

Fund Marketing in Thailand under the ASEAN Collective Investment Scheme

The ASEAN Collective Investment Scheme (“ASEAN CIS”) aims at facilitating the crossborder sale of mutual funds across Malaysia, Singapore and Thailand.

It was launched on the 25th of August 2014 by Singapore, Malaysia and Thailand and it remains open to the other ASEAN countries to join. It is similar to the UCITS framework (Undertakings for Investment in Transferable Securities) of the EU. The ASEAN region represents a significant growth opportunity for the investment fund industry as it is one of the regions that have the highest savings rates in the world. However, the fragmentation of the regulatory approach across the region makes distribution of funds expensive or, in some cases, impossible. Fund managers based in Singapore and Malaysia can now offer ASEAN CIS authorized in their home jurisdiction to retail investors in Thailand under a streamlined authorization process, provided that the fund in question satisfies the common standards specified in the Standards of Qualifying CIS and the specific regulations imposed by the Securities and Exchange Commission of Thailand (the “SEC”).

1. Standards of Qualifying CIS

The Monetary Authority of Singapore, the Securities Commission of Malaysia and the SEC have adopted the Standards of Qualifying CIS (the “Standards”) that governs the cross-border offering of ASEAN CIS. The Standards sets out common rules on the qualifications of the fund manager, the criteria for a qualifying ASEAN CIS, the liquidity, valuation, eligible investments and the investment limits of the ASEAN CIS. They aim to provide a common playing field for asset managers and ensure a secured environment for investors across the region. The highlights of the Standards are set out below.

1.1 The Management Company

The Management Company (referred as the CIS Operator under the Standards) together with its related companies must have a track record in managing collective investment schemes for at least five years and have Assets Under Management (“AUM”) of at least US\$500 million globally. The Standards specifies that the AUM includes discretionary funds but excludes property funds or real estate investment trusts (commonly known as REIT). The Standards imposes rules on the organizational structure of the Management Company in line with the international standards of practices of the investment fund industry. The Standards stresses that the board members and the key executives of the Management Company must be of sufficiently good repute and experienced in relation to the financial sector. For instance, the Chief Executive Officer (CEO), or equivalent, of the Management Company must have a minimum of ten years’ experience while all members of the board of directors must have a minimum of five years’ experience. Unlike in the UCITS Framework as modified by the UCITS V directive, there is no rule restricting the remuneration of the

employees of the Management Company.

1.2 Legal Form and Minimum Capital Adequacy

The Standards does not specify any particular legal form to qualify as an ASEAN CIS. The ASEAN CIS can be structured in any form acceptable under the laws and regulation of its home regulator. The ASEAN CIS must maintain a minimum capital of US\$1 million at all times. When the Management Company has the AUM of more than US\$500 million, the ASEAN CIS must maintain additional capital equivalent to 0.1% of the AUM in excess of US\$500 million. It is possible to avoid the additional capital requirement by subscribing to a professional indemnity insurance offering an equivalent amount of coverage.

1.3 Custodian

The assets of the ASEAN CIS must be entrusted to an independent custodian for safekeeping. The custodian can be either the trustee/fund supervisor or an institution that is subject to prudential regulation and on-going supervision, and independent from the Management Company. The custodian must at all times keep the assets of the ASEAN CIS segregated from its own and other clients' assets to ensure that the ASEAN CIS' assets are protected from losses by or insolvency of the custodian.

1.4 Liquidity

One of the important characteristics to make a fund attractive to investors is the ease of buying or selling fund's units. As a general rule under the Standards, investors may buy or sell the ASEAN CIS units at least once a month, subject to limited exceptions. The investors must receive their redemption payment within 7 business days.

1.5 Valuation

The sale or purchase price is determined by the Net Asset Value ("NAV") per unit. The NAV is equal to the net assets of the ASEAN CIS divided by the number of units held by investors minus fees and commission charges as the case may be. The Management Company must insure that the NAV is calculated and published at least every dealing day and that the published NAV is readily accessible by investors in Thailand. An independent party must be appointed for valuations and NAV calculation. It has to be either an external auditor, or the trustee/fund supervisor, or a unit within the Management Company which is independent from the fund management function.

1.6 Eligible Assets and Investment Limits

The Standards sets out the rules on the kinds of assets in which ASEAN CIS are allowed to invest. The eligible assets for ASEAN CIS include transferable securities, money market instruments, deposits, units in other ASEAN CIS and financial derivatives. The Standards further describes the characteristics of the eligible assets and the investment limits.

It should be noted that the Standards recognizes the master/feeder structure. To qualify as a feeder, an ASEAN CIS must invest at least 85% of its net assets in units of another ASEAN CIS.

2. Marketing Approval Process

The marketing approval process can be divided into two steps, (1) the application before the home regulator and, if successful, (2) the application before the SEC.

2.1 Approval from the Home Regulator

A Management Company who intends to offer an ASEAN CIS to Thai investors under the ASEAN CIS Framework must first submit an application to its home regulator (either before the Monetary Authority of Singapore or the Securities Commission of Malaysia as they are the only members of the ASEAN CIS Framework so far) for the home regulator to (i) approve the ASEAN CIS for offer to the public in the home jurisdiction, and (ii) assesses whether the fund qualifies as an ASEAN CIS under the Standards.

