ASEAN Plus Group's Regional Regulatory Guide to Asset Management in Asia-Pacific

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Content

Foreword

In 2020, the primary event in the world's collective experience was the COVID-19 outbreak—a global pandemic that reached every nation and which has consequential and ongoing effects on economies, trade, geopolitics, technological advancement and much more.

Financial centres and institutions around the world, and even in our region, continue to grapple with the dynamically changing environment in which investment management is conducted. It is not an overstatement to say that the industry is undergoing a revolution; one in which the use of technology, products, distribution regimes, fees and regulation will see dramatic changes for years to come. Hence, industry observers have opined that the asset and wealth management industry in Asia-Pacific will be the centre of global assets-under-management (AuM) growth in the coming years, contributing up to USD30 trillion by 2025.[1]

Effective asset management is to be done strategically, taking risks in a balanced way so as to effectively put investment capital to work sustainably. Legal and regulatory regimes in the Asia-Pacific region are still fragmented—they should to be made more progressive, so as to support industry development while still protecting the rights of investors. Singapore and Hong Kong continue to be the current asset management hubs of the region; however it is to be expected that others will come to the fore. Afterall, Asia is one of the largest infrastructure investment regions in the world, driven by China's Belt and Road (BRI) initiative that continues to drive massive growth.

The globalisation trend continues unabated, and the world is learning to take into account the new realities posed by the COVID-19 pandemic. With various countries spending huge amounts of money to deal with this global health issue and the loss of domestic revenues, governments and asset managers are challenged to think far ahead to identify possible opportunities and pitfalls.

This inaugural issue of the ASEAN Plus Group (APG)'s "Regulatory Guide to Asset Management" maps the latest state-of-play in the asset management sector in some of the regional group's jurisdictions: Indonesia, Vietnam, Cambodia, Philippines, Malaysia, Thailand and Singapore. In addition, Australia, China, India, South Korea and Taiwan (each significant economies with key relationships to ASEAN), are also represented in this Guide. All country chapters are written by leading regulatory lawyers from their respective jurisdictions, providing valuable insights into the respective markets, supervisory regimes and key regulatory requirements, including the related issues around licensing, money laundering, financial crime and digital assets.

This Guide aims to shine a light in this area of regulatory law regarding the commonalities and differences in across different countries and how each supervises and develops the asset management industry.

We hope that you will find this Guide practical and helpful. The APG law firms listed in this Guide would be pleased to render expert assistance to you in navigating the challenges and opportunities in the asset management space in the region.

[1] See https://www.pwc.com/sg/en/asset-management/assets/asset-management-2025-asia-pacific.pdf

Foreword by InCorp Global

2020 has been an eventful year, caused by the global battle with the pandemic. While the pandemic continues to make headlines in 2021, global economies, especially in Asia, are slowly but surely seeing a gradual rise in cautious optimism and pockets of growth opportunities.

One of the main theme circles around the growing asset management industry and how asset and fund managers are seeing heightened interest in this region, especially in key hubs like Singapore as well as the numerous investment opportunities that are springing up in various countries around ASEAN and APAC in general.

With increased funding flowing in from around the world into Asia, InCorp Group is collaborating with APG to present the tax perspective and tax consideration of each country in this guide for the asset management industry. We hope you find the guide useful and we look forward to working with you in navigating this complex regulatory and tax landscape.

About Us

Headquartered in Singapore, InCorp Global is a leading corporate services provider with an established regional presence across 7 Southeast Asian regions including Indonesia, India, Hong Kong, Philippines, Vietnam, and Malaysia. The group services more than 12,000 corporate clients across various industries, including asset and fund managers as well as family offices.

Our team consists of qualified chartered accountants, company secretaries, bankers and tax advisors who specialise in Business Incorporation, Secretarial & Compliance, Share Registry, Outsourcing, Accounting, Taxation, Immigration, Business Advisory, Risk Assurance, and Corporate Recovery.

Australia

1. Please provide an overview of the asset management market in your jurisdiction in 2020 and what are the trends and opportunities in 2021?

Australia has a substantial asset management market. At the core is compulsory superannuation. Australia requires employers to contribute 9.5% of an employee's salary to an employee's superannuation fund. This means that the asset management industry holds much of Australia's wealth. As at December 2020, superannuation assets were at AUD$3 trillion.

The value of superannuation assets declined sharply in 2020 due to the impact of the COVID-19 pandemic and the Federal Government allowing people to access their funds early. However the value of assets has since increased reflecting the recovery in local and overseas financial markets. IbisWorld predicts that the superannuation fund industry's assets will increase through to 2024-2026 at an annualised rate of 5.6% to AUD$3.6 trillion.

According to IbisWorld, revenue in the funds management services industry in Australia (excluding superannuation funds management) is anticipated to grow by 3.7% in 2020-21, following a decline of 8.4% in 2019-20. This decline was caused by the early stages of the COVID-19 pandemic. Trade tension between China and Australia as well as uncertainty in financial markets may limit industry growth in 2021. Assets invested by Australian fund managers on behalf of clients (excluding superannuation funds) are estimated to total AUD$1.03 trillion in 2020-21.

The COVID-19 pandemic has supported an increase in Environmental, Social and Governance investing, and this trend is expected to continue. Australia's aging population means that there may be an increase in demand for investments that provide income streams rather than capital growth.

Over the past five years, the portion of funds sourced from overseas markets that are managed by Australian fund managers has significantly increased. Australia being a signatory to the Asia Region Funds Passport should further support access to funds from international investors.

2. What is the regulatory framework for asset management in your jurisdiction:

a. Which official agencies/regulators supervise asset management in your jurisdiction?

The Australian Securities and Investments Commission (**ASIC**) is the main regulator of asset management in Australia. It is responsible for enforcing the *Corporations Act 2001* (Cth) (**Corporations Act**). It also manages the Australian financial services licence (**AFSL**) regime.

b. What are the sources of law regulating asset management in your jurisdiction?

The main source of law is the Corporations Act. ASIC administers the Corporations Act and also publishes guidance for the funds management industry.

Australia

3. What are the types of asset management, companies regulated in your jurisdiction?

Most investment funds are trust structures, usually unit trusts. Companies are not usually used as investment funds vehicles for taxation reasons, however a new corporate collective investment vehicle ("CCIV") regime has been proposed, although this has not yet been finalised or implemented. The proposed CCIV is a structure that overseas investors would be more comfortable with, and the new law includes a coherent solvency regime, and tax neutrality for investors.

4. What are the key regulatory requirements to establish and operate the different types of asset management companies mentioned above?

A person or entity that carries on a financial services business in Australia is required to hold an AFSL. This requirement is subject to various exemptions, and determining whether a person or entity is carrying on a financial services business in Australia is complicated. AFSLs are issued by ASIC under the Corporations Act.

In addition, investment funds may be considered "managed investment schemes" under the Corporations Act. If the scheme meets the definition, it may need to be registered with ASIC and will be subject to a high level of regulation. Investment funds that are offered to retail clients will usually need to be registered. In addition, interests in the scheme will be considered financial products under the Corporations Act which means there are further regulatory requirements.

5. For asset management activities, are family offices regulated in your jurisdiction? If so, how are they being regulated? Are family offices subject to special regulatory requirements as opposed to non-family offices?

Family offices are not subject to any specific regulatory requirements in Australia. They are subject to the same regulatory requirements as non-family offices, meaning that their asset managers could be required to hold an AFSL and that they could also be considered "managed investment schemes".

6. What are the key continuing / ongoing regulatory obligations of a licensee?

Australian financial services (**AFS**) licensees must comply with the general obligations under section 912(A)(1) of the Corporations Act.

These obligations relate to:

- Conduct and disclosure;
- The provision of financial services;
- The competence, knowledge and skills of financial advisers and authorised representatives;
- Ensuring financial advisers and authorised representatives comply with the financial services laws, compliance, managing conflicts of interest and risk management;
- The adequacy of financial, technological and human resources; and
- Dispute resolution and compensation.

Australia

7. What are the requirements in relation to the acquisition of a regulated asset management company in your jurisdiction (including cases where there is a change of control in the asset management company)?

An AFSL is subject to conditions prescribed by regulations in addition to the conditions imposed on the AFS licence certificate under section 914A(8) of the Corporations Act.

One of these conditions is that an AFS licensee which becomes aware of any change in control of the financial services licensee must notify ASIC. An AFS licensee must notify ASIC of the particulars of the change not later than:

- 10 business days for changes to controlling entity details for licensees other than body corporate licensees as defined by section 922C of the Corporations Act.
- 30 business days for changes to controlling entity details for licensees who are body corporate licensees as defined by section 922C of the Corporations Act.

In order to notify ASIC of a change in control, an AFS licensee must lodge a Form FS20 *Change of details for an Australian financial services licence*.

8. What are the main anti-money laundering and financial crime prevention rules applicable to asset management companies in your jurisdiction?

The primary anti-money laundering legislation in Australia is the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (**AML/CTF Act**). The AML/CTF Act empowers Australia's regulator the Australian Transaction Reports and Analysis Centre (AUSTRAC) to supervise financial services providers in the important area of AML/CFT. Like banks, asset management companies are subject to the same regulatory requirements for AML/KYC compliance. The AML/CFT Act provides the means to help detect and deter money laundering and terrorism financing by imposing a number of reporting obligations on financial institutions, including Threshold Transaction Reports and Suspicious Activity Reports.

9. Are there any relevant consumer or investor protection rules applicable to asset management companies in your jurisdiction?

The Design and Distribution Obligations (**DDO**) and Product Intervention Powers (**PIP**) legislation was passed in April 2019. This legislation aims to increase consumer protections for investors and requires issuers and distributors of financial products to promote suitable options to consumers. Financial service companies must identify target markets for their products and adopt reasonable distribution controls. The provisions are being phased in – the PIP took effect on 6 April 2019 and the DDO will apply from April 2021.

The law applies to financial products that require a disclosure document (for example, a product disclosure statement or prospectus) under the Corporations Act or that are regulated under the ASIC Act. Some products requiring disclosure are exempted from the new regime: MySuper products, margin lending facilities, securities issued under an employee share scheme and full-paid ordinary shares.

ASIC has the power to intervene if firms do not comply or where there is a risk of significant detriment to consumers. ASIC also can seek compensation on behalf of consumers affected by contravention of the design and distribution obligations. Companies breaching the rules could face civil and criminal penalties.

Australia 

10. In recent times, there has been increasing interest in digital assets, such as digitised securities, digital security tokens, and other digital tokens representing interests in assets. To what extent is the management of digital assets regulated in your jurisdiction, and what is the regulatory framework for it?

There are currently no specific regulations or legislation dealing with digital assets in Australia. ASIC, Australia's primary corporate, markets, financial services and consumer credit regulator, has reaffirmed the view that Australian legislative obligations and regulatory requirements are technology-neutral and apply irrespective of the mode of technology that is being used to provide a regulated service.

Cambodia

1. Please provide an overview of the asset management market in your jurisdiction in 2020 and what are the trends and opportunities in 2021?

The year 2020 will be mostly remembered for the impact caused by the COVID-19 pandemic. It came at the time when Cambodia also faces the partial suspension of preferential access to the EU market under the "Everything but Arms" initiative. The outbreak caused sharp deceleration in most of Cambodia's main engines of growth—tourism, manufacturing exports, and construction—which together account for more than 70% of the country's growth and almost 40% of paid employment. Like many other neighbouring countries, it is not surprising the economy registered negative growth of -2%, the sharpest decline in Cambodia's recent history.

For 2021, the vaccination progress against COVID-19, the slow recovery in global economic activity and the resumption of international travel and tourism are the biggest factors to Cambodia's growth outlook.

Despite these upheavals, Cambodia's investment landscape is improving, driven by increased interest in the technology sector. This is also fueled by positive market conditions, such as relative currency stability with a primarily dollarized economy, less capital flow restrictions compared to neighbouring ASEAN markets, and openness to foreign direct investment (permitting 100% foreign ownership of companies, with limited exceptions).

In addition, given the February 2021 coup in Myanmar, Cambodia is expected to become a destination for investors to shift their capital to. Many Myanmar-focused investors might now cast wider nets and shift from a Myanmar-only strategy to a regional strategy, and that would include Cambodia.

2. What is the regulatory framework for asset management in your jurisdiction:

a. Which official agencies/regulators supervise asset management in your jurisdiction?

In Cambodia, the main authorities that are responsible for supervision of asset management include:

- The Securities and Exchange Commission of Cambodia (the "**SECC**") have the powers and duties under the Law On The Issuance And Trading Of Non-Government Securities and the Prakas On Licensing and Management of Collective Investment Schemes to license and regulate companies and qualified persons in the asset management industry;
- The Ministry of Economy and Finance have the powers and duties under the Law on the Establishment of the Ministry of Economy and Finance that includes issuance of rules and regulations governing the asset management industry; and
- The National Bank of Cambodia have the powers and duties under the Prakas On Licensing and Management of Collective Investment Schemes to hold the minimum capital required of companies licensed by the SECC.

Cambodia

b. What are the sources of law regulating asset management in your jurisdiction?

The main sources of law include:

- The Civil Code of Cambodia (Royal KramNo. NS/RKM/1207/030 dated 8 December 2007)
- Law on The Issuance and Trading of Non-Government Securities (Royal Kram No. NS/RKM/1007/028 dated 19 October 2007) (the "**LIT**");
- Law on Anti-Money Laundering and Combating the Financing of Terrorism (Royal Kram No. NS/RKM/0620/021 dated 27 June 2020) (the "**AML**");
- Anti-Corruption Laws (Royal Kram No. NS/RKM/0410/004 dated 17 April 2010) (the "**ACL**");
- Law on Consumer Protection (Royal Kram No. NS/RKM/1119/016 dated 02 November 2019) (the "**LCP**");
- Prakas On Licensing and Management of Collective Investment Schemes (the "**CIS**") (SECC No. 003/18 dated 29 September 2018); and
- Prakas On Anti-Money Laundering and Combating the Financing Of Terrorism (National Bank of Cambodia B 7-08-089 Pro Kor) (the "**PAML**").

3. What are the types of asset management, companies regulated in your jurisdiction?

Pursuant to Articles 7, 26, 34, and 47 of the CIS, the companies involved in the business of:

- Fund Management;
- Trust Property; and
- Distribution, Buyback or Repayment

(Collectively, the "**Regulated Companies**")

would be regulated according to the CIS, and thus have to be licensed by the SECC, and each Executive Director, Chief Operations Officer and legal personnel of a Regulated Company must be approved by SECC.

4. What are the key regulatory requirements to establish and operate the different types of asset management companies mentioned above?

The regulatory requirements are different depending on the kind of Regulated Company and their specific business activities. However, there are a substantial number of common requirements which include:

1. The Regulated Company must be a registered business company in the Kingdom of Cambodia.
2. The Regulated Company must submit to tax registration in accordance with the Law on Taxation and related regulations.
3. The Regulated Company must possess the prescribed minimum capital requirements with fifteen (15) Percent of said minimum capital kept at the National Bank of Cambodia
4. The Regulated Company's management and other senior staff such as directors, executives, chief operating officers and legal professionals must be approved by the SECC and meet the requirements set forth in the CIS.
5. The Regulated Company must possess an internal audit unit to report the appropriateness, effectiveness and efficiency of the management operation, risk management and internal controls of the fund management company.

Cambodia

6. The Regulated Company must have a building and its premises located in the appropriate location to provide appropriate services to
7. The Regulated Company must have a business plan for three (3) years from the date of application for a license.
8. The Regulated Company must have appropriate risk management and internal control policies.
9. The Regulated Company must not have any directors and senior staff subject to conflict of interests (i.e. concurrently being employed at a competing company).
10. The Regulated Company must not be subject to any of the following events:
    a. Failure to comply with any instructions made pursuant to the CIS.
    b. The information or documents that the Regulated Company submitted to the SECC is fraudulent or misleading.
    c. A situation which lead to termination of business or dissolving of the business.
    d. Failure to pay any debt by court order.
    e. The Regulated Company used to be a shareholder holding overwhelming voting power or a person having aspecial relationship with a fund management company or any financial institution that has been declared bankrupt in or outside of the Kingdom of Cambodia within the last five (5) years from the date of application, except for the persons recognized by the court's decision that they shall not held accountable for the bankruptcy.
    f. The Regulated Company used to be a shareholder holding overwhelming voting power or a person having aspecial relationship with a fund management company or any financial institution whose license was revoked in or outside of the Kingdom of Cambodia within the last five (5) years as of the date of application, except for the persons recognized by the court's decision that they shall not held accountable for the revocation.
    g. The Regulated Company used to be involved in any such proceeding such as bankruptcy or liquidation in or outside of the Kingdom of Cambodia for the last five (5) years as of the date of application.
    h. The Regulated Company's financial status or business method is not yet sufficient.
    i. The Regulated Company is or may be involved in money laundering, terrorism financing or licensing or renewing of licenses to persons applying for it may affect the public interest.
    j. The directors, senior staff or shareholders holding an overwhelming voting power of the Regulated Company:
        i. Do not have good qualities and character;
        ii. Violated the laws and regulations relating to the protection of the public;
        iii. Committed dishonest or inappropriate acts or incapacitated with financial services or company management;
        iv. Conducted in or engaged in any other business that has cast doubt on the ability and the soundness of his/her decisions;
        v. Conducted business that is deceptive, exploitative or inaccurate in anyway;
        vi. Demonstrates an inability to act for the best interests of his/her customers due to the reputation, personality, the financial viability, and the reliability of the individual;
        vii. Demonstrates an inability to act under the terms of the license effectively, honestly and fairly;
        viii. Have been declared bankrupt within or outside Cambodia within five (5) years commencing from the date of the Regulated Company's application for license.

Cambodia

5. For asset management activities, are family offices regulated in your jurisdiction? If so, how are they being regulated? Are family offices subject to special regulatory requirements as opposed to non-family offices?

There are no specific or special rules or regulations governing family offices in Cambodia. Any entity or company set up to manage the wealth and investments of a family would be subject to the same rules and regulations of any other asset management company.

6. What are the key continuing / ongoing regulatory obligations of a licensee?

Once the Regulated Companies obtains the license to undertake asset management activities, it shall comply with the requirements as stipulated in the CIS. Some of which is set out below:

1. A Regulated company shall start its business within three (3) months as of the date of the issue of its license.

2. A Regulated company shall continue to comply with the terms and conditions required to apply for the license in the first place found in Article 9, Article 28, Article 36 and Article 49 of the CIS.

3. A Regulated Company shall conduct its asset management business separately from the other businesses in which it owns, and shall have its location, business, IT system, separate HR, and proper information barriers are required.

4. A Regulated Company shall maintain at all times the pension level, risk ratio, net capital and other financial levels as determined by the SECC.

5. A Regulated company shall submit to the SECC an audited annual financial report within a period of three (3) months or within a reasonable time as determined by the Director General of the SECC after the end of each fiscal year and periodic reports as well as other reports as determined by the Director General of the SECC.

6. In particular for Regulated Companies managing trust property, the financial statements of the investment trust property must be prepared separately from the company's own assets in accordance with the accounting standards as set forth in the existing regulations.

7. A Regulated company must seek approval from the Director General of the SECC before:

    a. Changing or modifying the composition of the Board of Directors, shareholder structure, capital, name or head office

    b. Using or adjusting any service fees or commissions.

Cambodia

7. What are the requirements in relation to the acquisition of a regulated asset management company in your jurisdiction (including cases where there is a change of control in the asset management company)?

The acquisition or change of control in the asset management company is subject to the approval by the SECC.

Article 80 of the CIS stated the requirement of an asset management company to seek for the approval from the Director General of the SECC for the following:

- Change of control,
- Change of the composition of the Board of Directors,
- Change of shareholding structure,
- Change of capital, and
- Change of company name or the address of the head office.

8. What are the main anti-money laundering and financial crime prevention rules applicable to asset management companies in your jurisdiction?

Anti-Money Laundering

The main regulations regarding anti-money laundering is the Law on Anti-Money Laundering and Combating the Financing of Terrorism (Royal Kram No. NS/RKM/0620/021 dated 27June 2020) (the "**AML**") and the Prakas On Anti-Money Laundering and Combating the Financing Of Terrorism (National Bank of Cambodia B 7-08-089 Pro Kor) (the "**PAML**").

Under the Article 4 and 5 of the AML, all businesses that might come into contact with money laundering activities such as financial institutions, lawyers, agents, and remittance offices among others are designated as "Reporting Entities" (the "**Reporting Entities**"). Article 7 and 8 of the AML mandates that all Reporting Entities must conduct customer due diligence before establishing business relationships with clients.

The rigour of the customer due diligence to be conducted is based on a risk-based approach i.e. if the risk of money laundering is high, a more rigorous standard is to be applied as compared to transactions where the risk of money laundering is low. The Reporting Entities are to follow the directives issued by the Cambodia Financial Intelligence Unit in determining the circumstances in which enhanced or simple due diligence to be conducted.

The AML mandates that Reporting Entities establish internal control measures to prevent money laundering, Reporting Entities that are part of a group of companies are further required to develop group-wide programmes against money laundering.

The AML also mandates certain continuing obligations on Reporting Entities, they are obliged to continuously monitor all transactions and pay special attention to:

1. Any complex, unusual or large transactions;
2. Any unusual patterns of transactions that have no apparent or visible economic of lawful purpose;
3. Business relations with persons in jurisdictions that do not have adequate prevention of money laundering systems;
4. Business relations where there is no face-to-face contact;
5. Business transactions with politically exposed persons;
6. Wire transfers that do not contain full originator's information; and
7. Business relations and transactions conducted by means of cross-border correspondent banking or other similar Financial Crime/Corruption

Reporting Entities are also expected to keep transactions records for five (5) years after termination of business relations with every client. These transaction records must be of sufficient completeness so as to allow for the reconstruction of every transaction including the amounts and currency involved.

Upon reasonable suspicion of money laundering activities, the Reporting Entities are to report such suspicions to the Cambodia Financial Intelligence Unit within a period of twenty-four (24) hours.

■ Financial Crime/Corruption

The main regulation regarding financial crime is the Anti-Corruption Laws (Royal Kram No. NS/RKM/0410/004 dated 17 April 2010) (the "**ACL**").

Under the ACL, all public officers and suspects of corruption must declare a list of his/her assets and liabilities (regardless of location of said assets and liabilities) upon the taking and leaving of their public office.

The ACL also establishes the Anti-Corruption Unit of Cambodia (the "**ACU**") in order to investigate and combat offences of corruption. The ACU has wide ranging powers to investigate offences of corruption, this includes wiretapping in cases where there is a clear hint of such offences. The Anti-Corruption Unit also possess the authority to compel the cooperation of all public offices, and in appropriate cases freeze and seize assets.

9. Are there any relevant consumer or investor protection rules applicable to asset management companies in your jurisdiction?

The main regulation regarding consumer/investor protection is the Law on Consumer Protection (Royal Kram No. NS/RKM/1119/016 dated 02November 2019) (the "**LCP**").

