

**GLOBAL GUIDE
REGULATIONS AND RESPONSIBILITIES
AFFECTING DIRECTORS AND SENIOR
MANAGERS OF ASSET MANAGERS
2020 EDITION**



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EXECUTIVE SUMMARY

A convergence of factors has brought about the perfect storm of disruption and change, presenting a myriad of challenges and opportunities to Asset Managers worldwide.

Ongoing regional and global dialogues between regulators and government bodies have identified the need for robust governance to ensure sustainable development of the asset management sector. The regulatory landscape, however, keeps

evolving. In particular, the legal frameworks are at various stages of development.

This practical guide provides an overview, from a panel of senior legal professionals across various jurisdictions, of how to navigate the regulations and responsibilities affecting directors and senior managers that will impact your business.



Benja Supannakul
Partner | Bangkok
Tel: +66 2636 2000 X3884
benja.supannakul
@bakermckenzie.com



Chi Lieu Dang
Partner | Hanoi
Tel: +884 24 3936 9341
chilieu.dang
@bakermckenzie.com



Oanh H. K. Nguyen
Partner | Ho Chi Minh City
Tel: +84 28 3520 2629
hoangkimoanh.nguyen
@bakermckenzie.com



Karen Man
Partner | Hong Kong
Tel: +852 2846 1004
karen.man
@bakermckenzie.com



Mahardikha K. Sardjana
Partner | Jakarta
Tel: +61 21 2960 8550
hardikha.k.sardjana
@bakermckenzie.com



Sue Wan Wong
Partner | Kuala Lumpur
Tel: +60 3 2298 7884
suewan.wong
@wongpartners.com



Caitlin McErlane
Partner | London
Tel: +44 20 7919 1894
caitlin.mcerlane
@bakermckenzie.com



Mark Simpson
Partner | London
Tel: +44 20 7919 1403
mark.simpson
@bakermckenzie.com



Laurent Fessman
Partner | Luxembourg
Tel: +352 26 1844 205
laurent.fessmann
@bakermckenzie.com



Sybille Briand
Partner | Luxembourg
Tel: + 352 26 18 44 261
sybille.briand
@bakermckenzie.com



Dennis A. Quintero
Partner | Manila
Tel: + 63 2 8819 4962
dennis.quintero
@quisumbingtorres.com



Karl Egbert
Partner | New York
Tel: +1 212 626 4649
karl.egbert
@bakermckenzie.com



Fan Lei
FenXun Partners | Shanghai
Tel: +86 21 6105 8581
lei.fan
@bakermckenziefenxun.com



Stephanie Magnus
Partner | Singapore
Tel: +65 6434 2672
stephanie.magnus
@bakermckenzie.com



Bill Fuggle
Partner | Sydney
Tel: +61 2 8922 5100
bill.fuggle
@bakermckenzie.com



Hao-Ray Hu
Partner | Taipei
Tel: +886 2 2715 7281
hao-ray.hu
@bakermckenzie.com



Masato Honma
Partner | Tokyo
Tel: +81 3 6271 9505
masato.honma
@bakermckenzie.com



Ansgar Schott
Partner | Zurich
Tel: +41 44 384 12 51
ansgar.schott
@bakermckenzie.com

LICENSE & APPROVAL



1 Does the chief executive officer, director or senior executives of a company asset manager need to be registered or licensed?

AUSTRALIA

No. There are basic eligibility requirements in order to be a director. To be a CEO and CFO, there is a requirement to have sufficient qualifications, knowledge, competence, experience and integrity to undertake their roles. However, none of the requirements to undertake the role of director, chief executive or senior executive include the requirement to be registered or licensed.

CHINA

China's asset management industry is complex and diverse with multiple types of players as well as their respective applicable laws and regulations. Therefore, the responses in this guide will be distinguished by different types of players and will be general responses.

For asset management organized as (a) retail / mutual fund management companies, (b) private fund management companies, (c) securities companies, (d) commercial banks, (e) insurance companies, and (f) futures companies and their asset management subsidiaries, the directors or senior executives of such institutions shall obtain qualification by passing the exam held by China Securities Regulatory Commission (CSRC), China Banking and Insurance Regulatory Commission (CBIRC), Asset Management Association of China (AMAC), Securities Association of China (SAC) or China Futures Association (CFA). For the directors and senior executives of other types of asset management companies, there is no specific requirement to procure any registration or license.

HONG KONG

The Securities and Futures Commission (SFC) needs to approve the appointment of executive directors, who will be licensed as responsible officers, of an asset manager. An executive director in this case means a director of the asset manager who (a) actively participates in, or (b) is responsible for directly supervising, the asset management business. The SFC also needs to approve other responsible officers who are not directors of the asset manager.

INDONESIA

The Indonesian Financial Services Authority (OJK) requires every prospective director and commissioner of financial services institutions incorporated in Indonesia, whether bank or non-bank, to pass a fit and proper test.

JAPAN

No. The directors or senior executives of an asset manager do not need to be registered or licensed.

LUXEMBOURG*

This will depend on whether the asset manager is supervised or not. For the purpose of this questionnaire, we will answer from an alternative investment fund manager (AIFM) perspective.

On the basis the asset manager is supervised by the Commission de Surveillance du Secteur Financier (CSSF), the chief executive officer, director or senior executives of a company asset manager would need to be approved.

MALAYSIA

At least one of its directors must hold a Capital Markets Services Representative License (CMSRL) for the regulated activity of fund management in relation to portfolio management, have the prescribed minimum years of experience, and be approved by the Securities Commission Malaysia (SCM) prior to undertaking the function as a licensed director (Licensed Director). If the asset management company is licensed to carry on more than one type of regulated activity, it is required to have a head of regulated activity for each regulated activity ("Head of Regulated Activity"). Each Head of Regulated Activity is required to hold a CMSRL and have the prescribed minimum years of experience.

