



## Summary of Jurisdictional Requirements for Asset Management Companies in Asia-Pacific

According to a [PwC report](#) in 2019, the Asia Pacific (APAC) asset management industry is poised to take the lead for growth in global assets under management (AUM) for years to come. Recognising the fragmentation of legal and regulatory regimes in the asset management industry of APAC, this article aims to provide a summary of the preliminary [guide](#) to the regulatory regimes of the asset management industry.

### Overview

Broadly speaking, the asset management industry in APAC is regulated through a licencing regime supervised by the respective governmental authorities. In the following, we will summarise the legal framework regulating the industry in each country.

### Australia

The chief regulator is the Australian Securities and Investments Commission (ASIC). Any person or entity carrying on a financial services business in Australia is required to hold an Australian Financial Services Licence (AFSL), which may be subject to various exemption depending on the nature of the financial services provided.

The key continuing regulatory obligations for a licensee relate to: (i) adequate disclosures of information; (ii) sufficiency of competence, knowledge and skills of financial advisers and authorised representatives of

the asset manager; (iii) continued compliance with financial services law, management of conflict of interests and risk management; and (iv) the adequacy of financial, technological and human resources.

A recent development in asset management regulation in Australia is the promulgation of the Design and Distribution Obligations and Product Intervention Powers legislations. The legislator had included further requirements for asset management companies (AMC) to identify target markets for their products and adopt reasonable distribution controls. In addition, the ASIC is conferred the power to intervene where there is a risk of significant detriment to consumers and seek compensation on behalf of aggrieved consumers for the AMC's breach of their obligations.



## Cambodia

There are three authorities involved in the supervision of AMC's in Cambodia, namely the Ministry of Economy and Finance (MEF), the Securities and Exchange Commission of Cambodia (SECC) and the National Bank of Cambodia (NBC). The MEF undertakes the legislative responsibility of issuing rules and regulations pertaining to asset management in Cambodia, whereas the SECC is responsible for the enforcement of these regulations and the issuance of the relevant licences for each AMC. As minimum capital requirements are imposed on different types of AMC's, the NBC is responsible for holding the minimum capital of the AMC's.

As of date, there are three main categories of AMC's that are regulated in Cambodia: AMC's engaged in the business of (i) general fund management, (ii) management of real estate assets, and (iii) distribution, buyback or repayment of fund units. Each of these categories of AMC's have differing licensing requirements. However, there are also various common requirements, such as: (i) the AMC's must be a registered company in Cambodia; (ii) these AMC's must maintain their minimum capital requirements with the NBC; and (iii) the management and other senior officers of the AMC must be approved by the SECC.

Key continuing regulatory obligations for an AMC includes: (i) the maintenance of financial levels (such as risk ratios) set by the SECC; and (ii) the procurement of approval from the SECC prior to modifying the composition of the board of directors and shareholder structure.

## China

One of the principles set out by the Chinese government for the financial sector is service of a *'real economy'*. From the government's perspective, AMCs ought to prevent the formation of a *'virtual economy'* where funds cycle within the financial system without servicing the financing needs of the real economy. In line with this position, the government discourages the use of cryptocurrencies as a currency for repayment by imposing restrictions on financial services relating to cryptocurrencies (such as cryptocurrency trading platforms and AMCs with cryptocurrencies as an underlying asset).

There is no single regulatory authority responsible for the regulation of asset management in China. Each type of asset management service and product are regulated by different regulatory authorities. The People's Bank of China (PBOC) is the central bank with authority to control monetary policy and regulate financial institutions. The China Banking and Insurance Regulatory Committee (CBIRC) is the administrative authority for asset management business of trusts and insurance companies, whereas the China Security Regulatory Committee (CSRC) is the administrative authority for public funds and private asset management (such as private investment funds). In addition, in 2012, the Asset Management Association of China was established as a self-regulatory organisation of the asset management industry responsible for the issuance of self-regulatory rules such as information disclosure requirements.

The key regulatory requirement for the procurement of the requisite licences in China relates to the capital of the AMC. For example, for a commercial bank setting up a wealth management subsidiary, the bank cannot contribute to the capital of the subsidiary with funds it acquired by debt financing or usage of deposits maintained with the bank. While continuing regulatory obligations of a licensee in China may differ depending on the nature of the services and products it provides, China places an emphasis on risk control, such as the maintenance of risk reserves and other financial ratios.

