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Philippine SEC Issues Rules for Investment Adviser Pass

The Securities and Exchange Commission (“SEC”) issued Memorandum Circular No. 5 (s. 2019) (“Guidelines”), which contains the rules on the implementation of the ASEAN Capital Markets Forum (“ACMF”) Pass. This is because the SEC is a signatory to the Memorandum of Understanding on the ACMF Pass under the ASEAN Capital Market Professional Mobility Framework (“Framework”) together with the regulators of Thailand, Malaysia and Singapore.

Implications for business in the Philippines

The Framework aims to enhance the connectivity of capital market professionals in the ASEAN region. In relation to this, the ACMF Pass allows the free movement of professionals licensed from a home country to perform investment advice activities and issue research reports on ASEAN financial products in a host country under the Framework. The Guidelines are applicable to professionals in the Philippines who intend to obtain an ACMF Pass in another signatory country, and those in other signatory countries who want to obtain that same pass.

Significant provisions of the Regulation

The following registered capital market professionals in the Philippines are qualified to apply for an ACMF Pass from a host regulator and become a recognised representative in other signatory countries:

- salesman of a broker dealer and/or investment house – a natural person hired to buy and sell securities on a salary or commission basis properly endorsed to the SEC by the employing broker dealer or the investment house, as defined under SEC rules;
- certified investment solicitor – a natural person of legal age duly licensed by the SEC and appointed by a fund manager to solicit, sell or offer to sell the shares or units of an investment company to the public as defined under SEC rules;
- key officer(s) of fund managers (investment company advisers) involved in the management of the fund and licensed by the SEC as certified investment solicitor; and
- other professionals which the SEC may determine as eligible.

On the other hand, a professional from other signatory countries is eligible to obtain the ACMF Pass and become a recognised representative in the Philippines, provided that he/she:

- is licensed or authorised by the home regulator;
- has no pending disciplinary action or has not been censured, reprimanded or fined by a professional or regulatory body for negligence, incompetence, mismanagement, dereliction of duty or violation of law or regulation; and
- has not been convicted or an offense involving moral turpitude, fraud, embezzlement, counterfeiting, theft, misappropriation, forgery, bribery, false oath, perjury, or any violation of securities, commodities, banking, real estate or insurance laws.

The foregoing recognised representatives may give advice only on the following ASEAN capital market products: shares, bonds, and units of collective investments scheme including real estate investment trust and infrastructure fund.



Furthermore, the recognised representatives are permitted to perform the following activities in the host jurisdiction:

- issuing research analysis or reports concerning the abovementioned capital market products that are solely incidental to the giving of general investment advice; and
- giving general investment advice to both retail and non-retail investors concerning the abovementioned capital market products.

Nevertheless, the recognised representative is prohibited to perform the following activities in the host jurisdiction:

- giving advice to investors by considering investor's investment objective, financial situation and particular needs; and
- soliciting for sales of the abovementioned capital market products.

The validity of the ACMF Pass is two years from date of grant unless earlier revoked by the SEC, and each recognised representative will be permitted to perform activities under the Framework in a host jurisdiction for the duration of such validity. The process and requirements for application and renewal of the ACMF Pass are detailed out in the Guidelines.

The ACMF Pass may also be revoked by the SEC, after due notice and hearing, based on the following grounds:

- when the license and/or registration of the recognised representative in the home jurisdiction is cancelled, terminated or becomes invalid;
- when the recognised representative is no longer compliant with eligibility requirements stated in the Guidelines;
- when the recognised representative commits any of the prohibited activities;
- failure of the recognised representative to comply with regulatory requirements and/or directive of the SEC despite due notice; or
- violation by the recognised representative of the Securities Regulation Code and its implementing rules, or other rules implemented by the SEC.

Conclusion

The Guidelines allow the free movement of professionals licensed from a home country to perform investment advice activities and issue research reports on ASEAN financial products in a host country. Through this SEC regulation, the Philippines aims to enhance and play a huge role in the connectivity of capital market professionals in the ASEAN region, thereby in the process also promoting investor protection and market integrity.

If you have any questions or require any additional information, please contact [Felix Sy](#) or [Donald Onghanseng](#) of Insights Philippines Legal Advisors (a member of ZICO Law).

This alert is for general information only and is not a substitute for legal advice.