PHILIPPINES

The appointment of independent professionals and trust officers of asset managers organized as (a) banks authorized to engage in trust and other fiduciary business (including asset or investment management activities), and (b) investment houses authorized to engage in investment management activities, require confirmation from the Monetary Board of the Bangko Sentral ng Pilipinas (the BSP, the Philippines' central bank and monetary authority).

For asset managers organized as fund managers of investment companies incorporated in the Philippines, there is no specific requirement to procure registration or approval (or confirmation of approval) for the appointment of a director (other than an independent director), the chief executive officer or other senior executives of such

* The questions and answers are limited to alternative investment managers.

1 Does the chief executive officer, director or senior executives of a company asset manager need to be registered or licensed? (Continued)

fund managers. However, the Philippine Securities and Exchange Commission ("Philippine SEC") reserves the right to review compliance by any such director or officers with the minimum prescribed qualifications under prevailing regulations and, where warranted, to require the removal thereof by the relevant fund managers.

SINGAPORE

The chief executive officer, director, or senior executives of a licensed asset manager will only need to be registered as appointed representatives of the company if they carry on regulated activities on behalf of the company. There is otherwise no registration or licensing requirement for these individuals, although their appointment may be subject to an approval requirement (see response to question 2).

SWITZERLAND

No, there are no such registration or licensing requirements. Note, however, that the members of the board of directors and the members of the executive board will have to be registered with the commercial register.

TAIWAN

Yes. The chief executive officer, director or senior executives need to be registered with the Securities Investment Trust and Consulting Association of the Republic of China (SITCA).

THAILAND

The Office of the Securities and Exchange Commission (the "Office of the SEC") must grant approval for the chief executive officer, director, and senior executives of an asset management company in Thailand, before the start of service with the company.

UNITED KINGDOM

Directors and senior managers must have sufficient qualifications, knowledge, competence, experience and integrity to undertake their roles. While there is no requirement to be registered or licensed as such, pre-approval is required from the Financial Conduct Authority (FCA) to perform key functions, see below.

UNITED STATES

There is no general requirement for executive officers, directors or senior executives of asset managers to be registered or licensed.

Executives who provide advice to clients, market products or services to clients, or supervise others who advise or market, may be subject to other registration requirements depending on what US regulators have jurisdiction over the asset manager. Oversight over asset managers is split between the US states (with respect to smaller asset managers, generally with less than USD 100 million in assets under management), the Securities and Exchange Commission (SEC) (with respect to all larger asset managers that provide advice with respect to securities) and the Commodity Futures Trading Commission (CFTC) (with respect to any larger asset managers that provide advice with respect to derivatives).

Under the SEC registration process, no registration for senior personnel is required. However, an asset manager is required to list certain information in the asset manager's registration form (i.e., Form ADV) with respect to chief executive officers, chief financial officers, chief operations officers, chief legal officers and any individuals with similar status or functions. This information includes such officers' names, titles, amount of ownership of the asset manager's voting securities and the date on which such officers' acquired their current title. Similar requirements apply to direct and indirect owners of 5% or more of an asset manager's voting securities.

Under the CFTC registration process, an associated person ("AP") is an individual who solicits orders, customers or customer funds (or who supervises persons so engaged) on behalf of a commodity trading advisor or commodity pool operator. Thus, to the extent that an executive officer, director or senior executive is themselves a salesperson or supervises salespersons, such an officer, director or executive may be subject to AP registration. The registration requirements apply to any person in the supervisory chain of command.

The CFTC registration process also requires disclosure of certain biographical and disciplinary information regarding "principals" (generally, 10% or more owners of a manager's voting securities, executive officers and chief compliance officers). Such principals are not, however, required to register. For managers subject to state regulation, states generally require registration only of investment adviser representatives (IARs). IARs include any person who, on behalf of the investment adviser, recommends or renders

1 Does the chief executive officer, director or senior executives of a company asset manager need to be registered or licensed? (Continued)

advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, solicits, offers or negotiates for the sale or sells advisory services, or supervises employees who perform these services.

VIETNAM

For VAMC: The State Bank of Vietnam (SBV) appoints the chairperson and the members of the Members' Council (a.k.a, General Meeting of Shareholders in a joint stock company), the head and the members of the Control Committee, the general director (a.k.a. CEO) and the deputy general director(s).

For other AMCs: No specific requirement.

2 Is approval from the regulator required for the appointment of directors/senior management of an asset management company?

Is there any distinction between persons acting in an executive capacity (e.g., Executive directors (eds) or directors/senior management who are responsible for the day-to-day operations of the local entity) and persons acting in a non-executive capacity (e.g., Nonexecutive directors (neds) or members of the board who are not responsible for the day-to-day operations of the local entity)?

AUSTRALIA

No approval is required for the appointment of directors/senior management. There is no distinction between EDs and NEDs, noting that in Australia, persons acting in an executive capacity would essentially be the equivalent of Responsible Managers (RMs). For Australian Financial Services License (AFSL) holders, there is a requirement to maintain the competence to provide the financial services covered by the AFSL and therefore as a minimum, RMs need to be nominated who (i) are directly responsible for significant day-to-day decisions about the ongoing provision of the financial services; (b) together, have appropriate knowledge and skills for all of the financial services and products of the AFSL holder; and (c) individually, meet one of the five options for demonstrating appropriate knowledge and skills.

CHINA

Yes. The appointment of directors or senior executives of all types of players must be approved by their respective regulators (e.g. CSRC, CBIRC or AMAC).