Under the LCP, no person or entity can be unfair towards consumers. "Consumers" are defined as persons who received goods and services which are ordinarily for personal, domestic, or household use and not for any commercial purpose. "Unfairness" generally relates to misleading or deceiving consumers.

In the specific context of financial investments, Article 18 of the LCP provides that no person shall make false or misleading representations of key points concerning the potential gains, risks or other significance of any business activity in which the person invites other persons by advertisement or other means to invest in.

The National Consumer Protection Committee (the "**NCP**") of Cambodia is empowered by the LCP to investigate any unfair practices either out of their own volition or upon the receipt of a complaint. The NCP has wide ranging powers of investigation and is authorized to impose fines, warnings and the cancellation or revocation of licenses.

There are also regulations relevant to investor protection found in the Law on The Issuance and Trading of Non-Government Securities (the "**LIT**") (Royal Kram No. NS/RKM/1007/028 dated 19 October 2007).

Under the LIT, any proposal to offer securities to the public must be approved by the SECC. The approval of SECC is dependent on whether the offer of public securities is in the interest of the public of Cambodia.

Cambodia 

The LIT also provides securities issuers with an avenue to submit a disclosure document for approval and registration by the SECC. This disclosure document can be refused registration if it does not comply with Cambodia's legal requirements or cancelled after registration if the SECC is satisfied that it contains significant information that is false or misleading or omits any significant information.

The LIT also prescribe three prohibited conduct in relation to securities, these are:

- Insider trading i.e. trading using price sensitive information that is not available to the public;
- Fictitious transaction of securities to create a false market or to manipulate the market; and
- Making false or misleading statements that would affect the price of securities.

10. In recent times, there has been increasing interest in digital assets, such as digitised securities, digital security tokens, and other digital tokens representing interests in assets. To what extent is the management of digital assets regulated in your jurisdiction, and what is the regulatory framework for it?

As of date, there are no specific rules, regulations, or law regulating the management of digital assets in Cambodia.

China

1. Please provide an overview of the asset management market in your jurisdiction in 2020 and what are the trends and opportunities in 2021?

After several years of development, China has finally formed the current asset management market pattern with the participation of commercial banks, securities companies, insurance asset management institutions, trust companies, public fund management companies, private fund managers and other institutions. Under the joint promotion of above institutions, China's large asset management market continues to expand. According to the preliminary statistics of Asset Management Association of China (AMAC, see introduction down below), by the end of 2020, the total asset management business scale of fund management companies and their subsidiaries, securities companies, futures companies and private equity fund management institutions was RMB 223.66 trillion, with an increase of RMB 17.17 trillion over the previous year and a year-on-year growth of 8.32%.[2]

After the implementation of regulatory standards and industry guidance in recent years, the asset management business has gradually walked out of the chaotic situation of brutal growth and disorderly competition, and the non-compliant products and services are withdrawing from the market substantially. Investor protection, compliance operation and risk management have become the important directions of the development of the asset management business in 2020.

- Restate the regulatory concept of integrating macro-prudential management with micro-prudential regulation and combining institutional regulation with functional regulation

  The People's Bank of China (PBOC) developed a macro-prudential policy framework, and the draft amendment to the *Law of the People's Bank of China* expressly includes macro-prudential management as one of the PBOC's responsibilities.

  Meanwhile, financial regulators have actively promulgated regulations so as to fill in gaps in the existing system, such as important financial services have been included in the scope of foreign investment security review; publishing new regulations on financial holding companies.

- Stick to the fundamental goal of serving the real economy

  Establishing a mechanism where the real economy is effectively supported by finance has been important to the design of China's financial regulatory system in recent years. It is imperative to give full paly to the role of asset management business in effectively serving investment and financing needs of the real economy, and to carry out regulation and guidance in a strict manner, in a bid to prevent capital shifting form real economy to virtual economy by cycling within the financial system.

  For example, in the banking and intermediation sector, the government vigorously engaged all major types of financial institutions during the last three years to curb systemic risks. Financial institutions were urged to lower their excessively high leverage ratios and reduce their poor quality and risky assets by about 16 trillion yuan ($2.45 trillion) during 2017-19, according to official statistics.

[2] See https://www.chyxx.com/industry/202012/918119.html

- Great opportunities in the Guangdong-Hong Kong-Macao Greater Bay Area (GBA)

  GBA, with a population of 71 million and a combined GDP of USD1.6 trillion, presents a more specific, wealth-oriented opportunity for asset managers. The concept of the GBA *Wealth Management Connect* had been developed into policy framework through multiple refinements in the past few years. It was first mentioned in the *Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area* released in February 2019. This scheme allows residents living in GBA to invest in eligible investment products distributed by banks in Hong Kong and Macao, and vice versa. Later, at the end of 2020 June, the Hong Kong Monetary Authority, Macao Monetary Authority and PBOC jointly issued an announcement on *Cross-Boundary Wealth Management Connect Pilot Scheme*, revealing more details such as the usage of designated investment accounts for the purchase of eligible investment products, the adoption of closed-loop through the bundling of designated remittance and investment accounts, and that cross-boundary remittances will be carried out in renminbi.

2. What is the regulatory framework for asset management in your jurisdiction:

a. Which official agencies/regulators supervise asset management in your jurisdiction?

In China, asset management may involve financial market segments of banking, securities, insurance, trust, public fund and private fund. Therefore, there is no single regulatory agency responsible for the regulation of asset management. Different asset management services and products are regulated by different regulatory bodies. The main regulatory bodies include PBOC, China Banking and Insurance Regulatory Committee (CBIRC) and China Security Regulatory Committee (CSRC).

Respectively, PBOC is the central bank with the power to control monetary policy and regulate financial institutions, CBIRC is the administrative authority for the wealth management business and subsidiaries of commercial banks and the asset management business of the trust and insurance companies and CSRC is the administrative authority for public funds, the private asset management business of securities and futures institutions, and private investment funds.

In addition, the AMAC, established on June 6, 2012, is a self-regulatory organization of asset management industry. It has established a relatively complete set of self-regulatory rules covering private investment fund management institutions, fund products, qualified investors, fund custody, fund sales, fund investment, information disclosure, accounting, fund valuation and outsourcing of services, etc.

b. What are the sources of law regulating asset management in your jurisdiction?

As mentioned above, the concept of asset management can be interpreted broadly in China, involving segments of banking, securities, insurance, funds, etc. Therefore, instead of a comprehensive law or an all-in-one document covering every aspects of regulations regarding asset management, those provisions and rules are scattered in several measures.

Since the promulgation of the Guiding Opinions on Regulating Asset Management Business of Financial Institutions (the "***Asset Management Regulation***"), in order to promote a better implementation, financial regulatory authorities have gradually formulated detailed supplementary rules within the framework of the *Asset Management Regulation* in relevant sectors respectively, such as:

- *Notice on Further Clarifying Matters concerning the Guiding Opinions on Regulating the Asset Management Business of Financial Institutions* jointly published by PBOC, CBIRC and CSRC in July 2018;
- *Notice on Strengthening Supervision of Trust in the Transition Period of Standardizing Asset Management Business* published by CBIRC in August 2018;

- *Measures on Supervision and Administration of Wealth Management Business of Commercial Banks* published by CBIRC in September 2018;
- *Measures on Administration of Wealth Management Subsidiaries of Commercial Banks* published by CBIRC in October 2018;
- *Administrative Measures on Private Offering Asset Management Business of Securities and Futures Business Organisationsand Administrative Provisions on the Operation of Private Asset Management Plans by Securities and Futures Business Institutions* published by CSRC in October 2018;
- *Provisional Measures on Administration of Insurance Asset Management Products* published by CBIRC in March 2020, etc.

3. What are the types of asset management, companies regulated in your jurisdiction?

The objects of regulation are mainly financial institutions providing investment and management services for investors' assets, such as banks, trusts, securities, funds, futures, insurance asset management institutions, financial asset investment companies and other financial institutions entrusted by investors.

4. What are the key regulatory requirements to establish and operate the different types of asset management companies mentioned above?

Requirements to establish and operate asset management companies may vary depending on what kind of financial institution the company is. However, two of the most important elements for a financial institution to establish and operate asset management business are qualified license and capital.

Take wealth management subsidiary as an example. Should a commercial bank intent to set up a wealth management subsidiary in China, the very first step is to apply for the comprehensive asset management business license from CBIRC. As stipulated by the *Measures on Administration of Wealth Management Subsidiaries of Commercial Banks*, the license covers public offering, private offering, wealth management advisory and consulting services. Meanwhile, as the shareholder of a wealth management subsidiary of a commercial bank, the financial institution must contribute its own capital, other than capital not owned by it such as debt funds and entrusted capital, for shares. It shall pay its registered capital at a minimum of RMB1 billion in a lump sum.

5. For asset management activities, are family offices regulated in your jurisdiction? If so, how are they being regulated? Are family offices subject to special regulatory requirements as opposed to non-family offices?

Family office is newly emerging in China and the industry as a whole is still in the early development stage. Therefore, it is a blank field in the regulatory practice without any special licensing requirements or thresholds of investment at present. They can be established as a built-in department of financial institutions, law firms and family businesses, or separately through the registration of limited liability companies.

China

6. What are the key continuing / ongoing regulatory obligations of a licensee?

The ongoing regulatory obligations of a licensee in asset management industries may be different due to the nature of the company and the financial services or products it provides. However, the key parts of those regulations of licensee's obligations can be quite similar and all targeted for one ultimate purpose, which is, stick to the bottom line of risk control and mitigate systemic risk. Common ground of those regulations includes but not limited to ratio of concentrations and risk reserves; net value management; fair market price; prohibition of insider trading, interest transfer and other irregular transaction activities; full disclosure of information; anti-corruption; anti-money laundering and anti-terrorist financing, etc.

7. What are the requirements in relation to the acquisition of a regulated asset management company in your jurisdiction (including cases where there is a change of control in the asset management company)?

This depends on the structure of the acquisition and detailed arrangement of the proposed transaction.

For instance, if the transaction involves foreign capital, contractual parties shall comply with relevant laws and administrative regulations on foreign exchange control, and promptly complete various foreign exchange approval, registration and filing, etc. with the State Administration of Foreign Exchange (SAFE). If the acquisition involves transfer of shares belonging to state-owned enterprises ora listed company, special formalities tailored for state-owned enterprises and listed companies shall be completed. Where the acquisition has the possibility of reaching the threshold for concentration, a declaration submitted to the Ministry of Commerce shall be made. In the case of industries in which wholly foreign-owned operations by foreign investors are prohibited pursuant to the *Catalogue on Industry Guidelines for Foreign Investment*, merger and acquisition of enterprises in such industries by foreign investors must not result in holding of the entire equity of the enterprises; in the case of industries in which controlling shareholding or relative controlling shareholding by a Chinese party is required, the controlling shareholding or relative controlling shareholding of enterprises by a Chinese party shall continue after the merger and acquisition of enterprises in such industries; in the case of industries in which operations by foreign investors are prohibited, merger and acquisition of enterprises in such industries by foreign investors shall be prohibited.

8. What are the main anti-money laundering and financial crime prevention rules applicable to asset management companies in your jurisdiction?

The *Anti-Money Laundering Law* and the *Counter-Terrorism Law* systematically set out anti-money laundering (AML) requirements for all financial institutions and certain non-financial institutions that have AML obligations established in China (collectively, the "**AML Regulation Objects**").

Besides, PBOC, as the primary regulatory authority of AML, has promulgated various regulations and rules that stipulate specific AML requirements for AML Regulation Objects in conducting their business, such as the *Measures on the Administration of the Customer Identity Verification and the Identification and Transaction Documents Keeping by Financial Institutions*. CBIRC and CSRC have also published various rules that impose special AML requirements on financial institutions in sectors of banking, insurance and securities under their governance, such as the *Implementation Measures of the Anti-Money Laundering Work in Securities and Futures Sectors*.

China

9. Are there any relevant consumer or investor protection rules applicable to asset management companies in your jurisdiction?

Consumer protection and investor protection are two different concepts in the context of asset management. For consumer protection regulation, it mainly focuses on the protection of financial customer's legitimate rights and interest, such as personal financial information security, code of conduct for financial marketing and publicity, the principle of "caveat venditor (seller beware)", etc., which have drawn more attention from the regulatory authorities in recent years.

However, investor protection is primarily referred from the perspective of investment management, which have been more emphasised recently. For example, the new *Securities Law* revised in 2020 has significantly raised the requirement of information disclosure by expanding the scope of the information disclosure obligors, improving the content of information disclosures, emphasising that the information necessary for investors to make value judgements and investment decisions should be fully disclosed, regulating the voluntary disclosure behaviour of information disclosure obligors, clarifying that listed company acquirers should disclose sources for buying additional shares; and establishing an information disclosure system for the issuer and its controlling shareholders, actual controllers, directors, supervisors and senior management personnel to make public commitments.

10. In recent times, there has been increasing interest in digital assets, such as digitised securities, digital security tokens, and other digital tokens representing interests in assets. To what extent is the management of digital assets regulated in your jurisdiction, and what is the regulatory framework for it?

China does not recognize cryptocurrencies as legal tender or a tool for retail payments. In the *Circular on the Prevention of Risks from Bitcoin* jointly issued by PBOC and several commissions in December 2013 (the "***2013 Circular***"), the regulators defined Bitcoin as a virtual commodity and warned the public about the risks of Bitcoin.

Later, in September 2017, PBOC and six other government agencies jointly issued the *Circular on Preventing Token Fundraising Risks* (the "***2017 Circular***"), warning the risks of Initial Coin Offerings. The regulators reiterated that cryptocurrencies, such as Bitcoin and Ethereum, are not issued by the country's monetary authority and therefore are not mandatorily-accepted legal tender. They do not have equal legal status with fiat currencies and cannot and should not be circulated and used in the market as currencies. The *2017 Circular* also imposed restrictions on the primary business activities of cryptocurrency trading platforms, including converting legal tender into cryptocurrencies, or vice versa, purchasing or selling cryptocurrencies, setting prices, or providing other related agent services. Chinese government authorities may shut down the websites and mobile applications of platforms that fail to comply, remove their applications from application stores, or suspend the platform's business licenses. As a result of the *2017 Circular* and the subsequent regulatory measures, cryptocurrency trading platforms have essentially shut down their trading activities in China.

India

1. Please provide an overview of the asset management market in your jurisdiction in 2020 and what are the trends and opportunities in 2021?

The Indian Asset Management Market is estimated to grow at a compound annual growth rate of approximately 14 % during the forecast period and around 80% is owned by the top 10 Asset Management Companies (AMCs). Mutual Funds constitute the majority of the Asset Management Market in India and the Pension Funds and Alternate Investment funds constitute the rest. A large proportion of the investors are institutions constituting of corporates, banks and Foreign Institutional Investors (FIIs).

Events contributing to the asset management market in 2020 is as follows:

- COVID-19 Pandemic

  The pandemic has impacted the entire economy and has also led to induce investors to save more. This was also further aided by the fact that the fund industry has intensified its efforts to go completely digital. During the initial period of the lockdown, the market faced a plunge by almost 30% and slowly attained highs towards the end of 2020 during the regain of the economy. Usually in market corrections, people often tend to sell their investments in panic, and by not having done so in 2020 the mutual fund investors have shown a certain level of maturity keeping the market at a considerable balance in India.

- New Market Players

  There have been new market players and ne asset management companies that have registered for a license and many who have shown interest to mark their entry into the asset management industry, i.e. the Mutual Fund industry.

- Policy changes

  There have been significant policy changes pertaining to the Mutual Fund Industry including a new taxation structure with an option of a lower tax slab for foregoing various exemptions/deductions. There has been a re-categorization and a new fund category has been introduced known as the flexi cap funds which will enable fund managers to take equity exposure of at least 65% across market capitalization and also the mutual fund industry has signed cricket stars to promote awareness on Mutual Funds with the campaign 'Mutual Funds Sahi Hai' (Mutual Funds are Right), the Association of Mutual Funds (AMFI) has become the association sponsor for Indian Premier League 2020 as well.

India

Trends and opportunities for 2021

- **Advancement of Technology, Sustainability and Innovation**

  With the advent of Artificial Intelligence and machine learning there is drive to create a stronger data foundation and also to enable a globalization of the market through shared services and indifferent geographies. The market is also looking at a huge cost-reduction with these measures and establishing a culture to optimize the cost model and return the investment. With the changing times, it is necessary that the market adheres to the latest generation technologies and innovates to strike a balance between sustainability and financial performance. There is also a good possibility of increased learning in the field and also support to workers to reinvent themselves.

- **Roll-down maturity**

  Debt mutual funds in India have long struggled with the problem of being unable to explicitly guarantee returns. Roll-down maturity has been the industry's response to this problem. It involves specifying a target maturity date and holding bonds whose maturity roughly corresponds with the date in question. This allows the fund's return to be predictable if it is held till the target date, although there's no explicit guarantee. The roll-down structure is used in open-ended funds, allowing investors to exit at any point of time, unlike a lock-in traditional scenario.

- **ESG Investing**

  ESG or Environmental, Social and Global Investing is an idea that caught on in 2020. ESG philosophy seeks to weed out companies which fail to satisfy specified norms on corporate governance, environmental impact or social awareness. Until 2019, there were only a couple of ESG schemes, but in 2020 most of India's large AMCs have launched such schemes.

- **Increase in SIPs**

  Systematic Investment Plans (SIP) has protected the investors from market volatility, especially during 2020. SIP is a convenient method of investment, having a similar structure as a recurring deposit and the investment starting from a low denomination. SIP has gained popularity and avoids the risk of timing the market.

2. What is the regulatory framework for asset management in your jurisdiction:

a. Which official agencies/regulators supervise asset management in your jurisdiction?

The Securities and Exchange Board of India (SEBI) is the primary regulator for asset management in India in accordance to the SEBI Act, 1992 and Regulations thereunder.

b. What are the sources of law regulating asset management in your jurisdiction?

In India, the Securities Exchange Board of India acts as the primary regulator for all funds and asset management or advisory activities in India, in accordance with the SEBI Act, 1992 ("**SEBI Act**"). Apart from this, the central government together with the Reserve Bank of India ("**RBI**"), India's central bank constituted under the RBI Act, 1934, regulates foreign investment and exchange control. There are also Regulations such as the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 ("**Mutual Fund Regulations**") and Alternative Investment Fund Regulations, 2012 ("**AIF Regulations**").

India

3. What are the types of asset management, companies regulated in your jurisdiction?

Asset management companies in India can be broadly divided into three category types — bank-sponsored mutual funds, mutual fund institutions, and the private sector mutual funds. The broadly regulated areas are:

- Alternative Investment Funds
- Mutual Funds
- Real Estate investment trusts and infrastructure investment trusts
- Collective investment schemes

4. What are the key regulatory requirements to establish and operate the different types of asset management companies mentioned above?

An application under Chapter IV of the SEBI Mutual Fund Regulations 1996 is required for an approval of an asset management company.

Key Eligibility Criteria:

- The reputation of the asset management company and the moral and professional standing of the directors and key personnel are vital when seeking for approval of registration.
- SEBI Regulations require that at least two-thirds of the directors of trustee company or board of trustees must be independent i.e. they should not be associated with the sponsors and 50% of the directors of AMC must be independent.
- The AMC is to maintain a stable net worth of Rs 100 million.
- The AMC is to take all steps to ensure a thorough due diligence is conducted to ensure that any scheme is not contrary to the Mutual Finds Regulation and the trust deed.

5. For asset management activities, are family offices regulated in your jurisdiction? If so, how are they being regulated? Are family offices subject to special regulatory requirements as opposed to non-family offices?

Family Offices can be set up by various methods such as private company, limited liability partnership or a trust, and the regulation is made under the following categories as well. The trust structure is most preferred among family offices, either for a single family office or a multi-family office.

Every individual is required to disclose their assets and income as per the laws of India and if a trust is established outside India they are under the scrutiny of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 wherein a 30% tax is levied on undisclosed foreign income (UFI) and undisclosed foreign assets (UFA) held outside India which has not been disclosed under the applicable Tax laws. Further India has enacted certain General Anti-Avoidance Rules (GAAR) for curbing tax avoidance in relation to existing Income Tax laws.

India

6. What are the key continuing / ongoing regulatory obligations of a licensee?

The Regulatory obligation of the asset management company have been mentioned in Regulation 25 of the MF Regulations. They are mentioned as follows:

- The AMC is to take all reasonable steps and exercise due diligence to ensure that the investment of funds pertaining to any scheme is not contrary to the provisions of the MF regulations and the trust deed.
- The AMC is to exercise all the due diligence and care in all its investment decisions as would be exercised by other persons engaged in the same business.
- The AMC must obtain prior in-principle approval from the recognized stock exchange(s) where units are proposed to be listed as per the MF Regulations.
- The AMC shall be responsible for the acts of commission or omission by its employees or the persons whose services have been procured.
- The AMC must submit to the trustees quarterly reports on its activities and the compliance with the MF regulations.
- On termination of the AMC, the Directors or other officers are not absolved of the liabilities of the AMC.
- An AMC cannot utilise the services of the sponsor or any of its associates, employees or their relatives, for the purpose of any securities transaction and distribution and sale of securities.
- The AMC shall not appoint any person as key personnel who has been found guilty of any economic offence or involved in violation of securities laws.
- The AMC shall not carry out its operations including trading desk, unit holder servicing and investment operations outside the territory of India.
- Any director of the AMC cannot hold office of a director in another AMC unless such person is an independent director and the approval of the board of the AMC of which such person is a director, has been obtained;
- The AMC shall not act as a trustee of any mutual fund;
- The AMC cannot undertake any other business activities except activities in the nature of portfolio management services, management and advisory services to offshore funds, pension funds, provident funds, venture capital funds, management of insurance funds, financial consultancy and exchange of research on commercial basis if any of such activities are not in conflict with the activities of the mutual fund. However, the AMC may, itself or through its subsidiaries, undertake such activities if it satisfies the Board that the key personnel of the asset management company, the systems, back office, bank and securities accounts are segregated activity-wise and there exist systems to prohibit access to inside information of various activities.
- The AMC shall not invest in any of its own schemes unless full disclosure of its intention to invest has been made in the offer. However, an AMC shall not be entitled to charge any fees on its investment in that scheme. The AMC is required to take all reasonable steps and exercise due diligence to ensure that the investment of funds pertaining to any scheme are not contrary to the provisions of the Mutual Fund Regulations and the trust deed. An AMC cannot, through any broker associated with the sponsor, purchase or sell securities, which is an average of 5% or more of the aggregate purchases and sale of securities made by the mutual fund in all its schemes. However, the aggregate purchase and sale of securities excludes the sale and distribution of units issued by the mutual fund and the limit of 5% shall apply only for a block of any three months.

India

7. What are the requirements in relation to the acquisition of a regulated asset management company in your jurisdiction (including cases where there is a change of control in the asset management company)?