In doing so, the home regulator will not only check that the fund complies with the Standards but will also have to assess that the fund complies with the local laws and regulations applicable to mutual funds. As a result, the local regulator may impose additional restrictions on the ASEAN CIS. The Standards does not provide for a maximum time period for the approval but, in practice, the timeframe should be similar to that of the approval of a local mutual fund.

2.2 Application to the Office of the SEC

Once approved by its home regulator, the Management Company must apply to the Office of the SEC by submitting the ASEAN CIS Application Form available on the website of the SEC (the “Application Letter”) together with the supporting documents.

The application fee is THB 100,000 net of the 7% VAT.

(i) Supporting Documents

The supporting documents requested by the SEC include:

- (1) the Application Letter;
- (2) a confirmative letter issued by the home regulator assessing that the fund qualifies as an ASEAN CIS;
- (3) a letter from the Management Company certifying that the units of the ASEAN CIS have been or would be offered for sale in the home regulator’s jurisdiction;
- (4) an affirmative letter by the Management Company that the documents used for sale of units of the 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 document issued by the Management Company on the appointment of (i) a brokerage firm and (ii) a local representative in Thailand;
- (6) the Fact sheet of the ASEAN CIS;
- (7) the offering document used for the offering of units in the home jurisdiction plus a wrapper containing additional information to make it compliant with the rules as specified by the SEC’s Notifications (or an additional prospectus which complies with the aforementioned SEC’s notifications).

(ii) Language of the Supporting Documents

The Application Letter must be in English. The offering document (including the wrapper or the specific prospectus) and the other supporting documents may be in Thai or English. If a document has been translated into the Thai language, the Management Company or its local representative must certify the Thai translation. The fact sheet of the ASEAN CIS (a more detailed version of the so-called Key Investor Information Documents – KIID) must be prepared in Thai Language.

(iii) Appointment of Local Distributor and Local Representative

The Management Company is required to appoint a local broker licensed by the SEC to conduct the marketing of units of the ASEAN CIS. The Standards do not allow the direct marketing in the host country. A local representative must be appointed in Thailand for coordinating and facilitating the exchanges with the SEC.

(iv) Timelines

The timeframe for the review of the 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 Management Company or its local representative.

(v) Foreign Exchange Control

Foreign exchanges are regulated in Thailand under the Exchange Control Act B.E. 2485 as amended and applicable regulations. Both institutional and retail investors are allowed to invest in ASEAN CIS within a global limit of US\$50,000 million. The local intermediaries need to seek the SEC approval and report electronically via the FIA system (Foreign Investment Allotment) for each of their clients. The Management Company may offer units of the ASEAN CIS in Thailand in either Thai baht (“THB”) or US\$. If the Management Company chooses to offer the units of the ASEAN CIS in THB, the local distributor will convert THB to US\$ in the amount equivalent to that being raised in Thailand.

(vi) Right of Refusal

Unlike the UCITS framework, the ASEAN CIS Framework does not create an obligation on the part of the host regulator to approve the marketing of the ASEAN CIS even though the CIS fulfills all the requirements. As a consequence, the SEC retains the discretionary power to refuse the marketing of an ASEAN CIS in Thailand.

3. Ongoing Obligations

Upon its approval for marketing in Thailand, the Management Company must comply with the ongoing requirements of the SEC and make sure that the investors in Thailand have access to accurate and up-to-date information on the ASEAN CIS. The SEC requires that the Management Company discloses to investors monthly information concerning the portfolio of the ASEAN CIS. A semi-annual report and an annual report must be prepared too according to the

rules specified in the Standards. Additionally, the Management Company must disclose to Thai investors all the information required to be disclosed to local investors under the laws and regulations of its home regulator.

An annual audit must be performed in the home jurisdiction of the Management Company by an authorized auditor and cover, at the minimum, the compliance with the Standards. Finally, the Management Company must inform the home regulator and the SEC of any significant changes to the ASEAN CIS. The SEC may instruct the Management Company to notify the investors of such change. The Standards contains a list of events that are deemed to be significant.

4. CIS for APEC

The introduction of the ASEAN CIS Framework is arguably one of the most important steps that the ASEAN has undertaken in the financial sector to harmonize the financial regulations of the region that will create new opportunities for asset management companies amongst others. Thailand and Singapore are also parties to the Passport Working Group of the Asian Region Funds Passport under the Asia-Pacific Economic Cooperation (“APEC”) which aims at implementing a collective investment schemes within the APEC region by September 2016. As Thailand and Singapore are parties to both schemes, it is likely that the APEC standards of collective investment scheme will be similar to those of the ASEAN CIS, placing Thailand in a strategic position for the marketing and the management of collective investment schemes.

The information provided in this document is general in nature and may not apply to any specific situation. Specific advice should be sought before taking any action based on the information provided. Under no circumstances shall the authors or LawPlus Ltd. be liable for any direct or indirect, incidental or consequential loss or damage that results from the use of or the reliance upon the information contained in this document. Copyright © 2015 LawPlus Ltd.

LawPlus Ltd.
Unit 1401, 14th Floor, Abdulrahim Place 990
Rama IV Road, Bangkok 10500, Thailand
Tel: +662 636 0662
Fax: +662 636 0663

LawPlus Myanmar Ltd.
Unit No. 520, 5th Floor, Hledan Centre
Corner of Pyay Road and Hledan Road, Kamayut Township,
Yangon, Myanmar
Tel: +95 (0)92 6111 7006
and +95 (0)92 6098 9752