HONG KONG

Yes. SFC approval is required for the appointment of executive directors and responsible officers of an asset manager. A director who does not participate or is not involved in the day-to-day management of the regulated activity is unlikely to be regarded as an executive director for the purposes of licensing. Also, a director responsible merely for the compliance, financial control, internal audit, back-office administration or human resources functions need not be approved as a responsible officer. The director's appointment may be subject to notification to the SFC.

INDONESIA

Yes. OJK requires approvals for all appointments of directors or commissioners by a financial services institution. OJK only requires approval for members of the two boards (i.e., members of the board of directors and board of commissioners).

JAPAN

No approval is required for the appointment of directors/senior management. There is no distinction between EDs and NEDs. However, the appointed directors and senior management shall be stated in the register of an asset manager filed with the authority, and any change thereto needs after-the-fact notification.

LUXEMBOURG*

Yes, approval from the CSSF is required for the appointment of directors/senior management, irrespective of whether the director is an executive director or a non-executive director.

MALAYSIA

Yes. The SCM needs to approve the appointment of a chief executive officer, the Licensed Director and key management (including the compliance officer and Head of Regulated Activity (where relevant)).

PHILIPPINES

For asset managers organized as (a) banks authorized to engage in trust and other fiduciary business (including asset or investment management activities), and (b) investment houses authorized to engage in investment management activities, the appointment of directors or senior management who comprise such entities' independent professional and trust officers must be confirmed by the BSP (acting through the Monetary Board).

For asset managers organized as fund managers of investment companies incorporated in the Philippines, there is no specific requirement to procure registration or approval (or confirmation of approval) for the appointment of a director (other than an independent director), the chief executive officer or other senior executives of such fund managers. However, the Philippine SEC reserves the right to review compliance by any such director or officers with the minimum prescribed qualifications under prevailing regulations and, where warranted, to require the removal thereof by the relevant fund managers.

* The questions and answers are limited to alternative investment managers.

2 Is approval from the regulator required for the appointment of directors/senior management of an asset management company?

Is there any distinction between persons acting in an executive capacity (e.g., Executive directors (eds) or directors/senior management who are responsible for the day-to-day operations of the local entity) and persons acting in a non-executive capacity (e.g., Nonexecutive directors (neds) or members of the board who are not responsible for the day-to-day operations of the local entity)? (Continued)

SINGAPORE

Yes. The Monetary Authority of Singapore (MAS) needs to approve the appointment of a director and chief executive officer of an asset manager licensed in Singapore, as well as to change the nature of the appointment of a person as a director from one that is nonexecutive to one that is executive. For an asset manager who is exempt from licensing, approval of the MAS is generally not required although the MAS may retain power to order the asset manager (being a registered fund management company) to remove its chief executive officer or any of its directors.

SWITZERLAND

Each member of the board of directors and each member of the senior management of the company must be held in good repute and have a history of compliant professional conduct ("proper business conduct"), irrespective of whether or not such a person is responsible for the day-to-day operations of the company. Further, such a person must have the requisite specialist qualifications with regard to the particular function that they assume within the company.

TAIWAN

Asset managers company in Taiwan can be categorized into two types: Securities Investment Trust Enterprise (SITE) and Securities Investment Consulting Enterprise (SICE).

The chairperson and general manager of a SITE need to be approved by the regulator, i.e., the Financial Supervisory Commission (FSC), while the chairman and general manager of a SICE do not need to be approved by the FSC. There are no differences between EDs and NEDs. The directors and senior management of SITE and SICE shall meet the qualifications set forth by the FSC, but no prior approval is required.

THAILAND

Yes. Approval from the Office of the SEC is required regardless of whether the person is acting in an executive capacity (i.e., ED). The only difference would be if that person does not act in an executive capacity (NED), in which case certain qualifications (e.g., work experience and educational qualifications) will not be required. However, if a director has no executive power but is a member of the investment committee, he or she must have related work experience, depending on the level of education (e.g., if the director has a bachelor's degree, he or she must have no less than one year's work experience in a related field).

UNITED KINGDOM

Where an asset manager is an authorized firm, an individual performing controlled functions must be pre-approved under the Approved Persons Regime (APR) by the FCA. These functions include governing functions, such as directors, non-executive directors (NEDs) and the chief executive. As from 9 December 2019, the Senior Managers and Certification Regime (SM&CR) replaces the APR. Following this, individuals classed as "senior managers" (e.g., executive directors, partners, the firm's CEO) will need to be approved by the FCA, whilst individuals falling outside of this category, but whose role may have a significant impact on customers, the firm and/or market integrity (certified persons), must be certified annually by the firm itself as fit and proper to do their job. In general terms, individuals may perform these roles temporarily for up to 12 weeks in any consecutive 12-month period without requiring approval.

UNITED STATES

No, although changes to the directors/senior management of an asset management company may trigger notice requirements to the regulators.

2 Is approval from the regulator required for the appointment of directors/senior management of an asset management company?

Is there any distinction between persons acting in an executive capacity (e.g., Executive directors (eds) or directors/senior management who are responsible for the day-to-day operations of the local entity) and persons acting in a non-executive capacity (e.g., Nonexecutive directors (neds) or members of the board who are not responsible for the day-to-day operations of the local entity)? (Continued)

VIETNAM

For VAMC: The SBV appoints the chairperson and the members of the Members' Council, the head and the members of the Control Committee, the general director and the deputy general director(s). The Charter of VAMC differentiates between "managers" (including the Members' Council, the Control Committee, the general director and the chief accountant) and "executives" (including the general director, deputy general director, heads and deputy heads of departments at the head office of VAMC, directors and deputy directors of the VAMC branches and representative offices).