## India

The primary regulator for asset management in India is the Securities and Exchange Board of India (SEBI). AMCs in India can be broadly divided into three categories: (i) bank-sponsored mutual funds, (ii) mutual fund institutions and (iii) private sector mutual funds.

An AMC in India must be deemed eligible by SEBI before it can be issued a licence to operate. The requirements are largely centred around the reputation and professional standing of the directors and senior officers of the AMC. It is also noted that at least half of the directors of the AMC must be independent.

Key continuing regulatory obligations of AMCs in India includes: (i) the duty to submit quarterly reports on its activities to the trustees; (ii) any director of an AMC may not hold office in another AMC unless said director is independent and had obtained approval in the other AMC; and (iii) the AMC may not undertake any other business activities except those in the nature of portfolio management, management and advisory services to offshore, pension, provident and venture capital funds, management of insurance funds, and financial consultancy.

A noteworthy development for AMCs in India is the likely introduction of the Cryptocurrency and Regulation of Official Digital Currency Bill 2021, where 'private' cryptocurrencies will be banned in India with certain exceptions aimed at promoting the underlying technology for the establishment of a framework creating a 'public' cryptocurrency to be issued by the Reserve Bank of India (RBI). As it stands, how cryptocurrencies or digital assets are regulated in the context of an AMCs remain to be clarified by the government.





## Indonesia

While Indonesia was adversely affected by the COVID-19 pandemic, interestingly, the asset management industry of Indonesia continued to grow as evidenced by the vast growth in the number of investors. As of 27 October 2020, mutual funds investors had risen by 52.2%.

The main regulator supervising asset management activities in Indonesia is the Indonesia Financial Services Authority, Otoritas Jasa Keuangan (OJK). The main category of AMC regulated by the OJK is the management of mutual funds.

In determining whether to grant an AMC a licence to operate, the OJK focuses on (i) the structure of the shareholders of the AMC and (ii) the structure of the board of directors and board of commissioners. Each director, shareholder and commissioner are to comply with the integrity requirements and financial requirements. In respect of the integrity requirements, the person must be deemed by the OJK, amongst others, as a person with good character and morality. In respect of the financial requirements, the person cannot be declared bankrupt (whether in the past or present) and possess adequate financial capacity.

In addition, in relation to the board of directors, there must be one director with an individual licence as the Securities Company Representative and another director with another individual licence as the Asset Management Representative.

Key continuing obligations of an AMC include compliance with the code of conduct of asset management and establishment of adequate governance structures. For example, AMCs must establish policies in relation to the management and resolution of consumer complaints.

## Malaysia

Being a leader in Islamic finance, Malaysia has taken the lead in setting out how the rise of digital assets will affect Islamic finance and its treatment for the purposes of regulating AMCs. In July 2020, the Shariah Advisory Council (SAC) resolved that it is permissible for anyone (including AMCs) to invest and trade in digital currencies and tokens registered on the digital asset exchanges. In particular, proceeds raised from the issuance of digital tokens must be utilised for Shariah-compliant purposes and that the rights and liabilities attached to the digital tokens must be Shariah-compliant. In the event that the above is only partially Shariah-compliant, the digital currency and token must be subject to review by the SAC under the Shariah screening methodology for listed companies on the Malaysian stock exchange.

There are two main bodies regulating the asset management industry in Malaysia: the Ministry of Finance (MOF) and the Securities Commission (SC). The MOF is responsible for overseeing policies implemented by the SC whereas the SC focuses on the issuance of licences and regulation of the licensees.

There are two main licences issued by the SC, namely, the capital markets services licence (CMSL) and capital markets services representative's licence (CMSRL).

As for the CMSL, key requirements for obtaining said licence includes: (i) the licensee must be a member of an alternative dispute resolution body approved by the SC; (ii) the engagement of auditors that are registered with the Audit Oversight Board of the SC; and (iii) the licensee must have at least one local “*bumiputra*” director and a minimum of 30% of the employees must be bumiputras. In respect of the CMSRL, the individual must pass the SC Licensing Examinations.

The key continuing obligations for a CMSRL-holder is compliance with a mandatory continuing professional

education programme. The essence of which is to ensure that the knowledge of these professionals are consistently updated.

The key continuing obligations for a CMSL-holder includes: (i) the establishment of a system of follow-up and review for delegated authorities and (ii) the establishment of clear compliance policies and procedures by the board of directors.