There exist certain restrictions and requirement with respect to the control of the AMC:

- At the time of giving registration to a mutual fund, SEBI shall conduct due diligence of all the entities holding 10% or more stake each in the mutual fund.
- In case of any subsequent change in controlling interest of 10% or more in an AMC, prior approval of the trustees and SEBI is required; and the unit holders are required to be given an option to exit on the prevailing Net Asset Value without any exit load or redemption fee.
- Para 2 of Seventh Schedule of MF Regulations states that *"No mutual fund under all its schemes should own more than ten per cent of any company's paid up capital carrying voting rights"*
- A mutual fund through its scheme can acquire shares of AMC of other mutual funds either by subscribing shares or transfer of shares from another shareholder. Further, Mutual Funds can also acquire shares of listed AMCs through stock exchanges

In India, the key legislations that govern mergers and acquisition are:

- The Companies Act, 2013: This is the primary legislation governing all companies in India, whether they are mergers, primary and secondary acquisitions it must be carried out in accordance with the Companies Act 2013 and read with the rules framed.
- The Securities and Exchange Board of India: The Securities Market in India is governed by the SEBI. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011, govern M&A transactions with respect to publically listed companies.
- The Competition Act 2002: The Competition Act 2002, read with the Competition Commission of India (Procedure in regard to transaction of business relating to combinations) Regulations, 2011 regulate Mergers and Acquisitions likely to cause a significant adverse effect on competition in India.
- The Insolvency and Bankruptcy Code, 2016("**IBC**"): The IBC, along with the rules thereunder regulates the dealing of distressed assets under the corporate insolvency resolution process. The IBC has been one of the main contributors to M&A deals since its inception.

India

8. What are the main anti-money laundering and financial crime prevention rules applicable to asset management companies in your jurisdiction?

SEBI has issued necessary directives from time to time on guidelines on Anti-Money Laundering, Standards and Combating the Financing of Terrorism / Obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 and Rules framed thereunder.

The RBI has also issued the Guidelines on Anti-Money Laundering Guidelines for Authorised Money Changers dated 02.12.2005; which includes:

- Know your customer (KYC) measures for identification of customers
- Purchase/Sale of Foreign Assets
- Suspicious transactions and reporting of suspicious activity
- Appointment of a Money Laundering Reporting Officer

As per the latest Master Circular issued by SEBI dated October 15, 2019, the transaction required to be reported by SEBI intermediary include:

- All cash transactions of the value of more than INR 10 lakh or its equivalent in foreign currency.
- All series of cash transactions integrally connected to each other which have been valued below INR 10 lakh or its equivalent in foreign currency where such series of transactions have taken place within a month and the monthly aggregate exceeds an amount of ten lakh rupees or its equivalent in foreign currency.
- All suspicious transactions whether or not made in cash and including, inter-alia, credits or debits into from any non-monetary account such as a dematerialised account.
- The Master Circular also provides for an illustrative list of circumstances which may be in the nature of suspicious transactions including, asset management services for clients where the source of the funds is not clear or not in keeping with clients' apparent standing /business activity.

9. Are there any relevant consumer or investor protection rules applicable to asset management companies in your jurisdiction?

Investor protection involves various measures established to protect the interests of investors from malpractices. SEBI is responsible for regulations of the Mutual Funds and safeguard the interests of the investors. Investor protection measures by SEBI are in place to safeguard the investors from the malpractices in shares, the stock market, Mutual Fund, etc.

Investor protection legislation is implemented under the Section 11(2) of the SEBI Act. The measures are as follows:

- Stock Exchange and other securities market business regulation.
- Registering and regulating the intermediaries of the business like brokers, transfer agents, bankers, trustees, registrars, portfolio managers, investment consultants, merchant bankers, etc.
- Recording and monitoring the work of custodians, depositors, participants, foreign investors, credit rating agencies, etc.
- Registering investment schemes like Mutual fund & venture Capital funds, and regulating their functioning. Promotion and controlling of self-regulatory companies.

- Keeping a check on frauds and unfair trading methods related to the securities market.
- Observing and regulating major transactions and take-over of the companies.
- Carry out investor awareness and education programme. Train the intermediaries of the business.
- Inspecting and auditing the security exchanges (SEs) and intermediaries. Assessment of fees and other charges.

Association of Mutual Funds in India (AMFI) was set up on August 22, 1995, is the association of SEBI registered Mutual Funds in India. It was set up to regulate all those who sell Mutual Fund in India. AMFI registration is required to solicit the Mutual Funds and it regulates the members of the association in order to protect the investor from any kind of mis-selling or unfair investment practices.

10. In recent times, there has been increasing interest in digital assets, such as digitised securities, digital security tokens, and other digital tokens representing interests in assets. To what extent is the management of digital assets regulated in your jurisdiction, and what is the regulatory framework for it?

India at present does not have a regulatory framework to manage digital assets. However, the Indian Parliament is considering the introduction of the Crypto currency and Regulation of Official Digital Currency Bill, 2021 (**the** "**Crypto Bill**"). The Crypto Bill intends to ban "private" crypto currencies in India with certain exceptions to promote the underlying technology of crypto currency and provide a framework for creating an official digital currency, the central bank digital currency to be issued by the Reserve Bank of India. The RBI had previously issued a circular on April 6, 2018 directing the entities regulated by the RBI not to deal in crypto/virtual currencies or provide any services for facilitating any person or entity dealing with or settling virtual currencies, and many banks suspended the current account operations of crypto currency platforms which effectively disabled crypto trading. The RBI circular was subsequently set aside by the Supreme Court of India in March 2020 by concluding that the RBI has been conferred with wide powers in the economy of the country, but the measures taken by the RBI for issuance of the circular were not proportionate and therefore is violative of Article 19(1) (g) of the Constitution of India. However, further clarity is being sought in this regard on the validity of digital currency and digital assets to be owned and traded.

The following are contributed by InCorp's Regional Offices

1. Does your jurisdiction have a special tax regime for the asset management industry? If so, please provide a brief overview.

Indian Income Tax Act, 1961 has various provisions which determine the taxability, computation methodology and concessional tax rates for investments made by an Asset Management Company.

In order to avail such benefit, the AMC needs to be registered with the Securities and Exchange Board of India ("SEBI"). SEBI is the regulator of the securities market in India.

India 

2. How would fund vehicles in your jurisdiction be treated for tax purposes?

Onshore funds in India are entities which are registered with SEBI and *inter alia* includes Venture Capital Funds, Business Trusts, Investment Funds, and Securitization Trusts. In some cases, the onshore funds are considered as pass through entities and income arising to such funds are taxable in the hands of investor.

3. For foreign funds investing in securities and assets in your jurisdiction, what are the tax implications in your jurisdiction?

Offshore funds investing in India are commonly known as Foreign Portfolio Investors ("FPI"). In order to avail tax benefits, they need to obtain either FPI Category I or FPI Category II license from SEBI.

Further, in order to continue with the non-residential status, avail the benefit of concessional tax rate and not constitute a business connection in India, such FPI will have to further comply with various conditions applicable to both the investment fund as well as its manager.

Benefit of double taxation avoidance agreement is available to FPIs.

4. What are the tax implications for resident individuals and entities in your jurisdiction investing in an onshore and offshore fund?

In some cases, the onshore funds are considered as pass through entities and income arising to such funds are taxable in the hands of investor.

Resident Indians investing in offshore funds are liable to tax on their worldwide income in India.

5. What are the tax implications for foreign individuals and entities investing in onshore funds in your jurisdiction?

Foreign residents and entities investing in onshore funds are liable to tax in India, subject to benefits available under Double Taxation Avoidance Agreement.

6. What are the tax implications for asset managers in your region managing both domestic, offshore, or domestic and offshore funds?

Asset manager handling onshore/offshore funds will be considered as residents of India and will be taxable on his total income in India.

Indonesia

1. Please provide an overview of the asset management market in your jurisdiction in 2020 and what are the trends and opportunities in 2021?

Since the global pandemic started in 2020, it is evident that the global economic distress has been playing a substantial role in the disruption and uncertainty of capital markets condition in general. As an effort to anticipate such conditions, the Indonesia Financial Services Authority ("**OJK**") has issued several policies, such as forward-looking policies and countercyclical policies. It is aimed to mitigate the market volatility and to maintain the stability of the whole financial system.

Interestingly, the asset management business, which primarily manages the mutual fund, still showed a positive trend in 2020. The data cited from pasaRDana (www.pasardana.id) shows that the collective asset under management of asset managements in mutual fund alone has increased by IDR21.40 trillion since last December 2019, reaching IDR535,19 trillion. Annually, the assets under management of the mutual fund industry grow by 3.99%.

Despite investors' negative sentiment in 2020, asset management is still thriving and maintaining the market interest to invest in their investment products. One of the main highlights is the vast growth of the number of investors at unprecedented milestones. According to the Indonesia Central Securities Depository, as of 27 October 2020, mutual fund investors have risen 52.2% into 2.7 million single investor identification (SID) since the end of 2019. Concurrently, the number of SID in the capital market sectors increased by 36.82% to 3.39 million SID.

The positive trend happening in 2020 shows that the asset management market is a gateway for retail and beginner investors to be included in the capital market activities, to support local investors' dominance, and to restore capital markets sector resilience.

In 2021, still within the effort to recover the national economic condition, OJK set up certain strategies for years to come. Through the Indonesian Financial Services Sector Master Plan of 2021 – 2025 to Recover the National Economy and Enhance the Financial Services Sector Resiliency and Competitiveness ("**Master Plan**"), OJK is keen to continue the good trends of 2020 and improve the overall financial service sectors reliability. OJK is issuing long-term policy direction to the national economic recovery program and other supporting policies to enhance the whole system in the financial sectors.

Within the OJK program in its Master Plan to be implemented by the financial services sector players, asset management, which manages the Securities portfolio for investor or the collective investment portfolio for a group of investors, still faces other challenges such as the level of financial literacy of investors and the inclusion in the capital market sector. The importance of educating new investors is the key for asset management to expand their business and to increase their assets under management in 2021. The momentum of investors' growth in 2020 should be used to foster investor trust and create a good quality investment portfolio for investors to create promising business for asset management, increase retail and beginner investors' participation, and strengthen the whole capital market sector.

Indonesia

If the above implementation is executed properly, the asset management activities will be beneficial for the asset management and the investor. The asset management's ability to provide options for the potential investor with financing limitations but a desire to enter the market will give alternative through the asset management products such as mutual funds, real estate investment trusts, and backed asset securities. The digitalization of the capital market transactions that becomes more familiar to retail and beginner investors may even provide broader coverage for the potential investor across Indonesia to enter into the market through asset management investment products.

2. What is the regulatory framework for asset management in your jurisdiction:

a. Which official agencies/regulators supervise asset management in your jurisdiction?

The official regulators that supervise the asset management activities in Indonesia is Indonesia Financial Services Authority/ *Otoritas Jasa Keuangan* ("**OJK**"). Prior to the enactment of the Law of the Republic of Indonesia No. 21 of 2011 on the Indonesia Financial Services Authority/ *Otoritas Jasa Keuangan* ("**OJK Law**"), the Capital Market activities were supervised under the Capital Market Supervisory Agency/ *Badan Pengawas Pasar Modal* ("**BAPEPAM**") or later known as the Capital and Financial Institutions Market Supervisory Agency/ Badan Pengawas Pasar Modal dan Lembaga Keuangan ("**BAPEPAM & LK**"). Effective as of 31 December 2012, the function, duties, and regulatory and supervisory authorities of the financial institution have switched from BAPEPAM & LK to OJK.

b. What are the sources of law regulating asset management in your jurisdiction?

The main regulation that regulates the asset management business activities can be found under Law No. 8 of 1995 on the Capital Market ("**Capital Market Law**"). Article 1 point 21 of Capital Market Law stipulates that Securities Company means the Parties which undertake the business activities as the Securities Underwriter, Securities Brokerage, and/ or Asset Management. Furthermore, Asset Management means the Parties whose business activities are to manage the Securities Portfolio for investor or collective investment portfolio for a group of investors, except for insurance companies, pension funds, and banks which carry out their own business activities according to the prevailing laws and regulations. The Capital Market Law also stipulates that parties that could undertake the business activities as the Asset Management is a Company that has obtained the business license from OJK. As the regulatory authority of the Capital Market activities, OJK keep issuing or updating the implementing regulations that formerly regulated in BAPEPAM & LK regulations, to accommodate the global development of the Capital Market sector.

3. What are the types of asset management, companies regulated in your jurisdiction?

There is no diversification of asset management types in Indonesia. Under the Capital Market Law, Asset Management mainly focused on the management of the mutual fund. According to Article 1 point 27 of the Capital Market Law, the mutual fund is an investment instrument utilized to collect funds from public investors to further invest in the Securities Portfolio. The mutual fund itself differs into two types of legal forms, which are the mutual fund in the form of a Company, or the mutual fund in the form of a collective investment contract. However, the only mutual fund that is implemented under the Capital Market Law is the mutual fund in the form of a collective investment contract.

Indonesia

On its development, below is the investment instrument that may be managed by the asset management according to the prevailing regulations:

a. **Discretionary Fund**
   OJK Regulation No. 21/POJK.04/2017 on the Management Guidelines of the Securities Portfolio for the Interest of Individual Investor ("**OJK Regulation 21/2017**").

b. **Mutual Fund in the form of a Company**
   OJK Regulation No. 33/POJK.04/2017 on the Management Guidelines of the Mutual Fund in the Form of a Company.

c. **Mutual Fund in the form of a Collective Investment Contract**
   OJK Regulation No. 23/POJK.04/2016 on the Mutual Fund in the Form of a Collective Investment Contract as amended by OJK Regulation No. 2/POJK.04/2020 on the Amendment of OJK Regulation No. 23/POJK.04/2016 on the Mutual Fund in the Form of a Collective Investment Contract.

d. **Open-Ended Mutual Fund (Money Market Fund, Fixed Income Fund, Equity Fund, Balanced Fund)**
   OJK Regulation No. 47/POJK.04/2015 on the Announcement Guidelines of the Daily Net Asset Value of the Open-ended Mutual Fund.

e. **Closed-Ended Mutual Fund (Capital Protected Fund, Capital Guaranteed Fund, Index Fund)**
   OJK Regulation No. 48/POJK.04/2015 on the Management Guidelines on the Capital Protected Fund, Capital Guaranteed Fund, and Index Fund.

f. **Limited Participation Mutual Fund**
   OJK Regulation No. 34/POJK.04/2019 on the Limited Participation Mutual Fund in the Form of Collective Investment Contract.

g. **Sharia Mutual Fund**
   OJK Regulation No. 33/POJK.04/2019 on the Issuance and the Requirements of the Sharia Mutual Fund.

h. **Real Estate Investment Trust**
   OJK Regulation No. 64/POJK.04/2017 on the Real Estate Investment Trust in the Form of Collective Investment Contract.

i. **Infrastructure Investment Trust**
   OJK Regulation No. 52/POJK.04/2017 in the Infrastructure Investment Trust in the Form of Collective Investment Contract.

j. **Backed Asset Securities**
   OJK Regulation No. 65/POJK.04/2017 on the Issuance and Reporting Guidelines of the Backed Asset Securities in the Form of Collective Investment Contract.

Indonesia

4. What are the key regulatory requirements to establish and operate the different types of asset management companies mentioned above?

As explained above, Indonesia does not have any diversification of asset management types. Therefore, there is only one main regulation that governs the operation of asset management. The Decree of the Head of BAPEPAM & LK No. KEP-479/BL/2009 on the Licensing for Securities Companies which Conduct Business Activity as Asset Management as amended by the Decree of the Head of BAPEPAM & LK No. KEP-26/BL/2020 on the Amendment of the Decree of BAPEPAM & LK No. KEP-479/BL/2009 on the Licensing for Securities Companies which Conduct Business Activity as Asset Management and its attachments ("**BAPEPAM Rule V.A.3**").

Under BAPEPAM Rule V.A.3, several highlights need to be aware of in establishing and operating an asset management company:

a. Shareholders Structure

To become the shareholder of the asset management company, the integrity and financial feasibility requirements must be fulfilled by the prospective shareholder, which shall comprise at least:

1. **Integrity requirements:**
   a. Has never conducted any action and/or convicted of committing any crimes in the financial sector;
   b. Has a good character and morality;
   c. Has a strong commitment to comply with the prevailing laws and regulations; and
   d. Has a strong commitment towards the development of a sound asset management operational.

2. **Financial feasibility requirements:**
   a. Has financial capability;
   b. Has never been declared bankrupt; and
   c. Has never become a management or supervisor of a company which, based on the shareholders' resolution or other equivalent company organ to the shareholders' resolution, was held accountable over the company's bankruptcy.

If the asset management has the status as a listed company or a public company, the above requirements only bind the controlling shareholders and shareholders who own 20% or more shares of the said asset management.

Furthermore, asset management as the financial service institution that being supervised under OJK, is also subject to OJK Regulation No. 27/POJK.03/2016 on the Fit and Proper Assessment of the Principal Party of the Financial Services Institutions ("**OJK Regulation 27/2016**"). According to article 2 of OJK Regulation 27/2016, the prospective principal party, which includes controlling shareholders, member of board of directors, and member of board commissioners, must obtain the approval from OJK with regard to the fit and proper test to conduct its duties and functions as the principal party.

In addition, according to Article 2 of the Ministry of Finance Regulation No. 153/PMK.010/2010 on the Shares Ownership and Capital of the Securities Companies, the foreign ownership of an asset management differ into two classifications:

- Owned at maximum of 85% of the issued and fully paid-up capital by the foreign entity which engages in the financial sector other than underwriter business activities; or
- Owned at maximum of 99% of the issued and fully paid-up capital by the foreign entity which engages in the underwriter business activities which have obtained alicense or under the supervision of the Capital Market regulatory authority in its country of origin.

Indonesia

b. Board of Directors and Board of Commissioners

An asset management company must have at least two members of the Board of Directors ("**BOD**") and two members of the Board of Commissioners ("**BOC**"). Similar to the explanation on point a above, the candidate of directors and commissioners of an asset management company shall fulfil the integrity and competency requirements, which shall comprise at least:

1. **Integrity requirements:**
   a. An individual which is legally competent to conduct legal actions;
   b. Has never been declared bankrupt or become a director or commissioner which was found guilty causing a company to be declared bankrupt;
   c. Has never become management or a supervisor of a company when such company was declared bankrupt, except the relevant party could prove that the company's bankruptcy was outside his/her fault or negligence or has conducted his/her duty based on good faith;
   d. Has never conducted any action and/or convicted of committing any crimes in the financial sector;
   e. Has a good character and morality;
   f. Has a strong commitment to comply with the prevailing laws and regulations; and
   g. Has a strong commitment towards the development of sound asset management operations.

2. **Competency requirements:**
   a. <u>For the directors candidate:</u>
      1. Has an adequate and relevant knowledge within his/her position in the scope of Capital Market and at least academically educated equivalent toa 3-year Diploma;
      2. Has experience and expertise in the Capital market and/or financial sector at least three years in a managerial position in an institution engaged in Capital Market and/or financial sector related to the fund management of the investor or the company which invested in the Securities portfolio or collective investment portfolio;
      3. Has an individual license as the Securities Company Representative, and at least one BOD has the individual license as the Asset Management Representative;
      4. Does not have a double position on the other company except as the commissioner of the Stock Exchange, Clearing and Guarantee Institution or Central Securities Depository Institution;
      5. Is responsible for the completeness and correctness of the documents submitted to OJK; and
      6. Is domiciled in Indonesia.

   b. <u>For the commissioners candidate:</u>
      1. Has adequate and relevant expertise within his/her position in the Capital Market sector and/or experience at least two years in a company engaged in the Capital Market and/or financial sector.
      2. Does not have a double position in other Securities Company.

Indonesia

c. Organizational Structure

Asset management must have the working unit or an official who undertakes the functions of asset management under the OJK Regulation No. 24/POJK.04/2014 on the Implementing Guidelines of the Functions of an Asset Management ("**OJK Regulation 24/2014**"). Based on Article 2 of OJK Regulation 24/2014, in conducting its activities, asset management must have and undertake the following functions:

1. Investment and research;
2. Trading;
3. Securities transaction settlement;
4. Risk management, compliance, and internal audit;
5. Marketing and handling the customers' complaints;
6. Information technology
7. Accounting and finance; and
8. Human resources development.

d. Business Licensing

To obtain the business license as asset management, a company must submit a business license application to OJK, accompanied by the following supporting documents:

1. Asset management identity (name, address, phone, fax, and logo);
2. A copy of the deed of establishment, which has obtained the approval from the Ministry of Law and Human Rights ("MOLHR"), as well as the latest amendment of the articles of association which have obtained the approval from MOLHR;
3. Asset management compliance strategy towards the prevailing laws and regulations in the Capital Market sector;
4. Asset management risk management strategy;
5. A copy of the tax identification number;
6. List of BOD, BOC, and personnel who have the individual license as the Securities Company Representative (Underwriter Representative, Brokerage Representative, and/or Asset Management Representative), and personnel who have the duties to implement and/or coordinate the asset management functions according to OJK Regulation 24/2014;
7. List of names and shareholders data. if the asset management has the status as the listed company or public company, the list of names and shareholders data only covers the controlling shareholders or shareholders which have 20% or more of the asset management shares;
8. Reference letter on the party which controls the asset management, both directly or indirectly;
9. Working permit for foreign manpower (as applicable);
10. Latest audited financial statements examined by OJK's registered Accountant;
11. Copy of the joint venture agreement for the joint asset management company (if any);
12. Current bank statement;
13. Proof of capital deposit;

14. Adjusted Net Working Capital information;
15. Integrity statement letter from the party which controls the asset management, if the asset management has the status as a listed company or a public company, the integrity statement letter only for the controlling shareholders or shareholders which have 20% or more of the asset management shares;
16. Integrity statement letter of the BOD and BOC of the asset management and other statement letters;
17. Domicile letter from the building management or authorized agency;
18. Organizational structure diagram;
19. Operational plan in the upcoming five years;
20. Financial projection in the upcoming five years;
21. List of branch office (if any); and
22. Standard operating procedure of asset management.

5. For asset management activities, are family offices regulated in your jurisdiction? If so, how are they being regulated? Are family offices subject to special regulatory requirements as opposed to non-family offices?

Indonesia does not recognize a family offices concept as a part of asset management business activities. Therefore, there is no implementing regulation specifically govern this type of business activities.

One of the investment instruments that may be similar to the family office concept is the Discretionary Fund ("**DF**"). DF under OJK Regulation 21/2017 shares the same ultimate goal with the family office, which manages an individual investment fund to be invested in some portfolio. However, the fund collected in DF shall only be invested in the form of Securities, which arguably means that the investment in Securities is not the only purpose for the common family office to utilize their fund. Further, the DF managed by the asset management must be reported to OJK by no later than 10 days since the agreement's signing date, which may be found very different from the family office concept that typically would like to keep their portfolio strictly confidential.