For other AMCs: No specific requirement. However, the chair of the Board of Management of the AMC's parent bank appoints the director and chief accountant of the AMC based on the proposal from the general director of the parent bank.

3 Is there generally any distinction between EDs and NEDs?

AUSTRALIA

There is no distinction between EDs and NEDs.

CHINA

Only a limited liability company with relatively few shareholders or of a relatively small size may have one executive director instead of a board of directors under the PRC Law. In practice, the scenario where the Chinese financial institutions have one executive director instead of a board of directors does not exist, therefore the directors of Chinese asset management institutions do not distinguish between EDs and NEDs under Chinese Law.

HONG KONG

Yes, to the extent that the distinction relates to the approval requirement. Only executive directors need to be approved and licensed as responsible officers by SFC. That said, all directors, whether ED or NED, should be fit and proper persons.

INDONESIA

Indonesian Law does not recognize the position of non-executive director as all members of the board of directors are considered as key management of the organization. However, Indonesian-incorporated asset management companies are obliged to have at least one independent commissioner.

JAPAN

EDs are specifically required under the Financial Instruments and Exchange Act (hereinafter referred to as FIEA) to have sufficient knowledge and experience: (i) to operate asset management companies in accordance with the FIEA and other applicable regulations; and (ii) to control and manage compliance and risks. There are no such specific requirements for NEDs.

LUXEMBOURG*

Yes, for example, NEDs need to have their domicile in a place allowing them, in principle, to travel to Luxembourg every day.

MALAYSIA

There is no distinction (to the extent that it relates to the approval requirement) between an executive director and a non-executive director. Directors, save for the Licensed Director, may be appointed without the prior approval of the SCM. However, before the appointment of directors, the licensed asset management company (being one which is established or incorporated in Malaysia) is required to undertake due diligence to ensure that the candidate is fit and proper and suitably qualified to assume the position.

Notifications to the SCM are required within two working days of the appointment or reappointment, or prior to any public announcement, whichever is earlier. The SCM will carry out a post-appointment assessment of the fitness and propriety of the directors. The assessment of whether a director is fit and proper may differ depending on whether the director is an ED or an NED. For example, the appointment of any person who is assuming concurrent responsibilities, particularly someone who will be or is an ED, requires closer scrutiny.

PHILIPPINES

For asset managers organized as (a) banks authorized to engage in trust and other fiduciary business (including asset or investment management activities), and (b) investment houses authorized to engage in investment management activities, there is no distinction between EDs and NEDs to the extent that it relates to the requirement to procure confirmation of appointment from the BSP (where required).

Likewise, for asset managers organized as fund managers of investment companies incorporated in the Philippines, there is no distinction between EDs and NEDs to the extent that it relates to the reserve authority of the Philippine SEC to review compliance or other disqualify a director, officer or senior management executive from holding office in a fund manager. However, the minimum prescribed qualifications for EDs are different from NEDs; in addition, the minimum prescribed qualifications for EDs must likewise factor any additional prescribed qualifications for the nature of the executive functions proposed to be held or performed by an ED.

* The questions and answers are limited to alternative investment managers.

3 Is there generally any distinction between EDs and NEDs? (Continued)

SINGAPORE

There is no distinction (to the extent that it relates to the approval requirement) between an executive director and a non-executive director. MAS approval will be required for a licensed asset manager to appoint a person as its director, and such director will need to satisfy the MAS that he or she is a fit and proper person to be so appointed. That said, the assessment of whether a director is fit and proper may differ depending on whether the director is an ED or an NED. For example, the appointment of any person who is assuming concurrent responsibilities, particularly someone who will be or is an ED, requires closer scrutiny.

SWITZERLAND

No, from a regulatory perspective, there is no such distinction, besides the fact that EDs are, as a matter of fact, more likely to be responsible if any laws or regulations are violated by the company.

TAIWAN

There is no distinction between EDs and NEDs.

THAILAND

Both EDs and NEDs require approval from the Office of the SEC before starting service with an asset management company. The distinction is in terms of qualifications. NEDs do not need to have work experience or training approved by the Office of the SEC (except if the NED is a member of the investment committee, in which case our analysis in item 2 above applies).

UNITED KINGDOM

Under the APR there is no distinction as both EDs and NEDs require pre-regulatory approval. In contrast, the SM&CR will not require pre-approval of standard NEDs (i.e., non-executives who do not chair key board committees in larger firms). Boths EDs and NEDs will be subject to the Conduct Rules.

UNITED STATES

As noted above, there are no general requirements with respect to EDs. Under the US registration regimes, the key distinction is generally whether an employee (whether an ED or NED) is involved in advice to clients, marketing or supervision of advice or marketing. Certain disclosure requirements do apply to EDs (but not NEDs) under both the SEC and CFTC registration processes. NEDs who perform functions that are equivalent to those performed by EDs will be treated as EDs for the purpose of required US disclosures.

VIETNAM

For VAMC: The SBV appoints the chairperson and the members of the Members' Council, the head and the members of the Control Committee, the general director and the deputy general director(s). Otherwise, there is generally no distinction as VAMC does not have a Board of Directors.

For other AMCs: The director is the manager of the AMC. The parent bank of the AMC is in charge of supervising the operation of the AMC.

4 Is approval from the regulator required for the resignation or removal of directors/senior management of an asset management company? Is there any distinction between EDs and NEDs?

AUSTRALIA

No. However, the Australian Securities & Investment Commission (ASIC) requires notification of the resignation or removal of directors within 28 days after such a change. To be effective, the notice of resignation must be accompanied by a copy of the letter of resignation (if applicable) given to the company. All directors, whether executive or non-executive, must comply with basic legal requirements under the Corporations Act 2001 (Cth). Non-executive directors are not expected to have the same level of detailed operational knowledge about their organisation as executive directors. However, the core duties for both executive and non-executive directors are the same.