## Philippines

There are four main types of AMCs in Philippines: (i) traditional investment companies (TIC), (ii) corporate debt vehicles (CDV), which focuses on investment in corporate debt, (iii) fund management companies (FMC) and (iv) financial institutions strategic transfer corporation (FISTC), which are companies that facilitate the disposal of non-performing assets of financial institutions.

The main regulator for asset management is the Securities and Exchange Commission of Philippines (SECP). However, asset management services provided by banking institutions or insurances are regulated by the Bangko Sentral ng Pilipinas (BSP) and the Insurance Commission (IC) respectively.

The requirements for each of type of AMC includes: (i) the maintenance of a minimum capital, which varies in amount depending on the type of AMC; (ii) the board of directors of the TIC and CDV must be all Filipino citizens, whereas FMCs and FISTCs do not have such requirements; and (iii) the chief executive officer and key officers of FMCs must possess minimum years of relevant experience, whereas TICs, CDVs and FISTCs do not have such requirements.

The key theme for the continuing obligations of AMCs in Philippines relates to the disclosure of information, where the SECP had imposed various disclosure obligations on each type of AMC.

Recognising the growth potential of digital assets, on 26 January 2021, the BSP had issued Guidelines for Virtual Asset Service Provider (VASP), wherein a separate licence will need to be applied by VASPs with the BSP. However, this regime does not cover the issuance, distribution, sale and offer for sale of digital assets in Philippines, which is governed by the above licensing regime regulated by the SECP.

## Singapore

A recognisable trend in the asset management industry of Singapore is the increasing interest in Environmental, Social and Governance (ESG) investing. To this end, the MAS released its Green Finance Action Plan (GFAP) with the objective of placing Singapore in good stead to become a leader for green finance in Singapore. In line with the GFAP, the Monetary Authority of Singapore (MAS) had recently published Guidelines on Environmental Risk Management for Asset Managers to further encourage sustainable investing amongst AMCs. To further support this agenda, the Investment Management Association of Singapore is planning to launch a series of ESG training programmes for the industry. Going forward, it remains to be seen how the increasing interests in ESG investing would affect AMCs and whether regulations would be amended to facilitate Singapore's aim of forging sustainable economies through greater ESG investing.

The main regulator for AMCs in Singapore is the MAS. There are three main types of AMCs: (i) licensed fund management company (LFMC), venture capital fund manager (VCFM) and a registered fund management company (RFMC). Save for RFMCs, who will only need to be registered with MAS, LFMC and VCFM is required to apply for a capital markets service licence (CMSL).

To obtain a CMSL licence, the MAS had provided for various requirements which can be broken down into the following categories: (i) human resource category,

AMCs in Singapore generally require at least 2 directors with a prescribed minimum number of years of relevant experience, save for VCFMs where there is no minimum number of years; (ii) minimum capital requirements, save for VCFMs, other AMCs have a prescribed minimum capital that it needs to maintain; (iii) risk-based capital requirements, which is only applicable for LFMCs.

Apart from the general requirement concerning disclosure of information, a key continuing obligation for FMCs in Singapore is the requirement to establish risk management frameworks subject to the review and approval of MAS.





## South Korea

There are three main types of AMCs in South Korea, namely, (i) collective investment business entities (CIBE), (ii) venture capital firms (VCF) and (iii) new technology venture capital firms (NVTCF). The chief regulator for CIBEs is the Financial Supervisory Service (FSS) whereas VCFs and NVTCFs are regulated by the Ministry of Small and Medium Enterprises and Start-ups (MSS).

In relation to the grant of the requisite licences for each of the above types of AMCs, the Financial Services Commission of South Korea (FSCSK) is responsible for managing the licensing regime as to CIBEs and NVTCFs and the MSS is responsible for VCFs. Common requirements for obtaining the approval includes: (i) minimum capital requirements depending on type of AMCs; and (ii) the establishment of systems and procedures to manage conflict of interests. As for VCFs, majority shareholders are required to satisfy the social credibility requirement and CIBEs are required to satisfy the social credibility requirement.

In respect of the key continuing obligations of the AMCs, it is common for them to be imposed at the point of registration for their respective licences. While the violation of these conditions is ground for termination of the licence, it is noted that the FSCSK, in the case of CIBEs, may choose to alleviate the minimum capital requirement of the non-compliant CIBE instead. As to VCFs and NTVCFs, there are no such alternatives and non-compliant AMCs will have their licences terminated by the respective regulators.