6. What are the key continuing / ongoing regulatory obligations of a licensee?

The details of continued obligations can be found under Point 6 of BAPEPAM Rule V.A.3, such as the updates of company information or change of the company organ. Other than said continued obligations, the licensee shall also subject to the following regulations:

- OJK Regulation No. 10/POJK.04/2018 on the Governance Application of the Asset Management ("**OJK Regulation 10/2018**"); and
- OJK Regulation No. 43/POJK.04/2015 on the Code of Conduct of the Asset Management.

Indonesia

7. What are the requirements in relation to the acquisition of a regulated asset management company in your jurisdiction (including cases where there is a change of control in the asset management company)?

With regard to the acquisition of asset management, the essence of any acquisition of a financial services institution can be found under OJK Regulation 27/2016. This regulation stipulates that any parties that will be the principal party of the financial services institution must obtain an approval from OJK regarding the fit and proper test, where the principal party includes the prospective shareholder that will acquire the asset management company.

OJK Circular Letter No. 2/SEOJK.04/2020 on the Assessment of the Fit and Proper test of the Prospective Principal Party of the Asset Management and Investment Advisor govern the implementing regulation from OJK Regulation 27/2016 specifically for asset management and investment advisor.

In practice, any transaction with regard to the acquisition of the asset management will be undertaken after obtaining approval from OJK regarding the fit and proper test. This is due to the reason that any prospective controlling shareholder will be prohibited from conducting any actions as the controlling shareholder before receiving such approval of fit and proper test from OJK, even if such shareholder already have the shares of the asset management.

Furthermore, any acquisition of asset management will be subject to Law No. 40 of 2007 on the Limited Liability Companies ("**Company Law**"). If the asset management is a listed company or a public company, other than being subject to the Company Law, is also subject to OJK Regulation No. 9/POJK.04/2018 on the Acquisition of Publicly Listed Companies, because of which may need to conduct the continued obligation such as mandatory tender offer.

8. What are the main anti-money laundering and financial crime prevention rules applicable to asset management companies in your jurisdiction?

The main regulation can be found under the OJK Regulation No. 12/POJK.01/2017 on the Implementation of Anti-Money-Laundering and Prevention of Terrorism Financing Programs within the Financial Services Sector ("**OJK Regulation 12/2017**"). This regulation updates the Know-Your-Customer principles which was previously governed under OJK Regulation No. 22/POJK.04/2014 on the Know-Your-Customer by the Financial Services in the Capital Market Sector ("**OJK Regulation 22/2014**"), which enhances the standard monitoring and supervising, policies and procedures, and the administrative requirements in identifying and verifying the customer to align with the latest international standard recommendation by the Financial Action Task Force on Money Laundering (FATF).

Indonesia

9. Are there any relevant consumer or investor protection rules applicable to asset management companies in your jurisdiction?

The relevant regulation with regard to the investor protection is governed under OJK Regulation No. 18/POJK.07/2018 on the Consumer Complaint Service within the Financial Services Sector ("**OJK Regulation 18/2018**"). Under the OJK Regulation 18/2018, asset management is included as the Financial Services Business Actor along with other financial services institutions such as commercial banks, underwriters, or pension funds. The scope of the consumer complaint service consists of receipt of complaints, handling the complaints, and the resolution of the complaints. Asset management shall have the written procedure of the consumer complaint services, to enable consumers to file their complaint to be further verified by the asset management in the validity of the complaint. Asset management must undertake a follow-up on the verbal complaints no later than five business days or written complaint no later than 20 business days to be settled within such period. If such complaint cannot be settled by the consumer and asset management, the option to settle in dispute settlement forum must be provided by the asset management to the consumer, following the relevant dispute resolution forum under the agreement and/or transaction document between asset management and consumer.

10. In recent times, there has been increasing interest in digital assets, such as digitised securities, digital security tokens, and other digital tokens representing interests in assets. To what extent is the management of digital assets regulated in your jurisdiction, and what is the regulatory framework for it?

As the promising growth of digital assets globally, unfortunately, Indonesia has not issued any laws or regulations to recognize digital assets as the investable portfolio equivalent to any Securities governed under the Capital Market Law.

The following are contributed by InCorp's Regional Offices

1. Does your jurisdiction have a special tax regime for the asset management industry? If so, please provide a brief overview.

There is no special tax regime for the asset management industry in Indonesia, except for small-medium enterprises, public listed companies and labour-intensive industries.

2. How would fund vehicles in your jurisdiction be treated for tax purposes?

For funds managed by an Indonesian fund manager, onshore income is not taxable as long as re-invested in Indonesia, Offshore income is also not taxable as long as re-invested in Indonesia and meets certain conditions as ruled by Omnibus Law No. 11/2020.

Indonesia

3. For foreign funds investing in securities and assets in your jurisdiction, what are the tax implications in your jurisdiction?

Foreign funds deriving income from Indonesia may be subject to Indonesian withholding tax depending on the type of income derived by the non-resident fund. The Indonesian withholding tax may be reduced under the relevant tax treaties.

4. What are the tax implications for resident individuals and entities in your jurisdiction investing in an onshore and offshore fund?

Onshore income is not taxable as long as re-invested in Indonesia. Offshore income is also not taxable as long as re-invested in Indonesia and meets certain conditions as ruled by Omnibus Law No. 11/2020.

5. What are the tax implications for foreign individuals and entities investing in onshore funds in your jurisdiction?

Foreign individuals and entities deriving income from Indonesia may be subject to Indonesian withholding tax depending on the type of income derived from the onshore fund in Vietnam. The Vietnam withholding tax may be reduced under the relevant tax treaties.

6. What are the tax implications for asset managers in your region managing both domestic, offshore, or domestic and offshore funds?

Asset managers deriving income from carrying on fund management activities for onshore and offshore funds will be subject to Indonesian income tax, unless they qualify for concessions as mentioned in item 1.

Malaysia

1. Please provide an overview of the asset management market in your jurisdiction in 2020 and what are the trends and opportunities in 2021?

The market in Malaysia has been steadily growing over the past few years, albeit at a much slower rate for year 2020 due to COVID-19. Below are statistics of asset allocation as compiled by the *Securities Commission Malaysia* ("**SC**"), the statutory body responsible for regulating and developing the Malaysian capital market.

Table on asset allocation for overall fund management

Year	Month	AUM (Converted from RM Billion to USD Billion on an approximate basis with 2021 currency conversion rate)						Total
		Equities	Fixed Income Securities	Money Market Placement	Unit Trust Funds	Private Equity/Unquoted Stocks	Others	
2018		84.46	38.12	40.53	6.55	2.83	6.20	178.79
2019		96.21	43.67	39.25	8.61	3.60	6.59	197.93
2020		105.13	51.71	36.57	11.83	4.41	8.06	217.71
2021	Jan 2021	103.34	51.75	37.33	12.07	2.89	11.73	219.11

Whilst the pandemic brought forth unforeseen impact to a person's daily life, it had also resulted in an unprecedented increase in the usage of technologies. To that end, the public has discovered that personal investments are readily accessible through digital and fintech platforms.

As seen in Rakuten Trade's (an online retail brokerage) announcement in April 2020 (shortly after the commencement of the lockdown in Malaysia), it recorded a staggering 11,000 new accounts applications in a month. Combining the growing adoption of online investment with the emergence of robo-advisor investment platforms such as StashAway (launched in Malaysia in 2018), Wahed Invest (launched in Malaysia in 2019) and Raiz (launched in Malaysia in 2020), it can be observed that COVID-19 played the role of a much needed catalyst in the development of accessible investments. Due to the continued enforcement of lockdown and the imposition of low interest rate in Malaysia, the increasing participation of investment in general is likely to continue for the foreseeable future, as evident in StashAway's announcement in early 2021 on the achievement of having US$1 billion (RM4.05 billion) of assets under management in less than 4 years (region-wide).

Malaysia

Environmental, Social Governance (ESG) investments in Malaysia

In line with global trends, Environmental, Social Governance (ESG) investments in Malaysia has gained a lot of traction recently. Specific megatrends such as climate change and human capital management are the key drivers of ESG performance.

Back in 2014, Bursa Malaysia and FTSE launched the ESG equivalent index in the form of "FTSE4Good" as part of their efforts in encouraging ESG adoption and awareness. At its launch, the FTSE4Good consisted only of 24 constituents and its growth expectation was minimal. Fast forward to December 2020, Bursa Malaysia announced the latest figure of 75 constituents, an increase of 213% since its inception but still a mere fragment of the total 900+ listed companies. That said, statistics only provide a limited view of the overall picture and should not be the sole conclusive evidence of future performance. This is especially true in light of the recent developing events including the Top Glove Corp Bhd ("**Top Glove**") saga and the declaration by the Employees Provident Fund ("**EPF**") whereby both events appear to hint at the inevitable explosive growth of ESG in Malaysia.

On the other hand, EPF noted in early 2021 that it aims to make all its investments based on ESG practices by 2030. This is driven by an EPF assessment on the impact of COVID-19 on assets value in particular between assets that are ESG compliant and non-ESG compliant.

Islamic Finance

Malaysia is a leader in the Islamic finance and investment industry and continues to be the largest Islamic banking, sukuk and takaful market in ASEAN. The big 3 rating agencies, in recent reports have all projected robust expansion of the Islamic finance industry in 2021 especially in Malaysia and Saudi Arabia, the two largest markets in the world despite the COVID-19 pandemic.

2. What is the regulatory framework for asset management in your jurisdiction:

a. Which official agencies/regulators supervise asset management in your jurisdiction?

The Ministry of Finance overseas the policies implemented by the Securities Commission. The regulation of the Malaysian capital market falls under the purview of the Securities Commission ("**SC**"). However, it should be noted that in 2012, the Central Bank of Malaysia ("**BNM**") and the SC signed a memorandum of understanding ("**MOU**") in order to promote financial sector and capital market stability. The MOU paves the way for continued collaboration and information sharing between BNM and the SC in areas which are critical in managing threats to financial stability and systemic risk including supervision of financial groups, management of financial crisis, supervision of money markets and derivatives market, combating threats relating to money laundering and terrorism financing and supervision of auditors of financial institutions.

b. What are the sources of law regulating asset management in your jurisdiction?

Predominantly, the following laws/guidelines are applicable:

- Capital Markets and Services Act 2007;
- Securities Commission Malaysia Act 1993;
- Securities Industry (Central Depositories) Act 1991;
- Guidelines and/or regulations issued by the Securities Commission.
- The Licensing Handbook issued by the Securities Commission (revised 15 Feb 2021);
- Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.

Malaysia

3. What are the types of asset management, companies regulated in your jurisdiction?

In Malaysia, a license is required for the conduct of the following regulated activities (as per schedule 2 of the Capital Markets and Services Act 2007 ("**CMSA**")):

- Dealing in securities;
- Dealing in derivatives;
- Clearing for securities or derivatives;
- Fund management;
- Dealing in private retirement schemes;
- Advising on corporate finance;
- Investment advice; and
- Financial planning.

(hereinafter collectively known as the "**Regulated Activities**")

Companies that are involved in the Regulated Activities typically consist of, amongst others, investment banks, stockbroking companies, portfolio management companies, digital investment management companies, insurance and takaful brokers and boutique portfolio management companies.

4. What are the key regulatory requirements to establish and operate the different types of asset management companies mentioned above?

a. Generally, there are two types of licenses, namely:

i. Capital Markets Services Licence ("**CMSL**") (under section 58 of the CMSA); and
ii. Capital Markets Services Representative's Licence ("**CMSRL**") (under section 59 of the CMSA).

Both of which are provided by the Securities Commission upon the successful processing of the application submitted.

b. Can anyone apply for said licenses?

To carry out the Regulated Activities (with the exception of financial planning), one will have to apply for CMSL. CMSL is only issued to a company with exceptions to financial planning, where a CMSL may be issued to an individual who is fit and proper, as set out in section 64 of the CMSA and complies with the criteria as set out by the SC. In order to qualify for CMSL, the applicant must be a company incorporated in Malaysia. However, if the applicant is desirous of carrying on the regulated activity of financial planning, it may do so either as a company, sole proprietorship or partnership.

c. What are the requirements when applying for a license?

<u>For CMSL (Company):</u>

The SC stipulated in its guidelines (issued under s.377 of the CMSA 2007), amongst others, the following requirements:

i. CMSL holders who carry on one or more of the following regulated activities are required to be a member of an alternative dispute resolution body (ADR body) that is approved by the SC:
   - Dealing in securities;
   - Dealing in derivatives;
   - Fund management but excluding asset manager managing listed unit trust schemes; and
   - Dealing in private retirement schemes.

Malaysia

ii. CMSL holders that carry on one or more of the following regulated activities are required to engage auditors that are registered with the Audit Oversight Board of the SC:
   - Dealing in securities;
   - Dealing in derivatives; and
   - Fund management.

iii. The applicant must possess a sufficient level of organisational competence;

iv. The directors, chief executive, managers, key management and controllers of a CMSL applicant must be 'fit and proper' and that none of the paragraphs under section 64(1) of the CMSA applies to them;

v. Effective from 1 May 2015, directors of CMSL holders for dealing in securities, dealing in derivatives and fund management in relation to portfolio management must complete the Capital Market Director Programme;

vi. Unless otherwise indicated, there must be at least one licensed director;

vii. Unless exempted, there must be at least one local ("*bumiputra*") director and a minimum of 30% bumiputra ratio amongst the employees;

viii. If the applicant is licensed to carry on more than one type of regulated activity, then in addition to the requirement of a licensed director, it must also have a person with a minimum of eight years of relevant experience to head each additional regulated activity. The requirement for appointing a head for each regulated activity is to ensure that a person with the necessary skills and expertise will provide guidance and supervision to the representatives carrying on that particular regulated activity. However, this requirement is not applicable for the regulated activity of clearing for securities or derivatives;

ix. Shareholding requirements will be dependant on the type of regulated activity; and

x. The applicant must satisfy the minimum financial requirements for a regulated activity which ranges between Rm50 thousand to Rm100 million (dependant on the type of regulated activity).

The license to carry out the regulated activities are not all-inclusive and are only issued on a need-to basis (largely dependent on the business of applicant company). (ie: If the company carries on the business of a REIT manager only, it will be granted an asset management licence that is restricted to real estate investment trusts).

For CMSRL (individuals):

The SC has stipulated in its guidelines, amongst others, the following requirements::

i. Must be at least 21 years old;

ii. Must be fit and proper and none of the grounds specified under subsection 65(1) of the CMSA apply; and

iii. For the principal license holder to support the individual's application;

iv. To have sufficient educational and professional background to assess the applicant's competency to carry on a regulated activity; and

v. To pass the SC Licensing Examinations.

Malaysia

Can a company/individual engage in a Regulated Activity without a license?

Yes, but in a very limited set of circumstances. These circumstances are listed out under Schedule 3 (Specified Persons) and Schedule 4 (Registered Persons) of the CMSA.

Under Schedule 3, it covers, amongst others, incidents where an accountant, lawyer or trust company is required to carry out any parts of the regulated activities on a purely incidental basis to the practice of his profession/ or the carrying on of the company's business.

Under Schedule 4, it lists out the categories of companies/individuals that are considered 'Registered Persons'. A Registered Person is allowed to carry out certain regulated activities without having to apply for a CMSL. An example of a Registered Person includes licensed banks, licensed insurance companies and individuals registered with a body approved by the securities commission.

5. For asset management activities, are family offices regulated in your jurisdiction? If so, how are they being regulated? Are family offices subject to special regulatory requirements as opposed to non-family offices?

Family offices are not defined under Malaysian law and hence such entities are not regulated for assets management activities.

6. What are the key continuing / ongoing regulatory obligations of a licensee?

In general, there is a set of principles (SC-GL/CLG-2005 (R5-2020) a licensee is expected to exhibit and adhere to. These are listed in brief in the table below:

1	**Integrity**	Conduct the fund management business with honesty and in an ethical manner e.g. treating its clients fairly and equitably.
2	**Skill, care and diligence**	Possess adequate controls in ensuring that the fund management functions and processes are carried out with due care, skill and diligence. Such obligation is also applicable to dealings with existing and potential clients.
3	**Acting in clients' interests**	Refrain from dealing for own account ahead of clients' orders.
4	**Supervision and control**	Ensure key duties and functions are properly segregated. Establish a system of follow-up and review for delegated authority and responsibility. Ensure proper assessment and management of risks, and provision of timely and adequate information to senior management.
5	**Adequate resources**	Ensure employees are suitably qualified for the positions in which they are employed, and there are sufficient resources to manage business activities and accommodate temporary absence of key personnel. In addition, risks assumed by the fund management company must commensurate with its level of capital.

6	**Business conduct**	Implement policies and procedures to detect and prevent fraud, market rigging, and other improper activities.
7	**Client asset protection**	Ensure clients' assets are credited into a trust account and the fund management company conducts timely reconciliation of trust account balances against third party records.
8	**Communication with investors**	Must not deliberately mislead or attempt to mislead existing or potential clients.
9	**Conflict of interest**	Ensure proper policies and procedures are put in place to prevent the company or its employees from taking advantage of confidential price-sensitive information.
10	**Compliance culture**	Board of directors must establish clear compliance policies and procedures that extend to all operations of the company.
11	**Dealing with the SC**	Promptly report information that is of material significance to the SC, and provides the SC with documents and information, when requested, in a timely manner.

In addition to the above, the securities commission also requires holders of Capital Markets Services Representative's Licence to comply with continuing professional education (CPE) requirements. In brief, CPE is a mandatory programme that aims to safeguard investors' interest by requiring capital markets professionals to consistently update their knowledge.

7. What are the requirements in relation to the acquisition of a regulated asset management company in your jurisdiction (including cases where there is a change of control in the asset management company)?

Under paragraph 4.03 of the guidance (SC-GL/LH-2007 (R12-2021)) issued by the securities commission ("**SC**"), it is noted that the existing shareholding requirements are a continuing obligation. As such, the existing requirements must still be complied with even during acquisition. Further, where there is a change in shareholding whether directly or indirectly for a holder of a capital markets services licence holder that results in the change of its 'controller', the SC's approval will be required.

A 'controller' has the same meaning as defined under subsection 60(7) of the CMSA, which means a person who–

- Is entitled to exercise, or control the exercise of, not less than 15% of the votes attached to the voting shares in the CMSL holder;
- Has the power to appoint or cause to be appointed a majority of the directors of the CMSL holder; or
- Has the power to make or cause to be made, decisions in respect of the business or administration of such CMSL holder, and to give effect to such decisions or cause them to be given effect to.

Malaysia

8. What are the main anti-money laundering and financial crime prevention rules applicable to asset management companies in your jurisdiction?

The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("**AMLA**") is the primary Malaysian statute governing the matter of anti-money laundering and financial crime prevention. As a federal legislation, AMLA is applicable throughout the whole of Malaysia.

Specifically for asset management companies, the securities commission has also introduced various guidelines SC-GL/AML-2014 (R1-2016) on the prevention of money laundering and terrorism financing (the "**Guidelines**"). The Guidelines are issued pursuant to section 83 and section 66E of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("**AMLA**") and section 158(1) of the Securities Commission Act 1993.

9. Are there any relevant consumer or investor protection rules applicable to asset management companies in your jurisdiction?

The applicable statutory laws include the following:

- The Consumer Protection Act 1999 which deals with general protection for consumers in relationship to general goods and services; and
- The Financial Services Act 2013("**FSA**") (with emphasis on Part VIII of the Act) which governs, amongst others, the banking and insurance industry, the payments system and foreign exchange matters. The FSA outlines the obligations of asset management companies which includes a list of prohibited conducts and imposes criminal liabilities for failure of compliance.

In addition to the above, consumers protections are also afforded in the form of continuing obligation imposed by the securities commission, wherein varying levels of mandatory obligations are given to asset management companies depending on the types of investors involved (ie. accredited investors, institutional investors or retail investors).

10. In recent times, there has been increasing interest in digital assets, such as digitised securities, digital security tokens, and other digital tokens representing interests in assets. To what extent is the management of digital assets regulated in your jurisdiction, and what is the regulatory framework for it?

Given that digital assets are a new class of assets there is no specific legal framework for its management apart from the following regulations which define the same.

Pursuant to the powers conferred by section 5 of the Capital Markets Services Act 2007, the Finance Minister, on the recommendation of SC, issued the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 which came into force on 15 January 2019, all digital currencies and digital tokens that satisfy the requirements in the Order are prescribed as securities for purposes of securities laws. The 2nd Revision of the Guidelines on Recognised Markets issued on 25 January 2019 by the Securities Commission of Malaysia (SC) paved the way for trading of crypto currencies to be conducted via a SC licensed Digital Asset Exchange. The Guidelines provided the framework and the requirements for Digital Asset Exchanges to be set up. Today Malaysia, has 3 Digital Asset Exchanges which are authorised to conduct trading of cryptocurrencies albeit currently limited to 4 crypto currencies namely Bitcoin, Ethereum, Litecoin and XRP. There are an estimated 450,000 active accounts with a monthly transactional value of digital currencies of RM105 million.

Malaysia

Further, the SC issued the Guidelines on Digital Assets on 28 October 2020 setting out the requirements relating to fund raising activity through digital token offerings, operation of initial exchange offering (IEO) platforms and the provision of digital asset custodial services. The applications for IEO registrations have closed on 15 Feb 2021 and are being currently considered by the SC.

In July 2020 the Shariah Advisory Council (SAC) of the SC resolved that it is permissible to invest and trade in digital currencies and digital tokens on registered Digital Asset Exchange (DAX).

Requirements for trading and investment in digital currencies and digital tokens on a registered DAX:-

Digital currency is recognised as 'mal' (owned property) from Shariah perspective.

- Digital currency that is based on technology without any underlying – Digital currency in this form is categorised as urudh and it is not a currency from Shariah perspective. Such digital currency is not categorised as ribawi (usurious) items. Therefore, the trading of such digital currency is not subject to the principle of bai' al-sarf (currency exchange).

- Digital currency that is backed by ribawi items –Digital currency that is backed by gold, silver and currency. If a digital currency is backed by ribawi items comprising gold, silver and currency, it is categorised as a currency from Shariah perspective. Hence, the trading of such digital currency is subject to the principle of bai' al-sarf (currency exchange).

- Digital currency that is backed by ribawi items other than gold, silver and currency– If a digital currency is backed by ribawi items other than gold, silver and currency, it is categorised as amwalribawiyyah (ribawi items). Therefore, the trading of such digital currency is subject to the Shariah requirements of ribawi items.

Digital token is recognised as mal under the category of urudh from Shariah perspective.

In determining the Shariah status of a digital token, the following matters must be fulfilled:

- The proceeds raised from the issuance of the digital token must be utilised for Shariah-compliant purposes;

- The rights and benefits attached to the digital tokens must be Shariah-compliant; and

- In the event that the utilisation of proceeds under item (i) and the entitlement of rights and benefits under item (ii) above are for mixed activities of Shariah compliant and Shariah non-compliant purposes, the existing SAC resolution on utilisation of sukuk proceeds and the business activities benchmark under the Shariah screening methodology for listed companies in the Malaysian stock exchange (Bursa) are applicable.