CHINA

For asset management institutions organized as (a) securities companies, and (b) wealth management subsidiaries of commercial banks, there is no specific requirement to procure the approval from regulators for the resignation or removal of directors/senior management.

In addition to the above, the relevant regulators must be notified of the resignation or removal of directors or senior management of other asset management companies.

HONG KONG

No. However, SFC must be notified of the change of director/senior management, depending on the relevant position.

INDONESIA

No. However, OJK must be notified of the resignation or removal of any members of the board of directors or board of commissioners, and of new directors or commissioners to replace the outgoing member. Any replacement members of the board of directors and board of commissioners are also subject to the OJK fit and proper test.

JAPAN

No approval is required for the resignation or removal of directors/senior management. However, after-the-fact notification is required.

LUXEMBOURG*

No approval is needed, only a notification to the CSSF should be made describing the reasons for the resignation or removal. There is no distinction in whether the member was an executive or not.

MALAYSIA

No. However, the SCM must be immediately notified of the resignation (likely to include removal as well) of directors/senior management (including the chief executive officer, key management and compliance officer).

PHILIPPINES

No. There is no requirement to obtain approval from the BSP for the resignation or removal of directors or senior management of asset managers organized as banks licensed to engage in trust and fiduciary business or as investment houses authorized to engage in investment management activities. Neither is there a requirement to obtain approval from the Philippine SEC for the resignation or removal of directors or senior management of asset managers organized as fund managers.

In both cases, however, the relevant regulator must be duly notified of the resignation or removal of directors and senior management (depending on the relevant position) as part of the asset managers' reporting obligations under applicable regulations.

SINGAPORE

No. However, the license conditions of an asset manager will typically require the asset manager to notify the MAS of the resignation of its chief executive officer or any of its directors. There is no distinction between EDs and NEDs in this regard.

SWITZERLAND

No approval is required from the regulator for the resignation or removal of directors/senior management of an asset management company. There is no distinction between EDs and NEDs in this regard.

* The questions and answers are limited to alternative investment managers.

4 Is approval from the regulator required for the resignation or removal of directors/senior management of an asset management company? Is there any distinction between EDs and NEDs? (Continued)

TAIWAN

Approvals from the FSC are not required for the resignation or removal of directors/senior management. There is no distinction between EDs and NEDs. A SITE/SICE needs to report the resignation or removal of directors/senior management to the SITCA.

THAILAND

No. However, the Office of the SEC must be notified of the resignation or removal of a director, chief operating officer, or senior manager within seven business days from the date of the resignation or removal.

UNITED KINGDOM

No regulatory approval is required and, to the extent that EDs or NEDs are either approved persons or senior managers, there is no distinction. However, the company must inform the FCA about the resignation or removal in the prescribed form within a specified time period. Under the SM&CR, should disciplinary action be taken against a senior manager for a Conduct Rules breach, the company must notify the FCA within seven business days of concluding disciplinary action on Form D (or Form C where the individual is no longer approved). For other individuals, notification is made annually using the FCA's electronic reporting system.

UNITED STATES

No approval is necessary, although such changes will generally trigger a requirement to amend an asset management company's registration documents with both the SEC and CFTC. NEDs are generally not disclosed in such documents and their resignation or removal would not, therefore, trigger such amendment requirements.

VIETNAM

For VAMC: The SBV dismisses the chairpersons and the members of the Members' Council, the head and the members of the Control Committee, the general director and the deputy general director(s). Otherwise, there is no distinction.

For other AMCs: There is no specific requirement. However, the chair of the Board of Management of the AMC's parent bank dismisses the director and chief accountant of the AMC based on the proposal from the general director of the parent bank.

5 Is there any nationality requirement for directors/senior management of an asset management company? If so, do any exemptions exist?

AUSTRALIA

None. However, residency requirements apply. (See below in Question 9).

CHINA

Generally, there is no specific requirement on nationality for directors or senior management. However, for (a) the Chinese-invested securities companies, (b) the futures companies and their asset management subsidiaries, the overseas employees that are personnel at the managerial level shall account for at most 30% of the company's total personnel at the managerial level. For the foreign-invested securities companies, the overseas employees that are personnel at the managerial level shall account for at most 50% of the company's total personnel at the managerial level.

HONG KONG

None. However, residency requirements may apply.

INDONESIA

Non-Indonesian directors are not permitted to engage in work related to human relations and personnel administration. Further, residency requirements such as stay permits and work permits still apply.

JAPAN

There is no nationality requirement for directors/senior management.

LUXEMBOURG*

There are no requirements relating to the nationality of directors/senior management.

MALAYSIA

The asset management company has to have at all times a Bumiputera director on its board. Further, it must at all times maintain at least a 30% Bumiputera composition of its representatives for its licensed activities. Note that the company must also at all times have at least one or two (as the case may be) resident directors (See Question 9).

PHILIPPINES

For asset managers organized as banks authorized to engage in trust and other fiduciary business, foreign persons may be appointed as directors only to the extent of the foreign participation in the equity of the bank (as directors of the bank itself, as the trust department or division does not typically have a separate juridical personality). For asset managers organized as investment houses authorized to engage in investment management activities or fund managers of investment companies, there is no nationality requirement for directors or senior management.

SINGAPORE

No. However, a licensed asset manager must have at least one executive director and chief executive officer employed full-time in the day-to-day operations of the asset manager who is resident in Singapore.

SWITZERLAND

No, there is no such nationality requirement.