## Taiwan

In Taiwan, the Financial Supervisory Commission (FSC) is the main government body regulating all financial institutions and services. There are four divisions under the FSC, one of which is the Securities and Futures

Bureau (SFB), who is responsible for regulating securities investment trust enterprises (SITEs) and securities investment consultancy (SICE).

The SITEs and SICEs are considered to be the main players in the asset management market of Taiwan and are subject to different licencing regimes. As for SITEs, the minimum paid up capital is NT\$300 million whereas the minimum paid up capital of SICEs is NT\$20 million (this may be increased in the event the SICE wishes to carry out additional business activities, such as provision of discretionary investment management services, where the minimum paid up capital is NT\$50 million). Other requirements relate to the human resource and internal processes of the AMCs.

In general, the key continuing obligations of SITEs and SICEs include the requirement to submit periodic financial reporting of each fund to the FSC or its clients (as the case may be). In the event the SITE and SICE wishes to conduct discretionary investment management, they are subject to additional continuing obligations, such as the requirement for the AMC to produce regular monthly record to its clients on the trading of the client's assets.

## Thailand

Thailand's asset management industry had been adversely affected by the COVID-19 pandemic, where values of AUM has declined. However, in more recent times, the statistics show that the AUM is gradually growing as Thailand's economy recover. An important trend to note will be the impending legislation under discussion concerning digital assets, where industry experts anticipate that AMCs will be imposed with higher levels of regulation and accountability.

There are three primary regulators of the asset management industry in Thailand: (i) the Securities and Exchange Commission of Thailand (SECT), possessing powers and under a duty to law down policies for the

promotion and development of securities business in Thailand; (ii) the Capital Markets Supervisory Board (CMSB), who lays down rules and regulations governing AMC; and (iii) the Bank of Thailand (BOT), possesses powers and is under a duty to regulate the money markets and transfers of money.

Key requirements that AMCs need to fulfil for a licence to operate in Thailand include: (i) a minimum capital requirement of THB25 million; (ii) majority shareholders, directors and key officers of the AMCs must not possess any prohibited characteristics prescribed by the Ministry of Finance; and (iii) the directors and key officers of the AMC must be approved by the SECT. The continuing obligations of AMCs in Thailand concerns its disclosure obligations to the SECT.

## Vietnam

Despite the outbreak of the COVID-19 pandemic, the asset management industry in Vietnam continues to grow as observed from the increase in the value of AUM in Vietnam.

There are several government agencies involved in the regulation of AMCs in Vietnam: (i) the Ministry of Finance of Vietnam (MOFV) possesses the general authority to exercise the State's administrative powers in the regulation of securities and securities market; (ii) the State Securities Commission (SSC), an agency under the MOFV, advises and assists the MOFV in exercising the State's administrative powers in regulating securities and the securities market. The SSC is also commonly delegated by the MOF to implement laws on securities and securities market in Vietnam; (iii) the Department of Management of Fund Management Companies and Securities Investment Funds (DMFS), an agency under the SSC, advises and assists the SSC in regulating the fund management companies (FMC); (iv) the State Bank of Vietnam (SBV) is authorised by the State to exercise State's administrative powers in regulating banking, monetary

and payment activities (including payment transactions by FMC); and (v) the Department of Planning and Investment (DPI), in collaboration with SSC, is responsible for the establishment and management of FMCs.

Under the laws of Vietnam, there are only two types of FMCs that are regulated, namely, an FMC and an AMC established by the State and managed by SBV for the purposes of settling bad debts and promoting reasonable credit growth for the economy. FMCs are required to apply for a Licence for Establishment and Securities Business Activities from the SSC. Such FMCs are required to comply with the following key requirements: (i) a minimum capital of VND 25 billion (approximately US\$1.1 million); (ii) a minimum of 2 founding shareholders (or capital contributing members) that are corporations. In the event that the FMC is formed as a single-member corporation, the member must be, amongst others, a commercial bank or an insurance company, and will be subject to further regulations prescribed by the SSC; and (iii) the FMC must have a director and five other officers that possess a fund management practising certificate.

Key continuing regulatory obligations of regulated FMCs include the compliance with conditions prescribed by the SSC at the point of application for the licence and the compliance with the foregoing requirements for the licence. In the event that the FMC fails to comply, the FMC must report to the SSC and lodge a rectification plan to resolve the non-compliance. During the rectification period, the FMC is not permitted to, amongst others, distribute any profit or raise and further capital from its existing clients.



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