The foundations for the growth of digital assets have been laid and the growth of DAX and IEO platforms are expected to spur a significant digital asset class in the future.

Malaysia

The following are contributed by InCorp's Regional Offices

1. Does your jurisdiction have a special tax regime for the asset management industry? If so, please provide a brief overview.

There are special tax regimes and they are dependent on the shareholding and product offering of the fund management company. The following are several examples:

- **Local fund management company**

The tax rate will be the prevailing Malaysian tax rates applicable to resident companies.

- **Foreign fund management company**

Until Year of Assessment ("YA") 2020, a 10% income tax rate is applicable to a foreign fund management company with 100% foreign ownership or at least 30 percent-owned locally and dealing with foreign investors. From YA2021 onwards, it will be subject to 24% percent income tax rate.

However, when these companies are dealing with local investors, the tax rate will be the prevailing Malaysian tax rates applicable to resident companies.

A foreign fund management company refers to a company incorporated in Malaysia and licensed under the Capital Markets and Services Act 2007.

- **Islamic fund management**

Full income tax exemption is available on statutory income on management fees received by resident fund management companies for managing funds of foreign and local investors established under Syariah principles [until YA 2020 (extension to YA 2023 has been proposed)]. Such funds must be approved by the Securities Commission.

- **Special purpose vehicle (SPV) for Islamic financing**

An SPV established solely for the purpose of issuance of Islamic securities under the Syariah principles (approved by the Securities Commission or established under the Labuan Companies Act 1990) is not subject to income tax and is not required to comply with administrative procedures under the income tax law. The company that establishes the approved SPV is deemed to be the recipient of the SPV's income and will be taxed accordingly, but that company will be allowed a deduction for the cost of issuance of Islamic securities.

- **Real estate investment trusts (REIT)/Property trust fund (PTF)**

REIT/PTFs are vehicles that mobilise funds from unit holders comprising individuals and companies for investments in the property sector and related assets. REIT/PTFs are exempted from tax on all income, provided that at least 90% of their total income is distributed to unit holders. This exemption only applies to REIT/PTFs that are listed on the Bursa Malaysia. If the 90% distribution condition is not complied with, all income will be taxed at the prevailing income tax rate at the REIT/PTF level and tax credit will be claimed by the unit holders on distributions received from the REIT/PTF. Unit holders are taxed as follows:

Malaysia

Unit holders are taxed as follows:

Unit Holders	Withholding Tax Rate
Individuals (whether resident or non-resident), body of persons, or other unincorporated persons	10% (until year of assessment 2025)
Non-resident company	24%
Resident company	None (income to be included in annual tax return)
Foreign institutional investor (pension fund, collective investment scheme, or other person approved by the Minister of Finance), and other unit holders not falling in the above-mentioned categories	10% (until year of assessment 2025)

- Labuan Fund Management Company

i. 3% corporate tax on net audited profits
ii. No withholding tax
iii. No stamp duty / import duty / sales tax
iv. No capital gain tax and inheritance tax
v. No tax on profit distribution to shareholders via dividends

2. How would fund vehicles in your jurisdiction be treated for tax purposes?

Fund vehicles depending on the fund structure, shareholding and products offered are taxed differently. Please refer to item 1 above for an overview.

3. For foreign funds investing in securities and assets in your jurisdiction, what are the tax implications in your jurisdiction?

Foreign funds deriving income from Malaysia may be subject to Malaysian withholding tax depending on the type of income derived by the non-resident fund. The Malaysian withholding tax may be reduced under the relevant tax treaties.

For investments into REITs/PTFs, please refer to item 1 above.

Malaysia

4. What are the tax implications for resident individuals and entities in your jurisdiction investing in an onshore and offshore fund?

Resident individuals and entities deriving income from investments in onshore fund vehicles should generally be exempted from Malaysia income tax with the exception of REIT.

Income derived by resident individuals and entities from offshore funds should generally be exempt from Malaysian income tax.

5. What are the tax implications for foreign individuals and entities investing in onshore funds in your jurisdiction?

Foreign individuals and entities deriving income from investment in onshore funds in Malaysia should generally be exempt from Malaysia income tax with the exception of REIT.

6. What are the tax implications for asset managers in your region managing both domestic, offshore, or domestic and offshore funds?

Asset managers depending on the fund structure, shareholding and products offered are taxed differently. Please refer to item 1 for an overview of the tax regime.

Philippines

1. Please provide an overview of the asset management market in your jurisdiction in 2020 and what are the trends and opportunities in 2021?

The coronavirus disease 2019 ("**COVID-19**") pandemicnegatively affected the business confidence, causing equity markets to suffer a significant drop in early 2020. This also had affected asset management companies as investors grew wary due to increased economic uncertainty amid the strict quarantine measures. Nevertheless, in the latter part of the year, the economy slowly started reopening and investor sentiment started turning cautiously optimistic ahead of vaccine-related developments. This pushed investors to go seek out investment opportunities amid emerging and growing themes brought about by the pandemic. One example of which is the accelerated push for digitalization and the growth of financial technology in the Philippines.

The Philippine government also continued to stimulate the economy and provide for additional investment opportunities. On 18 August 2020, the Securities and Exchange Commission ("**SEC**") launched a new framework for investment companies with the objective of investing in portfolios of corporate debt of large and medium-sized enterprises. Likewise, the Financial Institutions Strategic Transfer ("**FIST**") Act was also signed into law on 16 February 2021, which is the counterpart of asset management companies targeted to financial institutions where the latter may dispose of bad assets to.

2. What is the regulatory framework for asset management in your jurisdiction:

a. Which official agencies/regulators supervise asset management in your jurisdiction?

Companies engaged in the business of asset management are regulated by the SEC, except asset management activities performed by banking institutions and non-banking financial institutions performing quasi-banking functions, which are under the jurisdiction of the Bangko Sentral ng Pilipinas ("**BSP**"), and by insurance companies, which are under the jurisdiction of the Insurance Commission.

b. What are the sources of law regulating asset management in your jurisdiction?

The conduct of asset management in the Philippines is primarily regulated under the Securities Regulation Code ("**SRC**"), the Investment Company Act ("**ICA**"), and the FIST Act.The SEC has the authority to issue implementing rules and regulations ("**IRR**").

Philippines

3. What are the types of asset management, companies regulated in your jurisdiction?

There are four main types of asset management companies: the traditional investment company, corporate debt vehicle ("**CDV**"), fund manager, and financial institutions strategic transfer corporation ("**FISTC**").

■ Investment Company

There are two main classifications of investment companies, which are open-end investment companies, commonly known as mutual funds,[3] and closed-end investment companies.[4]

A mutual fund is an investment that offers for sale or has outstanding redeemable securities of which it is the issuer.[5] It holds itself out as being engaged primarily or proposes to engage primarily, in the business of investing, reinvesting, and trading in securities.[6] A closed-end investment company is an investment company that offers for sale a fixednumber of non-redeemable securities.[7]

Investment companies can generally engage in the business of investing, reinvesting, or trading in securities or other investment assets[8] such as money markets, financial derivatives, as well as units or participation of collective investment schemes ("**CIS**").[9]

■ CDV

As mentioned above, the SEC had introduced CDV, a type of closed-end investment company, that invests in portfolios of corporate debt papers of i) large corporations and medium operating or deriving income in the Philippines; or ii) any company guaranteed by a large or medium-sized domestic corporation or by the Philippine government and/or its agencies or by multi-lateral agencies involving exempt securities under SRC.[10]

A CDV may only be offered to any number of qualified buyers/investors and/or a maximum of nineteen (19) non-qualified buyers in the Philippines during any twelve (12)-month period.[11] Qualified buyers broadly refer to banks, registered investment houses, insurance companies, and investment companies, and natural and juridical persons who are deemed qualified by the SEC based on financial sophistication, net worth, knowledge, and experience in financial and business matters, or amount of assets under management.[12]

■ Fund Manager

A fund manager is an entity engaged in the business of managing the daily operations of an investment company in the investment, administration, and accounting of fund assets and the monitoring of the activities of third-party service providers such as a custodian, transfer agent, and distributors.[13] A fund manager is required to secure an investment company adviser license.[14]

■ FISTC

As previously mentioned, the FIST Act facilities the disposal of non-performing assets ("**NPA**") of financial institutions by transferring such NPAs to the FISTC.

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[3] SEC Opinion addressed to Valerie N. Pama dated 16 April 2015..
[4] Section 5, ICA.
[5] SEC Opinion addressed to Valerie N. Pama dated 16 April 2015.
[6] Rule 1, ICA-IRR.
[7] *Id.*
[8] Rule 3.4, ICA-IRR.
[9] Rule 6, ICA-IRR.
[10] Item II, SEC Memorandum Circular No. 23, Series of 2020.
[11] *Id.*
[12] *Section 10, SRC.*
[13] *Rule 1, ICA-IRR.*
[14] *Id.*

Philippines

Under the FIST Act, FISTCs have the following corporate powers, among others:

i. Invest in or acquire NPAs of financial institutions;

ii. Engage third parties to manage, operate, collect and dispose of NPAs;

iii. In case of non-performing loans, to restructure debt, condone debt and undertake other restricting related activities;

iv. Spend funds to renovate, improve, complete or alter the NPAs acquired from financial institutions; and

v. Issue equity or participation certificates or other forms of investment unit instruments ("**IUI**") for the purpose of acquiring, managing, improving and disposing of its NPAs acquired from a financial institution.[15] Only qualified buyers may acquire or hold IUIs in a FISTC in a minimum amount of Ten Million Pesos (PhP 10,000,000.00).[16]

4. What are the key regulatory requirements to establish and operate the different types of asset management companies mentioned above?

Entities which intend to operate as an investment company, a CDV, or a FISTC are required to incorporate a domestic corporation that shall operate as such. Apart from one-person corporations, corporations would have a minimum of two (2) directors up to a maximum of fifteen (15) directors.[17] The board of corporations that are vested with public interest (e.g. corporations whose securities are registered with the SEC pursuant to the SRC and public companies) are required to have independent directors constituting at least twenty percent (20%) of such board.[18] A public company is a corporation with a class of equity securities listed on an exchange, or with assets in excess of Fifty Million Pesos (PhP50,000,000.00) and has two hundred (200) or more holders each holding at least one hundred (100) shares of a class of its equity securities.[19]

At the minimum, the corporate officers of the corporation are the President (who must be a director), the Corporate Secretary (who must be a Filipino citizen and resident), and the Treasurer (who must be a resident of the Philippines).[20]

Other main requirements are as follows:

	Investment Company	CDV	Fund Manager	FISTC
Capitalization	Minimum paid-up capital – PhP 50,000,000.00. However, an investment company/CDV may apply for exemption with the SEC provided that it is one of or part of a group of investment companies to be created or already in existence to be managed or under management by the same Fund Manager with a track record of at least five (5) years. If the exemption is allowed, the investment company must have a minimum paid-up capital of at least PhP 1,000,000.00.[21]		Minimum paid-up capital – PhP 50,000,000.00, which shall remain unimpaired at all times.[22]	Authorized Capital – PhP 500,000,000.00 Minimum outstanding and subscribed capital – PhP 125,000,000.00 Minimum paid-up capital – PhP 31,250,000.00[23]

[15] Section 5, FIST Act
[16] *Section 11, FIST Act.*
[17] Section 22, Revised Corporation Code.
[18] Section 22, Revised Corporation; see Section 17.2, SRC.
[19] Section 3.1.16, SRC-IRR.
[20] Section 24, Revised Corporation Code.
[21] Rule 3.4, ICA-IRR; Item III, SEC Memorandum Circular No. 23, Series of 2020.
[22] Section 5.1, ICA-IRR, as amended by Section 4, SEC MC No. 33, Series of 2020.
[23] Section 7, FIST Act.

Philippines

	Investment Company	CDV	Fund Manager	FISTC
Nationality Restrictions	None		None	None, except if the FISTC shall acquire land. If the FISTC shall acquire land, at least 60% of its outstanding capital stock must be owned by Philippine Nationals and at least 60% of the board of directors shall also be Filipino citizens.[24]
Board of Directors	The members of the board of directors of an investment company/CDV must be required to be all Filipino citizens.[25]		Executive and non-executive board of directors are required to have a minimum of 5 years of relevant experience[26]	None
Chief Executive Officer	None		Minimum of 10 years of relevant experience[27]	None
Other Key Officers	None		Minimum of 3 years of relevant experience[28]	None

[24] *Id.*
[25] Rule 3.4, ICA-IRR; Item III, SEC Memorandum Circular No. 23, Series of 2020
[26] Rule 5.1 (d), ICA-IRR.
[27] Rule 5.1 (f), ICA-IRR.
[28] Rule 5.1 (g) & (i), ICA-IRR.

Philippines

5. For asset management activities, are family offices regulated in your jurisdiction? If so, how are they being regulated? Are family offices subject to special regulatory requirements as opposed to non-family offices?

A "family office" is not defined under Philippine law and implementing rules and regulations issued by the SEC. Family offices are generally unregulated under Philippine law. Nevertheless, if a family office intends to engage in the business of an investment company, fund manager, CDV, or FISTC, it will be required to secure a license as such.

6. What are the key continuing / ongoing regulatory obligations of a licensee?

Investment companies and their fund managers are required to comply with the relevant reportorial requirements and disclosures. These normally include the submission of its General Information Sheet ("GIS"), Annual Financial Statement ("AFS"), as well as the Annual and Quarterly Reports pertaining to the activities of an investment company.[29] A report on non-material changes regarding the information disclosed in the prospectus is also required to be filed with the SEC.[30] On the other hand, if there are any material changes to the prospectus, such as changes in investment objective, policy, or strategy, as well as changes as to the right of the shareholders/unitholders, the investment company is required to amend its prospectus and its registration statement.[31]

FISTCs are also required to submit their GIS and AFS.FISTCs are also required to submit reports regarding the sale of their NPAs. If the FISTC also issues IUIs, material information pertaining to the IUIs, and lists of taxable transactions, tax-exempt transactions, and party-exempt and partly taxable transactions must likewise be disclosed.[32]

If the investment company or the FISTC issues securities registered under the SRC or are public companies, it is also required to submit reports on changes to its beneficial ownership,[33] directors, officers, and principal owners of such corporation.[34]

7. What are the requirements in relation to the acquisition of a regulated asset management company in your jurisdiction (including cases where there is a change of control in the asset management company)?

Based on the law and existing regulations issued by the SEC, there appears to be no need to secure prior regulatory approval in relation to the acquisition of an asset management company including cases of change in control.

Nevertheless, if the investment company or the FISTC is deemed to be a public company, persons who intend to acquire the shares of a public company may be required to disclose such intention and conduct a mandatory tender offer.A tender offer is required when any person or group of persons acting in concert, who intends to acquire either i) thirty-five percent (35%) of the outstanding voting shares in a public company or ii) such number of outstanding shares which is sufficient to gain control of the board, in one or more transactions within a period of twelve (12) months.[35]

[29] Rule 12, ICA-IRR.
[30] Rule 14.5, ICA-IRR.
[31] Rule 14.1-14.3, ICA-IRR.
[32] Rule 22, FIST ACT-IRR.
[33] Section 17 and 23, SRC-IRR.
[34] Section 23, SRC-IRR.
[35] Section 19.2, SRC IRR.

Philippines

8. What are the main anti-money laundering and financial crime prevention rules applicable to asset management companies in your jurisdiction?

The main legislations governing anti-money laundering and financial crime prevention in the Philippines are the Anti-Money Laundering Act ("**AMLA**"), as amended, and theTerrorism Financing Prevention and Suppression Act of 2012 ("**TFPSA**").

The Anti-Money Laundering Council ("**AMLC**"), the government agency tasked to implement the AMLA and TFPSA, has issued the implementing and regulations ("**IRR**") for AMLA and TFPSA and other resolutions and regulations pertaining to anti-money laundering and countering the financing ("**AML/CFT**").

Under the 2018 IRR of AMLA ("2018 AMLA-IRR"), entities supervised or regulated by the SEC including mutual funds, closed-end companies or issuers, and other similar entities, are deemed to be covered persons under the AMLA.[36] Covered persons are required to register with the AMLC within thirty (30) working days from the issuance of its license.[37] Among other things, covered persons are required to conduct customer due diligence; identify,[38] verify, and record the true identity of their clients including the beneficial owners; and report suspicious and covered transactions to the AMLC.[39]

Under the 2018 AMLA-IRR, covered transactions refer to the following:

- A transaction in cash or other equivalent monetary instrument exceeding Five Hundred Thousand pesos (PHP500,000.00); and
- A transaction with or involving jewelry dealers, dealers in precious metals, and dealers in precious stones in cash or other equivalent monetary instrument exceeding One Million pesos (Php1,000,000.00); and
- A casino cash transaction exceeding Five Million Pesos (PHP5,000,000.00) or its equivalent in other currency.

This means that if the transaction between a cover person and another entity, which meets the above thresholds, the covered person is required to report the transaction to the AMLC. On the other hand, a suspicious transaction refers to a transaction, regardless of amount, where any of the following circumstances exists:

- There is no underlying legal or trade obligation, purpose, or economic justification;
- he client is not properly identified;
- The amount involved is not commensurate with the business or financialcapacity of the client;
- Taking into account all known circumstances, it may be perceived that theclient's transaction is structured in order to avoid being the subject of reportingrequirements under the AMLA;
- Any circumstance relating to the transaction which is observed to deviate from the profile of the client and/or the client's past transactions with the covered person;
- The transaction is in any way related to money launder/terrorist financing or related unlawful activity that is about to be committed, is being or has been committed; or
- Any transaction that is similar, analogous, or identical to any of the foregoing, such as the relevant transactions in related and materially-linked accounts.

[36] Section 1, Rule 4, 2018 AMLA-IRR.
[37] Section 1, Rule 35, 2018 AMLA-IRR.
[38] Rule 18, 2018 AMLA-IRR.
[39] Rule 22, 2018 AMLA-IRR.

Philippines

9. Are there any relevant consumer or investor protection rules applicable to asset management companies in your jurisdiction?

There are no separate laws or regulations concerning consumer or investor protection in asset management companies. The Investment Company Act and its IRR for investment companies and the FIST Act for FISTC provide for the relevant consumer or investor protection rules in relation to their financial products.

Investments companies are required to set up the appropriate systems, procedure, and processes to protect investors, these include policies regarding the handling of consumer complaint,[40] and appropriate and timely disclosures regarding changes to the registration statement,[41] extensions or new investment agreements,[42] and conflict of interest between the fund manager and investors,[43] among others.

FITSC are also required to set up financial consumer protection mechanism for the protection of borrowers. These shall include standards of conduct on disclosure and transparency, conflicts of interest, protection of client information, fair treatment in terms of affordability and suitability of product or service, prevention of over-indebtedness, cooling-off period, and objectivity, effective recourse, and exhaustion of all remedies, among others.[44]

The Data Privacy Act governs the collection, processing, and use of personal information.

10. In recent times, there has been increasing interest in digital assets, such as digitised securities, digital security tokens, and other digital tokens representing interests in assets. To what extent is the management of digital assets regulated in your jurisdiction, and what is the regulatory framework for it?

■ Virtual Asset Service Provider ("VASP")

The BSP recognized the accelerated growth and ongoing proliferation of virtual currencies in the Philippines in the last three (3) years since it has issued the Guidelines on Virtual Currency Exchanges in 2017. Recognizing the evolving nature of financial innovation and in line with the BSP's Digital Payments Transformation Roadmap, the BSP issued Guidelines for VASP (the "**VASP Guidelines**") on 26 January 2021.

This amendment was also issued to address the risks identified by the Financial Action Task Force ("**FATF**") in the "Guidance for a risk-based approach to virtual assets and virtual asset service providers" in 2019 in light of the new technology, services, and products.

The VASP Guidelines expanded the list of activities that shall be subject to licensing requirements, strengthened the Philippines' compliance with its **AML/CFT** obligations, and enhanced consumer protection.[45]

Under the VASP Guidelines, any entity that offers services or engages in activities that provide facility for the transfer or exchange of virtual assets which involve the conduct of one or more of the following activities must obtain a license with the BSP:

i. Exchange between virtual assets and fiat currencies;
ii. Exchange between one or more forms of virtual assets;
iii. Transfer of virtual assets; and
iv. Safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets.[46]

[40] Section 5.1.2 (l), ICA-IRR.
[41] Section 5.1.2 (u), ICA-IRR.
[42] Section 5.1.2 (v), ICA-IRR.
[43] Section 5.1.2 (ff), ICA-IRR.
[44] Section 19, FIST Act.
[45] Section 1, BSP Circular No. 1108, Series of 2021.
[46] *Id.*

Philippines

Despite the expanded coverage, the VASP Guidelines do not cover businesses related to the issuance, distribution, sale, or offer for sale of virtual/digital assets in the Philippines, which falls within the jurisdiction of the SEC.[47]

■ Issuance of virtual/digital assets

Presently, the Philippines does not have a dedicated framework dealing with the issuance, offer, distribution, or sale of digital assets and tokens. Previously, the SEC has issued draft rules for an initial coin offering ("**ICO**") in 2018 and draft rules for a digital asset exchange ("**DAE**") in 2019. However, these regulations have not yet been finalized and published, and, therefore not yet in force.

The proposed ICO rules primarily govern the conduct of ICOs wherein convertible security tokens are issued by start-ups and/or registered corporations organized in the Philippines, and start-ups and/or corporations conducting ICOs targeting Filipinos, through online platforms. On the other hand, the proposed DAE rules primarily govern the registration and operation of an exchange in which digital assets are traded on an online platform accessible in or from the Philippines.

Notwithstanding the foregoing, the issuance, distribution, sale, or offer for sale of digital assets is regulated by the SEC under the SRC, if such the digital asset is deemed to be a security. Under the SRC, all securities, including investment contracts, are required to be registered with the SEC prior to being sold or offered for sale or distribution within the Philippines.[48] An investment contract is defined as a transaction, contract, or scheme where a person makes an investment of money, in a common enterprise, with the expectation of profits, derived primarily from the efforts of others.[49] If it is determined that the digital asset is deemed to be a security, the SRC shall apply.

The issuer is only able to offer, sell, or distribute securities if made in compliance with the SRC. This includes the requirement to submit a prospectus and secure a secondary license with the SEC, unless otherwise exempt.

The following are contributed by InCorp's Regional Offices

1. Does your jurisdiction have a special tax regime for the asset management industry? If so, please provide a brief overview.

There is no special tax regime for the asset management industry in Philippines.

2. How would fund vehicles in your jurisdiction be treated for tax purposes?

Fund vehicles in Philippines will be taxed in the same way as normal companies at the standard tax rate of 20% / 25%.

3. For foreign funds investing in securities and assets in your jurisdiction, what are the tax implications in your jurisdiction?

Foreign funds deriving income from Philippines may be subject to Philippines withholding tax depending on the type of income derived by the non-resident fund. The Philippines withholding tax may be reduced under the relevant tax treaties.