TAIWAN

There is no nationality requirement for directors/senior management.

THAILAND

There is no nationality requirement for directors/senior management. However, residency requirements may be applicable if the asset management company is a public limited company.

UNITED KINGDOM

None. However, residency requirements may apply (see question 9).

UNITED STATES

No.

VIETNAM

For VAMC: Members of the Members' Council and the general director must be Vietnamese. For other AMCs: No specific requirement.

FITNESS & PROPRIETY



6 Is there a minimum qualification or minimum number of years of relevant experience required of directors/senior management of an asset management company?

AUSTRALIA

With respect to directors, no, so long as the director is at least 18 years of age and consents to taking on the role and responsibilities of a director. Directors must be fully up-to-date on what the company is doing, including its financial position, question managers and staff about how the business is going and take an active part in directors' meetings.

With respect to senior managers that may be appointed as RMs, there will be consideration of the nature, scale and complexity of the business of the AFSL holder. For body corporates, the people nominated as RMs do not need to be 'officers' of the body corporate or 'responsible officers' as defined s.9 of the Corporations Act. For entities that are heavily automated or small scale (if it provider financial services to less than 1,000 retail clients), RMs can be nominates who will provide regular sign-off on the licensee's processes and systems and the quality of services provided. These RMs do not need to have day-to-day involvement but must be available as needed. Also, the reduced level of involvement of such RMs is available in some instances (noting this is not an exhaustive list) for example, where they meet one of the five options for demonstrating knowledge and skills (with various options including (i) mixes of knowledge components combined with at least a minimum of 3 years relevant experience over a duration of time and (ii) exceptional cases with limited experience) or the RM is nominated as the "key person" on the licence (where there is heavy dependence on the capacity, knowledge and skills of such an RM).

CHINA

Yes. Generally, the directors and senior executives are subject to fit and proper requirements, which include working experience in the relevant field, management experience suitable for the proposed position and minimum number of years of working experience (depending on the proposed position).

HONG KONG

Executive directors and responsible offers are subject to fit and proper requirements, which include competence and capability criteria, taking into account past relevant experience and qualifications.

INDONESIA

All members of the Board of Directors must have at least three years' post-qualification experience ("PQE") as management in the capital markets or financial sector relating to customer fund management or in a company invested into a securities portfolio. Further all prospective members of the board of directors and board of commissioners are subject to the OJK fit and proper test.

JAPAN

The CEO is subject to fit and proper requirements while managing directors (EDs) are subject to knowledge and experience criteria, although there is no clear numerical standard.

LUXEMBOURG*

There is no specific length of time or qualification threshold required. However, persons who effectively manage the business of the AIFM must be of sufficiently good repute and sufficiently experienced in relation to the investment strategies pursued by the AIFs managed by the AIFM; the conduct of the AIFM's business must the responsibility of at least two persons meeting these conditions.

Please note that the shareholders or partners of an AIFM with qualifying holdings must be suitable taking into account the need to ensure its sound and prudent management. Please also refer to our answer under question 7.

MALAYSIA

Key management (including the Head of Regulated Activity (where relevant), compliance officer and directors are subject to fit and proper requirements. The key management (including the Head of Regulated Activity (where relevant), Licensed Director and compliance officer are also required to have the prescribed qualifications and knowledge. The Licensed Director and the Head of Regulated Activity (where relevant) are required to have the prescribed minimum years of experience.

6 Is there a minimum qualification or minimum number of years of relevant experience required of directors/senior management of an asset management company? (Continued)

PHILIPPINES

Yes, directors and key executive persons are subject to fit and proper requirements, which include competence and capability criteria, including minimum number of years of experience in financial or capital markets or other related fields. The minimum number of years of relevant experience varies on the type of the office as well as the executive functions proposed to be undertaken by a director or key executive officer of an asset manager.

SINGAPORE

A licensed asset manager must have at least two directors with a minimum of five years' relevant experience each. The asset manager must also have a resident full-time chief executive officer who should have at least five years of relevant experience.

SWITZERLAND

A director or member of the executive board has to prove that they have sufficient expertise and experience to assume the relevant duties within the company. However, there is no particular minimum qualification or minimum number of years of relevant experience required.

TAIWAN

Directors/senior management need to meet certain requirements, which include competence, past relevant experience and qualifications.

THAILAND

Directors, chief officers and senior managers acting in an executive capacity (EDs) are subject to certain requirements (which vary depending on their educational qualifications). For example, if a director, chief officer, or senior manager has a bachelor's degree, he or she must have at least three years' work experience in a certain field (e.g., must have worked in another securities company). NEDs do not need to have work experience (except if the NED is a member of the investment committee, in which case our analysis in item 2 above applies).

UNITED KINGDOM

There is a requirement to have sufficient qualifications, knowledge, competence, experience and integrity to undertake the role. What these are will depend on the nature of the role and the circumstances of the firm in question.

UNITED STATES

No. The CFTC registration process requires that APs pass certain industry examinations. States may also require IARs to pass industry examinations.

VIETNAM

For VAMC: Key executive persons and other directors are subject to fit and proper requirements, which include competence and capability criteria, taking into account past relevant experience and qualifications.

For other AMCs: No specific requirement.

7 Are there any other fitness and propriety requirements that apply to directors of an asset management company? What are they?

AUSTRALIA

As asset management companies are not regulated by the Australian Prudential Regulatory Authority (APRA) there are no "fit and proper" requirements. However, for AFSL holders there are requirements that RMs are to be of "good fame and character" which is considered by ASIC at the time of the application for the AFSL (including amendments to RMs). Some factors that may indicate a person is not of good fame and character include: (a) whether the person has been convicted of serious fraud within the last 10 years; (b) whether the person has held an AFSL that was suspended or cancelled; or (c) whether a banning order or disqualification order has previously been made against the person (see s. 913B(4) of the Corporations Act).

