



Monetary Authority of Singapore

**FINANCIAL ADVISERS ACT
(CAP. 110)**

GUIDELINES ON APPLICATIONS FOR APPROVAL OF
ARRANGEMENTS UNDER REGULATION 32CB OF THE
FINANCIAL ADVISERS REGULATIONS (RG 2)

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Purpose of these Guidelines

1 These Guidelines are issued pursuant to section 64 of the Financial Advisers Act (Cap. 110) [“the Act”] to provide guidance on an application for approval of an arrangement under regulation 32CB of the Financial Advisers Regulations (Rg 2) [“Regulation 32CB”].

2 These Guidelines set out the Monetary Authority of Singapore [“the Authority”]’s assessment criteria and application procedures for approval of arrangements under Regulation 32CB and the Authority’s supervisory expectation in relation to approved arrangements.

Definitions

3 For the purposes of these Guidelines:

“ACMF Framework” means ASEAN Capital Market Professional Mobility Framework;

“ACMF Handbook” means the Handbook on ACMF Pass under ASEAN Capital Market Professional Mobility Framework, set out at <http://www.mas.gov.sg/~media/MAS/Regulations%20and%20Financial%20Stability/Regulations%20Guidance%20and%20Licensing/Financial%20Advisers/Guidelines/Handbook%20on%20ACMF%20Pass%20under%20the%20ASEAN%20Capital%20Market%20Professional%20Mobility%20Framework.pdf>;

“ACMF Pass” means an arrangement between a foreign company and a Singapore Entity approved by the Authority under Regulation 32CB in relation to the provision of the financial advisory service specified under paragraph 8 of these Guidelines;

“ACMF Participant” means a foreign company incorporated in an ASEAN participating country that is providing a financial advisory service in Singapore effected under an arrangement approved by the Authority under Regulation 32CB;

“ASEAN” means Association of Southeast Asian Nations;

“ASEAN-listed capital markets products” means shares, bonds and units in collective investment scheme which are listed for quotation or quoted on an organised market in any member country of ASEAN;

“ASEAN participating country” means any country that is a participant of the ACMF Framework other than Singapore, and is specified in the Appendix of these Guidelines;

“FAR” means the Financial Advisers Regulations (Rg 2);

“foreign company” has the same meaning as in regulation 32CB(3) of the FAR;

“officer” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“organised market” has the same meaning as in section 2(1) of the Securities and Futures Act (Cap. 289);

“Recognised ACMF member” means a regulatory authority that is specified in the Appendix of these Guidelines;

“Recognised Representative” means a person, by whatever name called, in the direct employment of, or acting for, or by arrangement with, an ACMF Participant, who performs on behalf of the ACMF Participant any financial advisory service in Singapore pursuant to an approved arrangement under Regulation 32CB, whether or not he is remunerated, and whether his remuneration, if any, is by way of salary, wages, commission or otherwise, and includes any officer of the ACMF Participant;

“Singapore Entity” means a person who is a licensed financial adviser or an exempt financial adviser under section 23(1)(a), (b), (c), (d) or (e) of the Act.

3A The expressions used in these Guidelines, shall, except where expressly defined in these Guidelines and where the context otherwise requires, have the same meanings as in the Act.

Applicability of Regulation 32CB

4 Section 6(1) of the Act provides that no person shall act as a financial adviser in Singapore in respect of any financial advisory service unless he is authorised to do so by a financial adviser's licence or is an exempt financial adviser.

5 In particular, Regulation 32CB prescribes a foreign company as an exempt financial adviser under section 23(1)(f) of the Act in respect of a financial advisory service provided under an arrangement between the foreign company and a company incorporated in, or an unincorporated association formed or constituted in, Singapore, which has been approved by the Authority pursuant to an application made to the Authority.

6 Individuals who are representatives of the foreign company are not required to be appointed or provisional representatives under the Act if —

- (a) the type and scope of the financial advisory service provided by the representatives are within the type and scope of, or are the same as, that provided by the foreign company; and
- (b) the manner in which the representatives provide that type financial advisory service is the same as the manner in which the foreign company provides that type of financial advisory service.

7 The Authority only considers arrangements made between the foreign company and a Singapore Entity for approval under Regulation 32CB.

8 The type of financial advisory service which the Authority considers for approval under Regulation 32CB is the financial advisory service of advising others, either directly or through publications or writings, and whether in electronic, print or other form concerning any ASEAN-listed capital markets product, other than in the manner under paragraph 2 of the Second Schedule of the Act or advising on corporate finance within the meaning of the Securities and Futures Act (Cap. 289). The foreign company will also be permitted to issue or promulgate research analyses or research reports that are solely incidental to the provision of the financial advisory service, under the approved arrangement.

9 The approval of the arrangement should not be taken as an approval of all activities proposed to be conducted by the Singapore Entity under the arrangement. The Singapore Entity should ensure that its proposed activities are in compliance with all applicable laws, rules and regulations in Singapore, including all applicable licensing requirements under the Act.

Assessment Criteria of ACMF Participant

10 The Authority will take a facilitative approach to the approval of arrangements between the foreign company and a Singapore Entity. While we recognise that many such arrangements form a part of legitimate business activities, it is not the Authority's intent that an approval granted under Regulation 32CB be regarded as facilitating business practices or market conduct that could undermine regulatory integrity, or pose a risk to financial stability and market confidence.