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[47] *Id.*
[48] Section 8, SRC.
[49] ***Power Homes Unlimited Corporation vs. SEC***, G.R. No. 164182 26 February 2008.

Philippines

4. What are the tax implications for resident individuals and entities in your jurisdiction investing in an onshore and offshore fund?

Resident individuals and entities in Philippines who invest in onshore and offshore funds will be subject to Philippines income tax at their respective tax rates (0-35% for individuals and 20% or 25% for corporations).

5. What are the tax implications for foreign individuals and entities investing in onshore funds in your jurisdiction?

Foreign individuals and entities deriving income from Philippines may be subject to Philippines withholding tax depending on the type of income derived from the onshore fund in Philippines. The Philippines withholding tax may be reduced under the relevant tax treaties.

6. What are the tax implications for asset managers in your region managing both domestic, offshore, or domestic and offshore funds?

Domestic asset management corporations are taxed on their income derived from within and outside the country. Meanwhile, resident foreign corporations, or those foreign entities duly licensed by the Securities and Exchange Commission (SEC) to engage in asset management in the Philippines are taxed only on their income within the Philippines. The tax rate would be 20% / 25%.

Singapore

1. Please provide an overview of the asset management market in your jurisdiction in 2020 and what are the trends and opportunities in 2021?

Despite the outbreak of the COVID-19 pandemic in 2020, Singapore's stable pro-business environment, efficient legal system, tax friendly framework, and risk-based regulatory policies continue to make it an attractive proposition for asset management activities and a trusted fund domicile.

86 new asset manager licenses and registrations were issued in the first three quarters of 2020 alone.

■ Introduction of the VCC framework

To enhance Singapore's value as a full-service asset management and fund domiciliation hub, the Monetary Authority of Singapore ("**MAS**") and Accounting and Corporate Regulatory Authority ("**ACRA**") launched the Variable Capital Companies ("**VCC**") framework on 15 January 2020. The VCC is a new flexible corporate structure designed for investment funds that can be used for a wide range of investment funds and provides asset managers greater operational flexibility and cost savings. The flexibility of the VCC allows it to be used as either a standalone fund or an umbrella fund with multiple sub-funds and has attracted global and local asset managers to Singapore. The MAS further introduced the VCC Grant Scheme to co-fund up to 70% of qualifying expenses relating to the set-up of the VCC. As at mid-September 2020, more than 120 VCCs have been incorporated with the Accounting and Corporate Regulatory Authority ("**ACRA**"). With the VCC framework, Singapore is fast becoming an Asia Pacific hub for asset managers to co-locate their investment management activities alongside their investment funds domicile and this framework is set to continue to attract the interest of private wealth and institutional investors in 2021.

Further, the MAS and ACRA are working on enhancements to the VCC framework to better meet the needs of the industry and are also considering enhancements to the limited partnership regime in Singapore to enhance the limited partnership as a fund vehicle. This will provide further structuring options for asset managers that wish to domicile investment funds in Singapore.

■ Rise of ESG investments

Another key trend to pay attention to would be the increasing focus on Environmental, social and governance ("**ESG**") investing amongst asset management companies in Singapore. This has been led by the global trend towards ESG investments and the COVID-19 pandemic has only served to reinforce the importance of integrating sustainability into investments to safeguard against risks. Global net inflows into sustainable funds was US$71.1 billion in the second quarter of 2020, marking a 72% increase compared to the previous quarter. According to a survey done by the investment Management Association of Singapore ("**IMAS**"), 66% of respondents, who are mostly CEOs and CIOs of fund management companies in Singapore, believed that the pandemic would accelerate the adoption of ESG investments by asset management companies in Singapore. In 2019, the MAS released the Green Finance Action Plan ("**GFAP**") to put Singapore in good stead to be a leading centre for Green Finance in Asia Pacific. In line with the GFAP, the MAS recently published Guidelines on Environmental Risk Management for Asset Managers on 8 December 2020 to further foster sustainable investing amongst asset management companies. The IMAS also plans to launch a series of ESG training programmes for the industry to support Singapore's transition to a sustainable economy.

Singapore

■ Digital banking

On 4 December 2020, the MAS announced the successful applicants of licences to operate new digital banks in Singapore. However, as this appears to cater to the commercial banking space, it is unclear at this point whether this will have a large impact or spill-over effect on private banking and wealth management.

2. What is the regulatory framework for asset management in your jurisdiction:

a. Which official agencies/regulators supervise asset management in your jurisdiction?

Asset management activities are regulated by the MAS.

b. What are the sources of law regulating asset management in your jurisdiction?

The conduct of asset management in Singapore is primarily regulated under the Securities and Futures Act ("**SFA**") and its subsidiary legislations, such as the Securities and Futures (Licensing and Conduct of Business Regulations), and the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences).

Under the SFA, the MAS also has the authority to issue codes, notices, guidelines, circulars, and other written directions that apply to regulated asset management companies, which are available on the MAS website.

3. What are the types of asset management, companies regulated in your jurisdiction?

There are three main types of asset management companies: a licensed fund management company ("**LFMC**"), venture capital fund manager ("**VCFM**") or registered fund management company ("**RFMC**").

An LFMC and VCFM would need to hold a capital markets services license ("**CMSL**") granted by MAS while a RFMC would need to be registered with the MAS, unless otherwise exempt.

■ LFMC

There are two types of LFMCs: (a) the accredited/institutional LFMC, which can cater to an unlimited number of accredited investors ("**AIs**") (i.e. high net-worth individuals) and institutional investors ("**IIs"**); or (b) the retail LFMC, which can deal with retail investors.

■ VCFM

The MAS introduced the VCFM regime in 2017, which has a simplified authorisation process and regulatory framework. VCFMs must manage funds that:

a. Invest at least 80% of committed capital in securities that are directly issued by start-ups that are no more than 10 years old;

b. Invest up to 20% of committed capital in business ventures that are not listed on a securities exchange that do not meet the criteria in(a) above;

c. Whereby units of the fund are not available for new subscription after the close of fund-raising, and can only be redeems at the end of the fund life; and

d. Are offered only to AIs and/or IIs.

Singapore

■ RFMC

RFMCs are limited to servicing a maximum of 30 qualified investors (of which no more than 15 may be funds or limited partnership fund structures) and managing up to S$250 million in assets under management ("**AUM**"). Qualified investors refer broadly to AIs, IIs, or a fund or limited partnership whose underlying investors or limited partners are all AIs and IIs.

Due to the limitation on the number and type of investors that RFMCs are allowed to market their funds to, a RFMC has the advantage of less onerous requirements to fulfil before receiving MAS approval as opposed to a LFMC.

4. What are the key regulatory requirements to establish and operate the different types of asset management companies mentioned above?

All FMCs should be Singapore incorporated companies and have a permanent office in Singapore. The office should be dedicated, secure and accessible only to the FMC's directors and staff.

The other main requirements are listed below:

<table>
<tr><th>Requirement</th><th colspan="4">Description</th></tr>
<tr><th></th><th>Retail LFMCs</th><th>A/I LFMCs</th><th>VCFM</th><th>RFMC</th></tr>
<tr><td>Number of Directors</td><td colspan="2">At least 2 Directors with minimum of 5 years of relevant experience
(Of these Directors, at least 1 Executive Director who is employed full-time and resides in Singapore)</td><td>At least 2 Directors
(Of these Directors, at least 1 Executive Director who is employed full-time and resides in Singapore)</td><td>At least 2 Directors with minimum of 5 years of relevant experience
(Of these Directors, at least 1 Executive Director who is employed full-time and resides in Singapore)</td></tr>
<tr><td>Chief Executive Officer</td><td>Minimum of 10 years of relevant experience</td><td>Minimum of 5 years of relevant experience</td><td>Minimum number of years of relevant experience not prescribed</td><td>Minimum of 5 years of relevant experience</td></tr>
<tr><td>Number of relevant professionals residing in Singapore</td><td>At least 3 full-time resident professionals with minimum of 5 years of experience</td><td>At least 2 full-time resident professionals with minimum of 5 years of experience</td><td rowspan="2">At least 2 full-time resident professionals and representatives, who may include directors</td><td>At least 2 full-time resident professionals with minimum of 5 years of experience</td></tr>
<tr><td>Number of representatives residing in Singapore</td><td>At least 3</td><td>At least 2</td><td>At least 2</td></tr>
</table>

Singapore

Requirement	Description			
	Retail LFMCs	**A/I LFMCs**	**VCFM**	**RFMC**
Base Capital Requirement	S$1 million (if CIS offered) S$500,000 (if CIS is not offered)	S$250,000	None	S$250,000
Risk-based Capital	Financial resources are at least 120% of total risk requirement		None	Not applicable
Compliance function	Independent and dedicated compliance function in Singapore required	Independent and dedicated compliance function in Singapore required if AUM is at least S$1 billion	Independent and dedicated compliance function in Singapore required, compliance support from overseas affiliates, or external compliance services providers	Independent and dedicated compliance function in Singapore required, compliance support from overseas affiliates, or external compliance services providers
Application Fee	S$1,000			Not applicable
Annual License Fee	Fixed fee of S$4,000 Variable fee calculated at S$5 per representative from the 101st representative onwards as at 1 January of the calendar year		S$4,000	S$1,000

5. For asset management activities, are family offices regulated in your jurisdiction? If so, how are they being regulated? Are family offices subject to special regulatory requirements as opposed to non-family offices?

The term 'single family office' ("**SFO**") is not defined under the SFA and the MAS has made known its intention that it does not intend to license or regulate SFOs for the foreseeable future, and SFOs may rely on an exemption on the basis that it is a corporation managing funds for its related corporations.

Singapore

6. What are the key continuing / ongoing regulatory obligations of a licensee?

All FMCs must comply with several ongoing business conduct requirements, these typically include the following: ensuring adequate disclosure to customers, mitigating conflicts of interests, and ensuring that its AUM is subject to independent custody and valuation.

Additionally, all FMCs have to put in place a risk management framework that: (a) identifies, addresses and monitors the risks associated with customer assets, (b) is appropriate to the nature and size of its operations, and nature and complexity of the assets it manages. At the minimum, the risk management framework of an FMC should include governance, independence and competency of the risk management function, identification and measurement of risks associated with customer assets, timely monitoring and reporting of risks to management, documentation of risk management policies, procedures and reports, and internal audit functions,

FMCs are also required to comply with anti-money laundering obligations under MAS' Notice to Capital Market Intermediaries on Prevention of Money Laundering and Countering the Financing of Terrorism.

7. What are the requirements in relation to the acquisition of a regulated asset management company in your jurisdiction (including cases where there is a change of control in the asset management company)?

A person must seek MAS' approval prior to entering into an "arrangement" which would result in the person obtaining effective control of a CMS licensee. A person is deemed to have obtained effective control of a CMS licensee if he, whether acting alone or acting together with any connected persons, (i) acquires or hold, directly or indirectly, 20% or more of the issued share capital of the licensee; or (ii) controls, directly or indirectly, 20% or more of the voting power of the licensee. Hence, any agreement to acquire an FMC must have MAS' approval as a condition to the completion of the transaction.

8. What are the main anti-money laundering and financial crime prevention rules applicable to asset management companies in your jurisdiction?

The main legislation governing anti-money laundering and financial crime prevention in Singapore are: (a) the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, Chapter 65A of Singapore; (b) the Terrorism (Suppression of Financing) Act, Chapter 325 of Singapore; and (c) the MAS Act, Chapter 186 of Singapore.

The MAS has also issued several notices relating to anti-money laundering and countering the financing of terrorism (AML/CFT).

The MAS AML/CFT regime is aligned with the recommendations of the Financial Action Task Force ("**FATF**"), of which Singapore is a member state. The MAS adopts a risk-based (as opposed to prescriptive) approach to supervising licensees for AML/CFT risk. "Customer due diligence" (CDD) requirements are broadly in line with FATF recommendations. Identification and verification of customers, beneficiaries, connected parties are required, and so are checks for sanctioned parties and politically exposed persons. Among other things, FMCs are also expected to perform risk assessments on their customers and report suspicious transactions.

Singapore

9. Are there any relevant consumer or investor protection rules applicable to asset management companies in your jurisdiction?

The Consumer Protection (Fair Trading) Act, Chapter 52A of Singapore (CPFTA) and the Consumer Protection (Fair Trading) (Regulated Financial Products and Services Regulations 2009 are the main sources of law governing consumer protection in relation to the provision of financial products and financial services. Under the CPFTA, a consumer may commence proceedings against a provider of financial products and services for any "unfair practice" (as defined in the CPFTA) and such claims are limited to S$30,000.

In general, asset management companies are subject to stringent continuing requirements in order to protect the interests of investors, including requirements to make prompt and appropriate disclosures of its investment policy and strategy as well as risks associated with the strategy, ensuring that its AUM are subject to independent valuation and customer reporting and are subject to independent custody.

The SFA also distinguishes between accredited investors, institutional investors, and retail investors in order to manage the risks each class of investor is exposed to. As opposed to accredited investors and institutional investors, retail investors are non-professional, individual investors. Fund management companies that deal with retail investors have more stringent requirements placed upon them in order to better protect the interests of lay investors.

10. In recent times, there has been increasing interest in digital assets, such as digitised securities, digital security tokens, and other digital tokens representing interests in assets. To what extent is the management of digital assets regulated in your jurisdiction, and what is the regulatory framework for it?

Currently, Singapore does not have a dedicated legislative framework dealing with digital assets and tokens.

- **Securities and Futures Act ("SFA")**

Instead, any offer or issue of a digital token in Singapore will be regulated by the MAS under the SFA, if such tokens constitute a capital markets product covered by the SFA. MAS has issued a guide in relation to the treatment of digital tokens entitled "The MAS' Guide to Digital Token Offerings" (the "**Guide**"). This Guide sets out the principles and general points in relation to the categorisation of digital tokens and subsequent application of the SFA, if necessary.

Briefly, where digital tokens are construed to constitute securities or units of a collective investment schemes ("**CIS**"), such tokens may be treated as "capital markets products." In determining the category of the token, the MAS has clarified that it will examine the characteristics, structure and rights attached to the token. If, it is determined that the relevant tokens are capital market products, then the SFA will apply.

An issuer is only able to make an offer of tokens that are categorised as "capital markets products" if such an offer is made in compliance with the SFA. This includes the requirement to issue a prospectus to accompany the offer of such tokens, unless exempted. Alternatively, where an offer of units in a CIS is made, such an offer may be subject to the authorization or recognition requirements under the SFA, unless exempted.

Separately, intermediaries involved in the offer or issuance of digital tokens may be subject to MAS' oversight. MAS has identified three such intermediaries. Firstly, operators of platforms that make primary issues or offers of digital tokens (that constitute capital markets product) must hold a Capital Markets Service License. Secondly, financial advisors providing advice in Singapore in relation to digital tokens as an investment product must have a financial advisor's license. Finally, parties interested to establish or operate trading platforms for digital tokens that constitute securities, derivatives thereof, units in a CIS may need to seek approval from MAS to be an approved exchange or seek to be recognised as a market operator under the SFA and by the MAS.

Singapore

On the flipside, while tokens that do not represent an interest of right in a CIS, represent ownership in the company or represent indebtedness of the same will not be considered as securities or units in a CIS and hence, will not be regulated by the SFA, such digital tokens may instead fall under the ambit of the Payment Services Act ("**PSA**") if they constitute a digital representation of value. Where a token appears to be a digital representation of value, it may be categorised as a Digital Payment Token.

- **Payment Services Act (No 2 of 2019) ("PSA")**

The PSA aims to regulate both traditional and cryptocurrency-based payments. Under the PSA, any entity that is in the business of providing a digital payment token service must obtain license from the MAS, unless exempted. The PSA defines Digital Payment Token Services ("**DPTS**") as any service that is involved in, dealing in or facilitating the exchange of DPTs.

The PSA recognises that with the rise of digital tokens, the use of DPTs as a means of payment will become prevalent. Accordingly, the services that deal with DPTs will increase. To get ahead of the curve, the MAS has introduced a framework to regulate DPTS within the PSA. In this framework, businesses involved in the provision of DPTS, under the PSA, must either hold a standard payment institution license or a major payment institution license.

Further, all DPTS licensees are mandated to adhere to the relevant and applicable AML/CFT requirements imposed by MAS.

The following are contributed by InCorp's Regional Offices

1. Does your jurisdiction have a special tax regime for the asset management industry? If so, please provide a brief overview.

Under Singapore domestic tax law, where a fund manager in Singapore has the discretionary mandate to manage the onshore or offshore funds, the income of those funds will be considered Singapore sourced and taxable in Singapore.

However, under its separate tax regime for fund, the income of the onshore or offshore funds managed by the Singapore fund manager where the funds meet certain qualifying criteria and are awarded the tax exemption status on application to the Monetary Authority of Singapore. These tax exemption schemes are commonly referred to as the Section 13CA (applicable to offshore companies and trusts) (no application required), Section 13R (applicable to onshore companies) or Section 13X (for onshore and offshore companies, trusts, partnerships, etc.).

A broad range of specified income from designated investments derived from these incentivised onshore and offshore funds will be exempt from Singapore income tax.

2. How would fund vehicles in your jurisdiction be treated for tax purposes?

For onshore fund vehicles managed by a Singapore fund manager, their income will generally be subject to Singapore income tax, unless they have been awarded the specific exemption under the Section 13R or Section 13X scheme (where specified income from designated investments will be exempted), or their income is specifically exempt under specific provisions of the tax law.

Singapore

3. For foreign funds investing in securities and assets in your jurisdiction, what are the tax implications in your jurisdiction?

For offshore fund vehicles managed by a Singapore fund manager, their income will be subject to Singapore income tax, unless they have been awarded the specific exemption under the Section 13CA or Section 13X schemes (where specified income from designated investments will be exempted), or their income is specifically exempt under specific provisions of the tax law.

If the offshore fund vehicle is not managed by a Singapore fund manager, depending on the nature of the investment return, the income may be subject to Singapore withholding tax. Reduced withholding tax rates may apply under applicable tax treaties.

4. What are the tax implications for resident individuals and entities in your jurisdiction investing in an onshore and offshore fund?

The taxability of resident individuals and entities deriving income from investments in onshore fund vehicles should generally depend on the nature of the income and circumstances of the respective resident individuals and entities.

For investments in offshore funds, resident individuals should generally be exempt from Singapore income tax, whereas resident entities may be subject to tax if the income is received in Singapore, unless specific exemptions apply.

5. What are the tax implications for foreign individuals and entities investing in onshore funds in your jurisdiction?

Foreign individuals and entities deriving income from investment in incentivised onshore funds in Singapore should generally be exempt from Singapore income tax.

6. What are the tax implications for asset managers in your region managing both domestic, offshore, or domestic and offshore funds?

Local asset managers deriving income from carrying on fund management activities for onshore and offshore funds will be subject to Singapore income tax. However, if the meet certain qualifying criteria and are awarded a tax concession by the Monetary Authority of Singapore, they can enjoy a concessionary tax rate of 10% (instead of the prevailing corporate tax rate of 17%).

South Korea

1. Please provide an overview of the asset management market in your jurisdiction in 2020 and what are the trends and opportunities in 2021?

"The asset management market in South Korea will continue to grow rapidly as it did in the last decade," SK Securities Co., Ltd., as reported in Business Tribune, 3 Oct 2020.

(Source: https://www.biztribune.co.kr/news/articleView.html?idxno=247710)

Since 2010, the asset management market in South Korea has grown rapidly over the decade at a compound annual growth rate of 9.9%. This rate far exceeds the growth rate of GDP and financial liquidity of the last decade.

The reasons for the high growth rate of the asset management market in the last decade, and its prospective growth in the next decade are as follows:

- The expected rate of return of safe assets, such as instalment savings, has decreased significantly due to low interest rates;
- Investments through asset allocation are becoming more common and generalised as 'asset management' becomes widespread; and
- Demands for specialised asset managers will increase as financial products become more complicated.

2. What is the regulatory framework for asset management in your jurisdiction:

a. Which official agencies/regulators supervise asset management in your jurisdiction?

Collective investment business entities, new technology venture capital firms and their business conducts are regulated and supervised by the Financial Supervisory Service (the "**FSS**"), and operate under its guidance and supervision.

Venture capital firms and their business conducts are regulated and supervised by the Ministry of SMEs and Startups.

b. What are the sources of law regulating asset management in your jurisdiction?

Collective investment business entities are primarily regulated under the Financial Investment Services and Capital Markets Act (the "**FSCMA**") and its subsidiary legislations, such as the Rules on Financial Investment Business.

Venture capital firms are regulated under the Venture Capital Promotion Act (the "**VCPA**") and its subsidiary legislations.

New technology venture capital firms are regulated under the Specialised Credit Finance Business Act (the "**SCFBA**") and its subsidiary legislations.

South Korea

3. What are the types of asset management, companies regulated in your jurisdiction?

There are three main types of asset management companies: (i) a collective investment business entity ("**CIBE**") regulated under the FSCMA; (ii) a venture capital firm ("**VCF**") regulated under the VCPA; and (iii) a new technology venture capital firm ("**NTVCF**") regulated under the SCFBA.

■ CIBE

A CIBE is an entity that engages in the business of managing funds, etc. that are provided by at least two (2) investors by acquiring or disposing of investable assets (such as stocks, bonds, real estate, etc.) or by other means without any regular management instructions from the investors, and distributing the results of such management, including returning all the related rights to the investors (Articles 6(4), 6(5) and 8(4), FSCMA).

■ VCF

A VCF is a company that primarily engages in the business of venture capitals, i.e. founders, small and medium-sized enterprises ("**SMEs**"), startups, or other SMEs based on an innovative technology or innovative business model (Articles 2(2) and 2(10), VCPA).

■ NTVCF

An NTVCF is a company that engages in the business of investing in and providing loans to SMEs and medium-sized enterprises that operate new technology businesses, managing and providing guidance with respect to technology to new technology companies, establishing new technology business mutual funds, and managing the funds of such mutual funds (Articles 2(14-2) to 2(14-4), SCFBA).

4. What are the key regulatory requirements to establish and operate the different types of asset management companies mentioned above?

■ CIBE

An entity that wishes to engage in the collective investment business shall obtain approval from the Financial Services Commission (the "**FSC**") for each of its business units (Article 12(1), FSCMA).

A CIBE shall comply with the following:

i. A CIBE shall be a joint-stock company incorporated in accordance with the Commercial Act or a foreign investment business entity that has established a branch office in the Republic of Korea.

ii. The majority shareholder or the foreign investment business entity shall have sufficient investment capability, sound financial status and be socially credible.

iii. The minimum owner's capital for each business unit shall be as follows:
   a. KRW 8,000,000,000 in general
   b. KRW 4,000,000,000 for securities funds
   c. KRW 2,000,000,000 for real estate funds
   d. KRW 2,000,000,000 for special asset funds

iv. The executive officers of a CIBE shall not be subject to any reasons for disqualification and the entity shall employ employees with adequate expertise.

v. A CIBE shall have in place computer and communications systems, work areas and office equipment, security systems, etc.

vi. The business plan of a CIBE shall be reasonable and sound, and comply with the relevant laws and the order of sound financial transactions.

vii. A CIBE shall have sound financial status and be socially credible.

viii. A CIBE shall establish a system to prevent any conflict of interests, an appropriate standard for internal control of the business, and an appropriate system to block any exchanges of certain information.