CHINA

Yes. Generally, the directors and senior and senior executives are subject to other fitness and propriety requirements, which include integrity, honest, sound reputation as well as capability for performing their duties and no administrative or criminal penalty /punishment from regulators in recent years, etc.

HONG KONG

Candidates must satisfy the criteria of honesty, integrity and sound reputation, financial integrity and competence, and must comply with the fit and proper guidelines.

INDONESIA

Prospective members of the Board of Directors must hold a license as a security company representative, and at least one member of the Board of Directors must have a license as an investment manager representative.

JAPAN

There are no fitness and propriety requirements other than as stated in No. 6 above.

LUXEMBOURG*

The law requires that such persons must be of sufficient reputation and professional experience. Conducting officers should be members of the executive committee, which is the senior management body.

In essence, such persons must possess adequate professional experience by having previously carried out similar activities at a high level of responsibility and autonomy. In addition, professional standing shall be assessed on the basis of police records and on any evidence tending to show that the persons concerned are of good standing and are of irreproachable conduct.

MALAYSIA

Candidates must be fit and proper where none of the prescribed grounds specified in the relevant sections of the Capital Markets and Services Act 2007 (CMSA) applies to the candidates (see response to item 8).

PHILIPPINES

Yes. Generally, the directors, chief executive officer, and key executive officers or managers of asset managers are subject to the fit and proper guidelines under relevant banking regulations and the Securities Regulation Code based on the following criteria: (1) honesty, fairness, and integrity; (2) diligence, competency, and capability; and (3) financial soundness. The fit and proper requirements shall also take into account the principles and requirements of the International Organization of Securities Commissions (IOSCO).

SINGAPORE

Yes. Candidates must satisfy the criteria of honesty, integrity and sound reputation, and financial soundness, and comply with the fit and proper guidelines.

SWITZERLAND

No.

TAIWAN

Directors shall exercise due care of a good administrator and cannot engage in any dishonest practice.

* The questions and answers are limited to alternative investment managers.

7 Are there any other fitness and propriety requirements that apply to directors of an asset management company? What are they? (Continued)

THAILAND

Yes. For example, candidates must perform their duties (i) honestly, (ii) responsibly and diligently as professionals, (iii) in accordance with the Securities and Exchange Act. and (iv), in accordance with the codes of conduct and professional standards. Failure to do so may result in the approval being revoked by the Office of the SEC.

UNITED KINGDOM

Yes. The FCA Handbook sets out detailed guidance about the matters to be considered in assessing a person's fitness and propriety. These are honesty, integrity and reputation; competence and capability, including whether the person satisfies any relevant FCA training and competence requirements; and financial soundness.

UNITED STATES

No.

VIETNAM

For VAMC: Yes. Managers and executives of VAMC must comply with the law and regulations; perform their tasks honestly, carefully, and most appropriately to protect the owner's interest; be loyal to VAMC's and owner's interest; be exemplary in performing their duties; and be knowledgeable about risks involving VAMC's operation.

For other AMCs: No specific requirement.

8 Are there any other negative factors that will disqualify a candidate from becoming a director of an asset management company?

AUSTRALIA

Yes. A person cannot be a director if the person: (i) is an undischarged bankrupt; (ii) has entered into a personal insolvency agreement under the Bankruptcy Act 1966 and failed to fully comply with the terms of the agreement; (iii) has been banned by ASIC or a court from managing corporations under the Corporations Act 2001 (Cth) ("Corporations Act") (the length of the banning period will be set by ASIC or the court); or (iv) has been convicted of dishonesty-related offences, such as fraud. (These people are automatically banned for five years from the date of their conviction or, if imprisoned, for five years from the date of their release).

CHINA

Yes. Under the *PRC Company Law*, these negative factors include (a) any past convictions, (b) be liable for bankruptcy of the company he/she has served as a senior executive, (c) be liable for being revoked the business license of the company he/she has served as a senior executive, and (d) a relatively large amount of overdue debts, etc.

Compared with other specific laws or regulations applying to asset management institutions, *the PRC Company Law* is the general corporate law, therefore its regulations are also applied to asset management companies.

HONG KONG

Yes. These include (i) any previous conviction for a criminal offense or being the subject of unresolved criminal charges; (ii) any previous findings by courts or other competent authority of fraud, dishonesty or misfeasance; (iii) any disciplinary actions or disqualification actions made by any professional or regulatory body in relation to any trade, business or profession; (iv) any refusal or restriction of the right to carry on any trade, business or profession for which a specific license, registration or other authorization is required by law; (v) any previous disqualification made by a court of competent jurisdiction from being a director; (vi) any market misconduct found by the Market Misconduct Tribunal or failure to abide by any codes and guidelines promulgated by the SFC, other regulators or any relevant exchanges in Hong Kong or overseas (if applicable); (vii) the director being wound up (other than by voluntary dissolution by a solvent member) or being otherwise insolvent or having a receiver or administrator appointed, however described, etc.

INDONESIA

Yes. These include any past convictions relating to financial crimes, being declared bankrupt or holding the position of director or commissioner of a company that has been stated bankrupt, or stated to be responsible for a bankruptcy of a company.

JAPAN

Yes. Those who have limited capacity, are associated with organized crime groups, are bankrupt, were sentenced to certain criminal punishment within five years, were stripped of their finance business license or were in a position of director or officer of a financial institution whose license was rescinded within five years, are disqualified from becoming a director of an asset management company.