11 In making an application for approval of the arrangement under Regulation 32CB, the Singapore Entity should ensure that the foreign company meets the following criteria:

- (a) it possesses a minimum of five years proven track record in the specific financial advisory services that it is proposing to effect under the arrangement;
- (b) it is financially sound and has discharged its functions in an efficient, honest and fair manner during the five-year period mentioned in sub-paragraph (a); and
- (c) it is licensed or otherwise authorised to conduct the relevant financial advisory services in a ASEAN participating country and is subject to supervision by the Recognised ACMF member having regulatory oversight in the ASEAN participating country.

Responsibilities of Singapore Entity

12 The Singapore Entity should ensure that all Recognised Representatives of the ACMF Participant meet the following criteria at all times:

- (a) be at least 21 years old;
- (b) is licensed or otherwise authorised to conduct the relevant financial advisory services by a Recognised ACMF member;
- (c) is subject to the laws and regulations of the ASEAN participating country where the Recognised ACMF member has regulatory oversight and is subject to supervision by the Recognised ACMF member having regulatory oversight in the ASEAN participating country; and
- (d) satisfies the fit and proper criteria as set out in Section C in the Singapore section of Appendix 2 to the ACMF Handbook.

13 The Singapore Entity is responsible for ensuring that with respect to the Recognised Representatives' activities in connection with the arrangement that is approved by the Authority:

(a) the Recognised Representatives only act as representatives of the foreign company in respect of the arrangement that is approved by the Authority under Regulation 32CB; and

(b) the Recognised Representatives do not conduct any of the following activities:

(i) solicit for sales of any ASEAN-listed capital markets product;

(ii) provide advice to investors by considering investor's investment objective, financial situation and particular needs.

14 For arrangements where the Recognised Representative act as a representative in respect of a financial advisory service that is provided to any investor who does not fall within the definition of "accredited investor", "expert investor" or "institutional investor" under regulation 2(1) of the FAR, the Singapore Entity is also responsible for ensuring that the Recognised Representative is accompanied at all times by a representative of the Singapore Entity when meeting any client or member of the public in the course of acting as a representative in respect of the financial advisory service, monitoring the conduct of the Recognised Representative and ensuring the Recognised Representative's compliance with the laws and regulations as well as any conditions or restrictions imposed by the Authority when conducting any activities under the ACMF Framework. For arrangements involving investment vehicles, applicants should apply a "look-through" method to ascertain whether the end-beneficiaries of such investment vehicles satisfy the definition of "accredited investor", "expert investor" or "institutional investor" in regulation 2(1) of the FAR, as the case may be.

15 The Singapore Entity should ensure that there is proper documentation of the arrangement for audit trail purposes. The Authority, may, where necessary, request such documentation from the Singapore Entity.

16 These Guidelines do not set out an exhaustive list of requirements that the Singapore Entity is subject to. The Singapore Entity is also subject to conditions and restrictions imposed under the approval granted by the Authority, such as the following:

- (a) The Singapore Entity shall maintain a register in respect of every Recognised Representative (regardless of the duration the Recognised Representative resides in Singapore) containing information such as the duration of the Recognised Representative's visit to Singapore to carry out activities under the approved arrangement, his qualifications and the status of his licence or authorisation in jurisdictions other than Singapore;
- (b) The Singapore Entity shall ensure that proper documentation in relation to the approved arrangement, such as materials circulated or presented to investors, are kept for the duration of the approved arrangement until at least 5 years after the date of cessation of the approved arrangement;
- (c) The Singapore Entity shall implement policies and procedures to provide for the oversight of the conduct of the ACMF Participant and the Recognised Representatives, handling complaints arising from the approved arrangement and the resolving of disputes between investors and the Recognised Representatives.

Validity Period for ACMF Pass

17 Upon approval, the ACMF Pass will be valid for a period of 2 years, unless the ACMF Pass lapses or is cancelled by the Authority prior to the expiry of this period.

18 If the Singapore Entity intends to renew the ACMF Pass, it must submit a renewal application at least 14 working days prior to the expiry of the ACMF Pass.

Applications

19 An application for approval under Regulation 32CB must be submitted by the Singapore Entity using the format specified in the Singapore section of Appendix 2 to the ACMF Handbook. The application should include key information that seeks to address the assessment criteria in paragraph 11 and how the Singapore Entity will comply with paragraphs 12 to 16. In approving an application, the Authority would expect the roles and responsibilities of the foreign company and the Singapore Entity in the proposed arrangement to be clearly formalised in a service level agreement or an equivalent document.

20 In granting the approval under Regulation 32CB, the Authority reserves the right to review the approval of any arrangement as the Authority sees fit, including where there is a material change in the circumstances of the arrangement. A material change refers to a change in the substance of the arrangement rather than one of form. Such changes may be in relation to the type of financial advisory services provided, the target clientele or the role of the Singapore Entity. Changes in organisational structure or names of entities, and similar organisational changes which do not affect the substance of the arrangement, would not normally be considered material. A list of changes which the Authority views as material will be set out in the ACMF Pass.

APPENDIX

	ASEAN PARTICIPATING COUNTRIES	RECOGNISED ACMF MEMBER
1	Thailand	The Securities and Exchange Commission
2	Malaysia	The Securities Commission Malaysia
3	Philippines	The Philippines Securities and Exchange Commission