■ VCF

A VCF shall be registered with the Minister of SMEs and Startups as a VCF in order to engage in the venture capital business in accordance with the VCPA (Article 37(1), VCPA).

i. A VCF shall be a joint-stock company incorporated in accordance with the Commercial Act and shall have the paid-in capital of at least KRW 2,000,000,000, of which less than 20% shall be debt.

ii. A VCF shall have at least two (2) full-time employees with adequate expertise.

iii. The office of a VCF shall comply with the basic standards.

iv. The representative director and the registered executive officers of a VCF shall not be subject to any reasons for disqualification.

v. The majority shareholder shall satisfy the requirements to be socially credible.

vi. A VCF shall establish a system to prevent any conflict of interests.

■ NTVCF

An NTVCF shall be registered with the FSC (Article 3(2), SCFBA).

i. In the event that an NTVCF intends to engage in any other financial businesses stipulated in the SCFBA in addition to the new technology venture capital business, it shall have the capital of at least KRW 20,000,000,000.

ii. In the event that an NTVCF intends to engage only in the new technology venture capital business, it shall have the capital of at least KRW 10,000,000,000.

iii. An NTVCF shall not be a company or a majority shareholder, of which the registration has not been revoked or cancelled for a period of three (3) years.

iv. An NTVCF shall not be a company or a majority shareholder that is currently in corporate rehabilitation.

v. An NTVCF shall not have been subject to a punishment heavier than a fine due to violation of financial laws in the last three (3) years.

vi. An NTVCF shall establish a system to prevent any conflict of interests.

5. For asset management activities, are family offices regulated in your jurisdiction? If so, how are they being regulated? Are family offices subject to special regulatory requirements as opposed to non-family offices?

There are currently a few family offices that are in operation in Korea. However, neither the term, 'family offices,' nor the operation thereof is regulated.

As family offices are not subject to regulation by the financial authorities, more and more securities companies are offering services that are similar to the services as offered by the family offices.

South Korea

6. What are the key continuing / ongoing regulatory obligations of a licensee?

- **CIBE**

A CIBE shall maintain the fulfilment of the conditions that were required by the FSC upon the granting of the licence and registration to engagement in investment activities, and in the event of any violation thereof, the FSC may cancel its license and registration; provided, however, that the requirements regarding the owner's capital and majority shareholder shall be alleviated. Moreover, the FSC may cancel the registration of a CIBE in the event of the FSCMA or any financial laws (Article 420(1), FSCMA).

- **VCF**

In the event that a VCF cannot fulfil the conditions for registration, does not invest in at least 40% of the total assets that are being managed within three (3) years after the registration, or is in violation of the VCPA or other relevant laws, the Minister of SMEs and Startups may cancel its registration, make an order to suspend its business, make a correction order or issue a warning, or suspend the assistance given in accordance with the VCPA for a period not exceeding three (3) years (Article 62(1), VCPA).

- **NTVCF**

In the event that an NTVCF does not qualify as an NTVCF, does not commence its business within one (1) year from the registration date, or does not continuously operate its business for at least one (1) year without any justifiable reason, the FSC may cancel its registration (Article 57(3), SCFBA).

7. What are the requirements in relation to the acquisition of a regulated asset management company in your jurisdiction (including cases where there is a change of control in the asset management company)?

In the event of a change of a majority shareholder, the new majority shareholder shall fulfil the conditions required for each type of asset management company.

Moreover, any person that wishes to become the majority shareholder by acquiring the shares issued by a CIBE in accordance with the Act on Corporate Governance of Financial Companies shall obtain approval of the FSC in advance (Article 31(1), Act on Corporate Governance of Financial Companies). The FSC also assesses whether the shareholder with the largest shareholding conforms to the qualification requirements every two (2) years (Article 32(1), Act on Corporate Governance of Financial Companies).

According to the Act on Corporate Governance of Financial Companies, any changes of the majority shareholder of an NTVCF shall be reported to the FSC within two (2) weeks from such change (Article 31(5), Act on Corporate Governance of Financial Companies).

In the event that a VCF assigns its business or announces a split-off or a merger and the assignee or the company newly established as a result of the split-off or the merger or the company remaining after the split-off or the merger wishes to succeed to the VCF's position, the assignee or the company shall report such assignment, split-off or merger to the Minister of SMEs and Startups within thirty (30) days from the assignment, the split-off or the merger date.

South Korea

8. What are the main anti-money laundering and financial crime prevention rules applicable to asset management companies in your jurisdiction?

The main legislations governing anti-money laundering and financial crime in Korea are: (a) the Act on Reporting and Using Specified Financial Transaction Information; (b) the Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, Etc.; (c) the Act on Regulation and Punishment of Criminal Proceeds Concealment; and (d) the Act on Prohibition Against the Financing of Terrorism and Proliferation of Weapons of Mass Destruction.

The Korea Financial Intelligence Unit (the "**KoFIU**") has also implemented the Anti-Money Laundering and Combating the Financing of Terrorism ("**AML/CFT**") regime in Korea.

The obligations to comply with the 'customer due diligence' system, to provide training sessions to the executive officers and employees on anti-money laundering, and to report to the board of directors thereabout, as stipulated in the Act on Reporting and Using Specified Financial Transaction Information all apply to asset management companies.

9. Are there any relevant consumer or investor protection rules applicable to asset management companies in your jurisdiction?

The provisions of the FSCMA that provide for the protection of investors are as follows:

- Articles 9(5) and 9(6): The investors shall be divided into ordinary investors and professional investors.
- Article 37: Financial investment companies, including CIBEs, shall operate their business in good faith and shall not act in the best interests of themselves or any third party by undermining the interests of investors.
- Article 55: Financial investment companies, including CIBEs, are prohibited from making an undertaking to the investors to compensate, in whole or in part, any losses that may be suffered by the investors or guarantee a certain amount of profit for the investors, or from compensating, in whole or in part, any losses that are suffered by the investors, or from providing a certain amount of profit to the investors.
- Article 56: Any amendments to or revisions of the terms and conditions of a financial investment company shall be reported to the FSC and be publicly announced.

The Act on Protection of Financial Consumers was recently enacted and was enforced on 25 March 2021. The provisions of the Act on Protection of Financial Consumers that provide for the protection of investors are as follows:

- Article 17: A company that sells financial products shall not recommend a purchase of financial products that are not suitable for its general consumers on the basis of their financial status, experience of acquiring or disposing of financial products, etc.
- Article 18: In the event that a financial product, which a general consumer voluntarily wishes to purchase, is not suitable for him/her on the basis of his/her financial status, etc., the company shall notify the consumer of such unsuitability.
- Article 19: In the event of recommending a financial product to a general consumer, any important matters relating thereto shall be explained clearly to the consumer for his/her full understanding.
- Article 20: A financial product seller shall not conduct any unfair practices that violate the rights and interests of a consumer by using its superior position.
- Article 21: A financial product seller shall not unjustly recommend a purchase of a financial product, such as by providing conclusive opinions on uncertain matters.
- Article 47: In the event that a consumer purchases a financial product that is in violation of any of the above provisions, he/she may request for a cancellation of the purchase within five (5) years.

South Korea

10. In recent times, there has been increasing interest in digital assets, such as digitised securities, digital security tokens, and other digital tokens representing interests in assets. To what extent is the management of digital assets regulated in your jurisdiction, and what is the regulatory framework for it?

An amendment to the Act on the Reporting and Use of Specific Financial Transaction Information, which strengthened the AML/CFT regime by applying it to the providers of digital assets was passed in March 2020.

Digital asset providers are required to register with the Korean financial authorities before they begin their operation. 'Digital asset provider' is defined as anyone who runs a business on transaction, exchange, intermediary trading or deposit of digital asset. The Act regulates digital asset provider from transaction in false name, money laundering or other illegal transaction, etc.

Taiwan

1. Please provide an overview of the asset management market in your jurisdiction in 2020 and what are the trends and opportunities in 2021?

Mutual funds and ETFs with investments strategies relating to Environmental, Social, and Corporate Governance ("**ESG**") have become more and more popular in Taiwan. According to relevant local news report, around 15% of new mutual funds launched in Taiwan in 2020 had explicit ESG strategies, and Taiwan had the largest share of ESG mutual fund and ETFs in Asia as of 2020 Q3.

According to a newsletter issued by Taiwan's financial regulator, the Financial Supervisory Commission ("**FSC**") in January of 2021, the FSC is proposing to amend relevant laws and regulations in order to allow Securities Investment Trust Enterprises ("**SITEs**") to issue and act as managers of real estate investment trust ("**REIT**") funds, which, under current Taiwan laws and regulations, may only be issued under the trust structure with banks being the qualified issuers. Once the proposed amendment is made, this may be a new business opportunity for SITEs, which are generally prohibited from investing in real estate under current law.

2. What is the regulatory framework for asset management in your jurisdiction:

a. Which official agencies/regulators supervise asset management in your jurisdiction?

In Taiwan, the FSC (the Financial Supervisory Commission) is the government body regulating all financial institutions, products and services. There are four bureaux established under the FSC, one of which is the Securities and Futures Bureau ("**SFB**"). The SFB is responsible for regulating the securities industry and related businesses, including the securities investment trust enterprises ("**SITEs**") and securities investment consulting ("**SICEs**"), which are generally considered the main market players in the asset management industry in Taiwan.

In addition, the Securities Investment Trust and Consulting Association of the R.O.C. ("**SITCA**") is the self-regulatory organization for SITEs and SICEs, in charge of adopting self-regulatory rules and overseeing its members (being SITEs and SICEs).

b. What are the sources of law regulating asset management in your jurisdiction?

The asset management industry in Taiwan is primarily regulated under the Securities and Exchange Act("**SEA**"), the Securities Investment Trust and Consulting Act and their regulated regulations such as the Regulations Governing Securities Investment Trust Enterprises, the Regulations Governing Securities Investment Consulting Enterprises, the Regulations Governing Securities Investment Trust Funds, etc., as well as the self-regulatory rules of the SITCA.

Taiwan

3. What are the types of asset management, companies regulated in your jurisdiction?

The main types of regulated entities in the asset management industry in Taiwan include the SITEs (Securities Investment Trust Enterprises) and the SICEs (Securities Investment Consulting Enterprises).The main business activities of a SITE are public offering of securities investment trust funds ("**SITE Funds**") and investing in or trading securities, securities-related products, or other types of investments approved by the FSC. Under current law, SITE Funds may also be issued by way of private placement, subject to relevant requirements and restrictions. The core business of a SICE is securities investment consulting service, which is defined as providing analysis, opinions, or recommendations on matters relating to investment in or trading of securities, securities-related products, or other items approved by the FSC, in return for compensation obtained directly or indirectly from a principal or third party.

In addition to the above, a SITE or SICE may also provide services such as (a) discretionary investment management ("**DIM**") services; (b) acting as a master agent of publicly offered offshore funds in Taiwan; (c) acting as a placing agent for privately placed offshore funds in Taiwan, etc., subject to relevant filings, approvals, requirements and/or restrictions.

4. What are the key regulatory requirements to establish and operate the different types of asset management companies mentioned above?

■ SITEs

A SITE must be organized as a company limited by shares, with the paid-in capital of no less than NT$300 million. One of the promoters of an SITE shall be a fund management institution, bank, insurance company, securities firm, or financial holding company meeting certain qualifications ("**Professional Shareholder**"). The aggregate shares subscribed by such qualified promoters must not be less than 20% of the total shares issued when the SITE is established. In addition, there are also some other qualifications/requirements such as having internal departments for investment research, finance and accounting, and internal audit as well as sufficient and adequate department heads, managerial officers and personnel meeting the required qualifications, etc.

As for shareholders other than the Professional Shareholders, the total shares held by any single shareholder (i.e., non-Professional Shareholder) together with its related parties and nominees shall not exceed 25% of a SITE's total issued shares.

■ SICEs

SICE must be organized as a company limited by shares, with the paid-in capital of no less than NT$20 million, while there would be higher minimum capital requirements and other additional requirements if the SICEs wishes to carry out additional business activities such as providing DIM (discretionary investment management) services (where the paid-in capital must not be lower than NT$50 million), or acting as a master agent of offshore funds (where the paid-in capital must not be lower than NT$70 million). There are also some other qualifications/requirements such as the requirement of having internal departments for investment research and finance and accounting as well as sufficient and adequate department heads, managerial officers and personnel meeting the required qualifications, etc.

Taiwan

5. For asset management activities, are family offices regulated in your jurisdiction? If so, how are they being regulated? Are family offices subject to special regulatory requirements as opposed to non-family offices?

While the concept of family office is getting more and more popular in Taiwan, this term is not defined under Taiwan law. In Taiwan, the services relating to family offices are understood to include trust-related services, succession planning, tax planning and/or any other services that may be needed for ultra-high-net-worth individuals, so whether any of them are regulated should depend on their natures. For example, "trust businesses" are regulated under the Trust Business Act and require the license from the FSC, and in practice, such businesses are generally provided by banks, while law firms are able to provide legal services relating to trust, succession and tax.

6. What are the key continuing / ongoing regulatory obligations of a licensee?

Please see below certain key continuing / ongoing regulatory obligations of SITEs and/or SICEs under current Taiwan laws and regulations:

- SITEs and SICEs shall, within 3 months after close ofthe accounting period, publicly announce and file with the SITCA/ FSC their audited annual financial reports;
- SITEs are required to report events that have material effect on the rights and interests of beneficiaries (i.e., holders of the interests of SITE Funds) within two days of the occurrence of the event;
- SITEs shall periodically submit annual and monthly financial report regarding the utilization of each SITE Fund to the FSC.
- SITEs shall publicly announce the per-unit net asset value of the SITE Fund on a daily basis.

Furthermore, SITEs and SICEs must meet additional continuing regulatory obligations if they also conduct DIM (discretionary investment management) business. For instance, SITEs and SICEs conducting DIM business shall produce for each customer a regular monthly record of trading on the customer's assets and a report on the current status of those assets.

7. What are the requirements in relation to the acquisition of a regulated asset management company in your jurisdiction (including cases where there is a change of control in the asset management company)?

An acquisition of shares of a SITE from any Professional Shareholder requires the prior approval from FSC, while there is no such requirement for SICEs. Please also note that a prior approval from the Investment Commission would also be required if the acquirer is a foreign investor, regardless of whether the target company is a SITE or SICE.

Taiwan

8. What are the main anti-money laundering and financial crime prevention rules applicable to asset management companies in your jurisdiction?

SITEs and SICEs are subject to Taiwan's AML laws and regulations, including the Money Laundering Control Act and the Regulations Governing Anti-Money Laundering of Financial Institutions. Under Taiwan's AML laws and regulations, SITEs and SICEs are required to, among others, (a) implement its own internal AML guidelines and procedures; (b) check and verify the customer's identity (KYC)and their beneficial owner based on a risk-based approach; (c) keep necessary transaction records; (d) report to the government on suspicious transactions, etc. In practice, the SITCA also issued the Model Guidelines for Anti-Money Laundering and Counter Terrorism Financing Policies for SITEs and SICEs for them to follow.

9. Are there any relevant consumer or investor protection rules applicable to asset management companies in your jurisdiction?

The Financial Consumer Protection Act ("**FCPA**") is the main law governing financial consumer protection in Taiwan. As SITEs and SICEs fall within the definition of "financial services institutions" under the FCPA, they must comply with relevant obligations provided for in the FCPA for protecting the interests of financial consumers, such as the obligations (a) not to engage in falsehood, concealment, or other conduct sufficient to mislead others when carrying out solicitation or promotional activities, and (b) to fully explain the important details of the financial products or services, and of the contract, to the financial consumer, and to fully disclose the associated risks.

On the other hand, from the perspective of investor protection, the SITEs may be subject to relevant provisions under the securities regulation, such as the relevant anti-fraud rules of the SEA (the Securities and Exchange Act), etc. There are also similar regulations under the Securities Investment Trust and Consulting Act, which provide that SITEs and SICEs shall not operate business involving misrepresentation, fraud or any other act which is sufficient to mislead other persons.

10. In recent times, there has been increasing interest in digital assets, such as digitised securities, digital security tokens, and other digital tokens representing interests in assets. To what extent is the management of digital assets regulated in your jurisdiction, and what is the regulatory framework for it?

No laws or regulations have been promulgated or amended in Taiwan to specifically deal with the management of digital assets. Under current Taiwan laws and regulations, SITE Funds may only invest in securities, securities-related products or any other products as approved by the FSC, so SITE Funds may not invest in digital assets if they do not fall within the scope of investments that can be made by SITE Funds.

Thailand

1. Please provide an overview of the asset management market in your jurisdiction in 2020 and what are the trends and opportunities in 2021?

With reference to special report of Fitch Rating on Thai Investment Management, throughout the outbreak of coronavirus 2019 or COVID-19, The Thai asset-management industry shows early signs of recovery as the mutual fund assets under management slightly rose up around 1.6% in April 2020 and 1.2% in May 2020 to approximately 4.1 trillion Thai Baht. In bond mutual funds as the largest segment in the Thai mutual fund industry, it was reported that outflows were around THB327 billion (-14%) in aggregate in March 2020 although assets under management had increased as the demand of the market of mutual fund was high. In a few cases, bond funds suspended redemptions. In the other way around, money market funds showed aggregate inflows of over THB100 billion in March 2020 and inflows of almost THB50 billion in April 2020 before minor outflows in May 2020, as the report of the Fitch Rating stated. The Fitch Rating is of its opinion that this is consistent with other markets, which had overall inflows to money market funds as investors allocated assets away from riskier mutual fund categories.

In the year 2021, the trends and the opportunities such as digital transformation, the Securities and Exchange Commission of Thailand enforcement trends, workforce transformation and financial resilience have slightly impacted the asset management market. Currently, The SEC is in the process of preparing their regulation to be in accordance to the new trends of asset management market in the year 2021 such as the regulations on the COVID-19 pandemic, digital asset (digital token and cryptocurrency) and fintech supervision. As the result, it is expected that the asset management companies will be obliged to have a higher level of accountability once the new regulation is impacted.

2. What is the regulatory framework for asset management in your jurisdiction:

a. Which official agencies/regulators supervise asset management in your jurisdiction?

In Thailand, the main official authorities that are responsible for supervision of asset management are:

- The Securities and Exchange Commission of Thailand or the SEC have the powers and duties under the Securities and Exchange Act to lay down policies of promotion and development of securities businesses including asset management businesses;
- The Capital Market Supervisory Board or the CMSB which have the powers and duties under the Securities and Exchange Act that include issuance of rules and regulations governing the asset management business; and
- The Bank of Thailand or the BOT which have the powers and duties under Bank of Thailand Act to regulate the money market and transfers of money.

Thailand

b. What are the sources of law regulating asset management in your jurisdiction?

- The Securities and Exchange Act B.E. 2535 (A.D. 1992) of Thailand or the SEA.
- The Anti-Money Laundering Act, B.E. 2542 (1999) of Thailand or the AMLA; and
- Prevention and Suppression of Terrorism Financial Support Act of Thailand or PSTFSA

3. What are the types of asset management, companies regulated in your jurisdiction?

Pursuant to Section 4 of the SEA, the securities business includes business of securities brokerage, securities dealing, investment advisory service, securities underwriting, mutual fund management, private fund management and other businesses relating to securities as specified by the Minister of Finance upon recommendation of the SEC.

According to Section 90 of the SEA, any of securities businesses can be undertaken only by formation of either a limited company or a public limited company, or by a financial institution and after having obtained a license from the Minister upon recommendation of the SEC. An asset management company ("Asset Management Company") is one of permitted securities companies.

Asset Management Companies may be either a private fund management company and a mutual fund management company.

4. What are the key regulatory requirements to establish and operate the different types of asset management companies mentioned above?

Pursuant to requirements specified in SEA, the Ministerial Regulation Concerning Granting of Approval for Undertaking Securities Business B.E. 2551 and other relevant regulations for the establishment and operation of the Asset Management Company, the Asset Management Company shall comply with the following requirements, terms and conditions:

1. Having paid-up registered share capital of either not less than THB 25 million for a securities company carrying on the mutual fund management business or the private fund management business for non-institutional investors, or of not less than THB 10 million for a securities company carrying on the mutual fund management business or the private fund management business for institutional investors;
2. Having a strong financial position which will not be likely to cause damage or any other circumstances indicating financial hardship;
3. Person who is or will be a major shareholder shall not have any prohibited characteristics specified in the Notification of the Ministry of Finance concerning prescription of conditions for the securities company to apply for approval of a major shareholder;
4. Name of the Asset Management Company shall include the words "securities company" at the beginning and the word "limited" at the end, except for the case of financial institutions that are established under law on business of financial institution and have obtained securities business license;
5. Any director, manager or person with power of management or an advisor of the Asset Management Company shall not have the following prohibited characteristics:
    a. Being or having been a bankrupt;
    b. Having been imprisoned by the judgement of a court which is final for an offence related to property committed with dishonest intent;

c. Having been a director, a manager or a person with power of management of a financial institution which had its license revoked, unless an exemption has been granted by the CMSB;

d. Being a director, a manager or a person with power of management of any other securities companies, unless otherwise exempted;

e. Having been removed from a position of chairman, director or manager under conditions specified by the SEA;

f. Being a political official;

g. Being a government official with responsibility to supervise securities companies, an officer of the Bank of Thailand or of the Office of the SEC, unless otherwise exempted;

h. Being a person not having educational qualification, work experience or other qualification as specified in the notification of the CMSB; and

i. Having other prohibited characteristics as specified in the notification of the CMSB.

6. Directors or managers who have to manage the business of the Asset Management Company shall be appointed only with approval from the Office of the SEC; and

7. The Asset Management Company shall open its office for business during business hours and close its office on the days specified by the Office of the SEC.

5. For asset management activities, are family offices regulated in your jurisdiction? If so, how are they being regulated? Are family offices subject to special regulatory requirements as opposed to non-family offices?

According to laws of Thailand, only security companies that obtained an asset management licence can engage in asset management business. There is no concept of family offices under laws of Thailand. As a result, no law on family offices has been enacted.

6. What are the key continuing / ongoing regulatory obligations of a licensee?

Once the Asset Management Company has obtained the license to undertake the asset management business, the Asset Management Company shall comply with requirements as stipulated in the SEA and other relevant regulations as set forth below:

- Undertaking a securities business specified in the license within 180 days from the date of obtaining the license;
- Maintaining status of the legal entity during the period of undertaking securities business and in accordance with details on the most recent shareholding structure shown to the Office of the SEC;
- Preparing its accounts stating its true and accurate business operation and financial condition;
- Preparing a balance sheet and a profit and loss account for each accounting period of six months. The balance sheet shall be audited and an opinion thereon is given by an auditor approved by the Office of the SEC to be the auditor for such financial year and such auditor shall not be a director, officer or employee of the Asset Management Company; and
- Publishing particulars or disclose any other information concerning the Asset Management Company in a prominent place at the offices together with submitting a copy of such publications or disclosure of such information to the Office of the SEC.

