, two different frameworks have emerged in 2013 (i.e., the Asia Region Funds Passport and the ASEAN CIS Framework, the former of which is still in the consultation phase).

The industry welcomes the launch of the ASEAN CIS Framework as the first Asian "funds passport" and an important step to create a more integrated regional funds market.

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