Thailand

7. What are the requirements in relation to the acquisition of a regulated asset management company in your jurisdiction (including cases where there is a change of control in the asset management company)?

The acquisition or change of control in the Asset Management Company in Thailand is subject to approval by the Office of the SEC.

The Ministerial Regulation No. 11 (B.E. 2541) (A.D. 1998) issued under the Securities and Exchange Act B.E. 2535 (A.D. 1992) stipulated the procedures and requirements in relation to acquisition of the Asset Management Company that any Asset Management Company wishing to purchase the business of another Asset Management Company by way of purchasing of seventy-five percent or more of the total number of voting shares of that other securities company shall apply for the transfer of securities business licenses from the acquired Asset Management Company. In this way, any person acquiring the Asset Management Company shall submit an application for a securities business license which is owned by the acquired Asset Management Company, and at the same time, the acquired Asset Management Company shall submit an application for cancellation of its securities business license.

8. What are the main anti-money laundering and financial crime prevention rules applicable to asset management companies in your jurisdiction?

There are two main laws in Thailand — the Anti-Money Laundering Act of Thailand ("AMLA") and Prevention and Suppression of Terrorism Financial Support Act of Thailand ("PSTFSA") which are applicable to the Asset Management Company.

These two Acts were enacted to mitigate the high risk of money laundering in Thailand as they are in compliance with the international standards regarding to AMLA and PSTFSA as recommended by Financial Action Task Force ("FATF").

In order to prevent transactions that are deliberately designed to conceal the unlawful origin of funds as primarily contained within AMLA, the Financial Action Task Force ("FATF") recommended an amendment to the AMLA and PSTFSA to be in compliance with the international standards. The amendments passed through the public hearing stage on June 15, 2020, and the proposed amendment will be proposed to the cabinet and the parliament respectively.

In addition, the SEC was notified by the Anti-Money Laundering Office (AMLO) that an Asset Management Company is required to submit a transaction report on the fundamental offenses including offenses relating to unfair trading practices in accordance to SEA which consist of offenses in spreading fake news or mistake as to an essential element of security or insider information and falsely creation of quantity or price of securities. Such report will be verified by AMLO. The AMLO has the power to consider information about the transaction as well as to issue an order to seize or freeze the property in connection with committing of the offense.

Moreover, in respect of PSTFSA, it provides that Asset Management Company has the obligation (i) to establish a policy for risk assessment or guideline for prevention of the terrorism financial support (ii) to suspend handling of property of persons in the list specified by the law and such property of the substitute or act on behalf of the persons on the list. (iii) to notify the AMLO of the suspended property and information of a customer or an ex-customer who is considered to be a person in the list.

If the person having the duty to report the transaction fails to act as required by law, there are criminal penalties on the managing director or any person responsible for the management of the company who may also be punished for ordering non-committing or failing to comply with provisions of law.

Thailand

9. Are there any relevant consumer or investor protection rules applicable to asset management companies in your jurisdiction?

As Asset Management Companies are under the regulation of SEC, in case of enforcement of law on market misconduct of securities trading on the Stock Exchange of Thailand ("SET") under the SEA, any misconduct such as securities price manipulation, insider trading, accounting fraud of the securities company that results in damage to the investors, the company is subject to criminal liability on market misconduct under SEA and an offender is subject to civil liabilities for the damages occurred to the investors.

Not only the Office of the SEC sector has the power to take action on criminal sanction and administrative sanction against an offender, but also the investor can also exercise the right in relation to a criminal action and a civil action under the provisions of the SEA .

10. In recent times, there has been increasing interest in digital assets, such as digitised securities, digital security tokens, and other digital tokens representing interests in assets. To what extent is the management of digital assets regulated in your jurisdiction, and what is the regulatory framework for it?

In Thailand, there are two main laws regarding the Digital Asset. The main objectives of these laws are to support the increase in demand and recognition of Digital Assets in Thailand as well as protecting investors from the extreme volatility of Digital Assets by requiring issuers and other operators of Digital Assets businesses to disclose adequate and correct information.

The Royal Decree on Digital Asset Business of Thailand 2018 ("DAB")

Under the DAB, the SEC is the regulator for Digital Asset and mainly focuses on the digital token offering and undertaking of digital asset businesses with the authority to issue relevant rules, regulations, conditions and procedures in relation to the digital assets. The definition of Digital Asset under DAB has been knowns a cryptocurrency and digital token.

The type of activities subjected under the Royal Decree are as follows

- A public offering of Digital Tokens, or known as Initial Coin Offering ("ICO"), in this regard, the public offering of newly issued Digital Tokens are subject to approval of the Office of the SEC and the Digital Tokens shall be made through offering by the Digital Token system provider or known as ("ICO Portal"). As of now, only a Thai incorporated company can obtain approval for a ICO or to become a Digital Token system provider; and

- Operation of any of businesses relating to Digital Assets, namely
  i. Digital Assets Exchange;
  ii. Digital Assets Broker;
  iii. Digital Assets Dealer; and
  iv. Other businesses to be further specified by the Minister of Finance, is also subject to approval of the SEC.

Thailand

Operators of Digital Assets businesses are also subject to unfair trades prohibitions, similar to prohibitions against unfair trading of securities, including prohibitions against insider trading, dissemination of false information, front running and market manipulation.

The Ministry of Finance ("MoF") has the power under the DAB to issue ministerial regulations in relation to the DAB as well as appointing competent officers to perform their duties in accordance with the DAB.

In addition, the SEC has been granted with the regulatory power under the DAB to issue rules, regulations and notifications regarding issuance and trading of Digital Tokens and operation of Digital Assets business.

If anyone fails to comply with provisions of the DBA, penalties including both criminal and civil sanctions will be imposed. Criminal sanctions include a maximum fine of THB 5,000,000 and/or imprisonment for a maximum term of 10 years or both. On the other hands, civil sanctions include a fine in the amount to be determined by the Office of the SEC, trading bans and a ban from being a director or an executive of any Digital Assets business operator.

Amendment to the Revenue Code (No.19) of Thailand 2018 (the "Revenue Code"):

The main purpose of this Amendment to the Revenue Code is to impose tax on income from the Digital Asset operation including

- Share of profits or other benefits derived from holding Digital Tokens; and
- Benefits gained, surplus to the investment amount, from the transfer of Digital Assets

Withholding tax is 15% on share of the profits and/or the benefits gained.

In addition, the SEC currently pays attention to investors who participate in the cryptocurrency activities. In April, 2021, the Office of the SEC made an announcement that in the near future, the SEC would purpose the plan which aims to strengthen cognitive skills of cryptocurrency traders.

To extent, the SEC will collaborate with private sectors to set up a training course providing knowledge in cryptocurrency investment for new traders. Any cryptocurrency trader may be required to attend and pass this course. However, the traders who have already opened trading accounts or those who already have experience in stock trading will not be required to participate this course again.

Vietnam

1. Please provide an overview of the asset management market in your jurisdiction in 2020 and what are the trends and opportunities in 2021?

The market size for the asset management industry in Vietnam is currently fairly small compared to some other countries in Asia-Pacific. There has only been 43 securities investment fund management companies ("**FMC**") over 48 registered FMCs[50] in normal operation with a total charter capital of around USD145 million in Vietnam so far.

In spite of such small size, Vietnam asset management market has experienced positive growth in recent years. Before 2012, most of the funds operating on the market were member funds and there were only 4 public funds, accounting for about 20% of the number of funds. However, there were 51 securities investment funds on the market in the year 2020, an increase of nearly two times compared to the year 2015 (28 funds)[51] . The development of securities investment funds as elaborated above did contribute a significant part in the growth of total assets managed by the FMCs in Vietnam.

The value of the assets under management at the FMCs was around USD 5.4 billion at the end of 2015, and increased nearly three times to around USD 15.5 billion by June 2020 in spite of the outbreak of COVID-19 pandemic. In addition, there has been a strong rise in portfolio value of the foreign investors in Vietnam, from around USD14.7 billion in 2015 to nearly USD 37 billion at the beginning of 2020.[52]

From the above trend and being encouraged by the State's restructuring plan on the FMCs through new laws and guidance on securities promulgated in 2020, it is expected that Vietnam asset management market will continue to grow steadily and become a better market for investors in the following years.

2. What is the regulatory framework for asset management in your jurisdiction:

a. Which official agencies/regulators supervise asset management in your jurisdiction?

The asset management activities of the FMCs are under management and supervision of the following Vietnamese competent authorities:

- The Ministry of Finance("**MOF**") is authorized by the Government to exercise the State's administration of securities and the securities market in general;
- The State Securities Commission ("**SSC**"), an agency under the MOF, advises and assists the MOF in exercising the State's administration of securities and the securities market, organizes implementation of the law on securities and securities market as delegated and authorized by the MOF;

[50] According to the State Securities Commission of Vietnam ("SSC")'s portal as of the date of this Guide: http://www.ssc.gov.vn/ubck/faces/vi/vimenu/vipages_vicsdlcty/ctyquanlyquy?_adf.ctrl-state=yhzsexctb_4&_afrLoop=2460871561000
[51] https://tinnhanhchungkhoan.vn/nganh-quan-ly-quy-qua-nhung-chang-duong-phat-trien-post245912.html
[52] https://tinnhanhchungkhoan.vn/nganh-quan-ly-quy-qua-nhung-chang-duong-phat-trien-post245912.html

- The Department of Management of Fund Management Companies and Securities Investment Funds, an agency under the SSC, advises and assists the SSC in the securities and the securities market in relation to fund management companies and securities investment funds;
- The State Bank of Vietnam ("**SBV**") is authorized by the Government to exercise the State's administration of banking, monetary and payment activities (including payment transactions by the FMCs); and
- The Department of Planning and Investment ("**DPI**"), in collaboration with the SSC, is responsible for the establishment and management of the fund management companies.

b. What are the sources of law regulating asset management in your jurisdiction?

The conduct of asset management in Vietnam is mainly prescribed under the recently effective Law No. 54/2019/QH14 dated 26 November 2019 on Securities issued by the National Assembly, effective as from 01 January 2021 ("**Law on Securities**") and its relevant decrees, circulars and decisions issued by competent State agencies, particularly:

- Decree No. 155/2020/ND-CP dated 31 December 2020 detailing a number of articles of the Law on Securities issued by the Government;
- Decree No. 156/2020/ND-CP dated 31 December 2020 regulating penalties for administrative offences regarding securities and securities market issued by the Government; and
- Circular No. 99/2020/TT-BTC dated 16 November 2020 providing guidance on operation of securities investment fund management companies issued by the Minister of Finance.

As of now, Vietnam has a relatively complete and comprehensive regulatory framework in accordance with the international practices to effectively manage the FMCs.

3. What are the types of asset management, companies regulated in your jurisdiction?

Securities Investment Fund Management Company (or the FMC in short) is the sole type of asset management company regulated under the laws of Vietnam, which is defined as an enterprise that has been issued with the License for Establishment and Securities Business Activities ("**License**") by the SSC, and takes charge of managing securities investment fund and securities portfolio, as well as providing securities investment consulting services.

In addition, to avoid any doubt, it should also be noted that the Government has introduced regulations governing a type of 'asset management company' whose business activities are entirely dissimilar to those stipulated under the Law on Securities or as commonly understood worldwide. In particular, that type of asset management company is a State-owned enterprise established and managed by the State Bank of Vietnam for the purpose of settling bad debts from credit institutions and promoting reasonable credit growth for the economy.

4. What are the key regulatory requirements to establish and operate the different types of asset management companies mentioned above?

RHTVN:

In order to incorporate and operate a FMC in Vietnam, the following main conditions will be required to satisfy according to the Law on Securities:

Conditions	Descriptions
Capital	■ The minimum charter capital must be at least VND25 billion (around USD1.1 million).
Shareholders Or Capital Contributing Members	■ In case of individuals, must not fall into the category of persons not entitled to establish and manage enterprises in accordance with the Law on Enterprises; ■ In case of being organizations, must have legal entity status and be currently operating lawfully; the organization's business activities must be profitable in the 2 years preceding the year of request for issuance of the License; and its most recent annual financial statements must be audited with unqualified opinions; ■ Must satisfy the conditions stipulated under Law on Securities as specified in Section 7 below if shareholders or capital contributing members being foreign investors; and ■ (and its affiliated persons (if any)) shall not own 5% or more of charter capital of other FMC if it already owns 10% or more of charter capital of a FMC.
Structure of Shareholders Or Capital Contributing Members	■ There must be a minimum of 2 founding shareholders or capital contributing members being organizations. If the FMC is organized in the form of a single-member limited liability company, the company owner must be a commercial bank or insurance company or securities company or foreign organization which satisfies the requirements under Law on Securities: i. It is licensed [to operate], and has operated in the banking, securities or insurance sector for two (2) consecutive years preceding the year of participation in contributing capital for establishment or purchase of shares or capital contribution portions; ii. The licensing agency in the home country and the SSC has signed a bilateral or multilateral co-operative agreement on exchanging information and coordinating in management, inspection and supervision of securities and securities market activities; and iii. Its business activities must be profitable in two (2) years preceding the year of participation in contributing capital for establishment or purchase of shares or capital contribution portions, and the financial statements in the most recent year must be audited with total acceptance; ■ The total capital contribution ratio of organizations must be at least 65% of the charter capital, in which the organizations being commercial banks or insurance company or securities companies must own at least 30% of the charter capital.

Vietnam

Conditions	Descriptions
Personnel	■ There must be a General Director (or Director) and at least 5 staff having fund management practising certificates and at least 1 compliance controller. The General Director (or Director) must satisfy the following criteria: i. Not be currently subject to prosecution for criminal liability or serving a prison sentence or be banned from securities practice in accordance with law; ii. Have at least 4 years' working experience in a professional section of any organization operating in the financial, securities, banking or insurance sector or in the financial, accounting or investment section of another enterprise; iii. Have a fund management practising certificate or an equivalent certificate in accordance with Government regulations; and iv. Not have been penalized for any administrative breach in the securities and securities market sector in the 6-month period prior to lodging the application file. ■ Where there is a Deputy General Director (or Deputy Director) who is in charge of professional activities, he/she must satisfy the criteria mentioned in Point (i), (ii), (iv) above and have a securities business practising certificate appropriate for the professional activities of which he/she is in charge.
Material Facilities	■ There must be a working headquarter to ensure the operation of the securities business activities; and ■ There must be adequate material and technical facilities, office equipment, and a technology system in accordance with the professional rules on securities business activities.
Application Fee	■ VND30,000,000 (approximately USD1,300).
Other Operation Conditions	■ It must have rules on operation, risk management and internal control; and ■ Its charter must be approved by the general meeting of shareholders, the members' council or the company owner.

Vietnam

5. For asset management activities, are family offices regulated in your jurisdiction? If so, how are they being regulated? Are family offices subject to special regulatory requirements as opposed to non-family offices?

The concept of "family office" is nowhere to be found under the Vietnamese laws. Only the FMCs which obtain the License from the SSC are allowed to engage in asset management activities in compliance with the Law on Securities.

6. What are the key continuing / ongoing regulatory obligations of a licensee?

RHTVN:

Once the SSC issues a License to the FMC, it must then maintain and comply with the conditions for issuance of the License as prescribed by the laws (which include those as specified in the table in Section 4 above). For instance, the FMC must at all times sustain its capital of no less than VND25 billion.

In case the FMC fails to maintain any said conditions, the board of management, the members' council or the owner of that FMC must then approve a rectification plan and make a report to the SSC.

It is worth noting that during the implementation of the rectification plan, the FMC is not permitted to:

i. Supplement any securities business activity;

ii. Distribute profit;

iii. Raise capital for establishment of a fund or securities investment company,

iv. Increase the charter capital of a closed investment fund, members fund or securities investment company currently managed by it;

v. Sign new investment management contracts or any document to extend their term or receive additional capital from existing entrusting clients; and

vi. Establish any branch or representative office or make offshore investment.

7. What are the requirements in relation to the acquisition of a regulated asset management company in your jurisdiction (including cases where there is a change of control in the asset management company)?

The transfer of shares or capital contribution portions in the FMC must meet the following conditions/restrictions:

- Founding shareholders and capital contributing members at the time of establishment of the FMC are not permitted to assign their shares or capital contribution portions within a period of three (3) years from the date of issuance of the Licence, except in a case of assignment among founding shareholders or capital contributing members;
- Conditions on shareholders and capital contributing members as specified in the table in Section 4 above shall also be applicable in case of transfer/acquisition of shares or capital contribution portions in the FMC;

Regarding foreign investors, to own 100% of the charter capital, the foreign investor being an organization must satisfy the conditions as specified in Section 4 above. Otherwise, foreign investors (either organizations or individuals) are only allowed to own up to 49% of the charter capital in the FMC.

In addition, an FMC is not permitted to contribute capital for establishment or purchase shares or capital contribution portions in other FMCs in Vietnam, except for the following cases:

- Purchase to carry out consolidation or merger;
- Purchase to own or own jointly with its affiliated persons (if any) no more than 5% of the currently circulating voting shares of a FMC listed or registered for trading.

8. What are the main anti-money laundering and financial crime prevention rules applicable to asset management companies in your jurisdiction?

The State Bank of Vietnam (SBV) is the primary regulator and supervising authority on implementation of laws on Anti-Money Laundering ("**AML**") in Vietnam and the main regulations on AML is Law No. 07/2012/QH13 dated 18 June 2012 on Prevention of and Combating Money Laundering ("**Law on AML**") and its guiding regulations.

Therefore, in addition to the reporting obligations to the SSC under the Law on Securities, the FMCs (as other financial organizations in Vietnam) must in principle, further apply appropriate measures to identify their clients (i.e. Know Your Customer policies) and report to the SBV of any high value transactions, suspicious transactions and transactions of electronic money transfer exceeding the prescribed amounts.

Money laundering is a prohibited act and classified as a crime under the Criminal Code No. 100/2015/QH13 dated 27 November 2015, as amended ("**Criminal Code**") which technically includes:

i. Directly or indirectly participating in financial transactions or others to conceal the illegal origin of the money or property obtained through his/her commission of a crime or obtained through another person's commission of a crime to his/her knowledge;

ii. Using money or property obtained through his/her commission of a crime or obtained through another person's commission of a crime to his/her knowledge for doing business or other activities;

iii. Concealing information about the true origin, nature, location, movement or ownership of money or property obtained through his/her or commission of a crime or obtained through another person's commission of a crime to his/her knowledge or obstructing the verification of such information; and

iv. Committing any of the offences specified in Point (i), (ii), (iii) above in the knowledge that the money or property is obtained through transfer, conversion of money or property obtained through another person's commission of a crime.

Those found in breach will be subject to fines, imprisonment from 1 to 15 years depending on the severity of the infringement and confiscation of assets.

Vietnam

9. Are there any relevant consumer or investor protection rules applicable to asset management companies in your jurisdiction?

The new Law on Securities of Vietnam and its guidance has supplemented the previous laws with certain regulations to ensure the transparency of the securities market in general and protect investors' interest when investing in or making transactions with the FMCs in Vietnam in particular. Especially, the FMC:

i. Must maintain its equity not less than the statutory minimum charter capital during its operation, and in the case of failing to meet this requirement, the FMC must apply a rectification plan where during such rectification period, the FMC will be prohibited from doing acts in relation to capital mobilization (as mentioned in Section 6 above);

ii. Must develop and apply uniformly professional processes, accounting policies in accordance with the provisions of law, have strict internal audit process, and have a code of professional ethics that is appropriate for each position;

iii. Must independently manage and separate the assets of each entrusting consumer and completely separate the investor's trust assets from the company's assets;

iv. Must also comply with investment restrictions to minimize the risk of loss of assets of the fund;

v. Must obtain approval from the SSC and must be granted a quota by the State Bank of Vietnam before making outward portfolio investments; and

vi. Must periodically notify the portfolio status to the investors and report information in relation to its capital transactions to the SSC.

Failure to do the same, the FMC will be subjected to respective penalty. The amount of penalty will be determined case by case depending on infringement of the FMC.

10. In recent times, there has been increasing interest in digital assets, such as digitised securities, digital security tokens, and other digital tokens representing interests in assets. To what extent is the management of digital assets regulated in your jurisdiction, and what is the regulatory framework for it?

Even though the trend of digital assets can be witnessed in other countries in Asia Pacific recently, Vietnam has had no regulatory framework governing digital assets so far. This is because the MOF is still of the view that the trading or exchanging of digital currencies/assets poses numerous potential risks.

However, it is an undeniable fact that the Vietnam is experiencing a boom in the digital transformation of the traditional currencies and assets. In this new landscape, it is more important now than ever for Vietnam to delve deeper into the management of digital currencies/assets.

Accordingly, Vietnam is now at the crossroads of change as the MOF established a research group comprising the SSC and other relevant competent authorities dedicated to the study of digital assets and cryptocurrency. The group will be setting up guidelines and proposing regulations to oversee activities in relation to digital currencies/assets in Vietnam. Consequently, this will allow Vietnam to follow the current practices and global trends while ensuring the safety and security for the financial market in the upcoming time.[53]

[53] http://baochinhphu.vn/Kinh-te/Bo-Tai-chinh-nghien-cuu-cach-quan-ly-tien-ao-tai-san-ao/427255.vgp

Vietnam

The following are contributed by InCorp's Regional Offices

1. Does your jurisdiction have a special tax regime for the asset management industry? If so, please provide a brief overview.

There is no special tax regime for the asset management industry in Vietnam.

2. How would fund vehicles in your jurisdiction be treated for tax purposes?

Fund vehicles in Vietnam will be taxed in the same way as normal companies at the standard tax rate of 20%.

3. For foreign funds investing in securities and assets in your jurisdiction, what are the tax implications in your jurisdiction?

Foreign funds deriving income from Vietnam may be subject to Vietnam withholding tax depending on the type of income derived by the non-resident fund. The Vietnam withholding tax may be reduced under the relevant tax treaties.

4. What are the tax implications for resident individuals and entities in your jurisdiction investing in an onshore and offshore fund?

Resident individuals and entities in Vietnam who invest in onshore and offshore funds will be subject to Vietnam income tax at their respective tax rates.

5. What are the tax implications for foreign individuals and entities investing in onshore funds in your jurisdiction?

Foreign individuals and entities deriving income from Vietnam may be subject to Vietnam withholding tax depending on the type of income derived from the onshore fund in Vietnam. The Vietnam withholding tax may be reduced under the relevant tax treaties.

6. What are the tax implications for asset managers in your region managing both domestic, offshore, or domestic and offshore funds?

Asset managers in Vietnam will be taxed in the same way as normal companies at the standard tax rate of 20%.

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