LUXEMBOURG*

Every candidate for membership of the management body/governing body must ensure compliance with the following requirements:

- a) the number of hours spent fulfilling professional engagements cannot exceed 1,920 hours per year
- b) the number of mandates in regulated entities and in operating companies cannot exceed 20

MALAYSIA

Yes. These negative factors include: (i) the director having been convicted, whether within or outside Malaysia, of an offense involving fraud or other dishonesty or violence or the conviction of which involved a finding that the director acted fraudulently or dishonestly; (ii) the director having been convicted of an offense under the securities laws or any law outside Malaysia relating to the capital market; (iii) the director being an undischarged bankrupt whether within or outside of Malaysia; or (iv) the SCM having reason to believe that the director will not carry on the regulated activity efficiently, honestly or fairly.

* The questions and answers are limited to alternative investment managers.

8 Are there any other negative factors that will disqualify a candidate from becoming a director of an asset management company? (Continued)

PHILIPPINES

Yes. This includes past failures to comply with relevant disclosure or reporting obligations with the Philippine SEC, past convictions relating to violations of any provisions of relevant regulations, fraud, dishonesty or any offense involving moral turpitude and (a) the purchase or sale of securities, or (b) the conduct of business as a broker, dealer, investment adviser, investment house, bank, trustee or other fiduciary capacity.

SINGAPORE

Yes. These include a past conviction relating to fraud or dishonesty or other criminal offenses, being an undischarged bankrupt, having had execution in respect of a judgment debt returned unsatisfied in whole or in part, having entered into a compromise or scheme of arrangement with creditors (being a compromise or scheme of arrangement that is still in operation), having had a prohibition order made by the MAS against him/her or has been a director or concerned in the management of regulated financial institutions that ended up having their licenses revoked or wound up by a court.

SWITZERLAND

No.

TAIWAN

Yes. Certain negative factors will disqualify a candidate from becoming part of senior management. For instance, under the following circumstances, a candidate will be disqualified if such candidate:

1. has previously been sentenced by a final and unappealable judgment to imprisonment for one year or more for fraud, breach of trust, or misappropriation, and has not fully served the sentence, or less than two years have elapsed since completion of the term of sentence, expiration of the suspended sentence, or pardon
2. has previously been sentenced by a final and unappealable judgment to a sentence of imprisonment or greater severity for misappropriation related to public function or occupation and has not fully served the sentence, or less than two years have elapsed since completion of the sentence, expiration of the suspended sentence, or pardon
3. has previously been convicted by a final and

unappealable judgment of a crime under the Securities and Exchange Act or the Securities Investment Trust and Consulting Act, and has not fully served the sentence, or less than three years have elapsed since completion of the sentence, expiration of the suspended sentence, or pardon

4. has been refused transaction because of dishonor of a negotiable instrument, and transactions have not been reinstated

THAILAND

Yes. For example, if the candidate (i) has a past criminal conviction relating to fraud or other dishonest act; (ii) is or has been declared bankrupt; (iii) is of unsound mind; (iv) has been rejected for inclusion in, or withdrawn from, the Office of the SEC's database of directors and executives of securities issuing companies; or (v) has been imprisoned by a final judgment of a court on the grounds of committing non-compoundable offenses, he or she may be disqualified from being a director of an asset management company.

This should be considered on a case-by-case basis as, for certain prohibited characteristics, the Office of the SEC still has discretion as to whether the director should be disqualified (e.g. revocation of the previously granted approval or denial of the new approval). Nevertheless, if a prohibited characteristic is discovered at the stage of obtaining approval, the Office of the SEC must deny approval for that person.

UNITED KINGDOM

A director must be able to devote sufficient time and attention to their duties. Where the candidate already holds other appointments and, in particular, executive roles, this issue may come into contention. Bankruptcy and disqualification as a director would prevent appointment.

UNITED STATES

Yes. Both the SEC and CFTC can deny registration for the asset management company if a director has been convicted of a felony or been found or convicted of securities/derivatives-related wrongdoing. In both cases, disclosure of such negative information must be provided during the registration process and may be publicly available.

Individual US states may impose separate requirements.

8 Are there any other negative factors that will disqualify a candidate from becoming a director of an asset management company? (Continued)

VIETNAM

For VAMC: The chairperson, vice chairperson and members of the Member's Council, head and members of the Control Committee, and the general director can be dismissed under the following circumstances:

- loss of or having limited civil capacity
 - violation of the law resulting in a prosecution
 - having a decision to be transferred or assigned to a different position
 - having submitted a resignation letter to the Member's Council and Control Committee of VAMC
 - failure to participate in management activities and activities of the Members' Council, Control Committee for six consecutive months, unless under force majeure circumstances
 - failure to meet the fit and proper requirements
 - failure to fulfill the assigned tasks
 - failure to accurately and fully perform the relevant duties and obligations
 - when the authority in charge of appointment so opines
- For other AMCs: No specific requirement.

9 Is there a residency requirement for directors/senior management of an asset management company (eg. primary residence must be in each local jurisdiction)?

AUSTRALIA

Yes. A proprietary company must have at least one director who ordinarily resides in Australia. For public companies, there must be a minimum of three directors, at least two of whom must ordinarily reside in Australia. Further, public companies must also have at least one secretary, and the secretary must reside in Australia.

CHINA

None. However, considering industrial practice and our experience, it is advisable that the directors and senior management shall reside in China for performing their duties.

HONG KONG

At least one responsible officer must be available at all times to supervise the business of the asset manager. This usually means that the responsible officer needs to reside in Hong Kong.

INDONESIA

All members of the board of directors must be domiciled in Indonesia.

JAPAN

An asset management company's representative must reside in Japan.

LUXEMBOURG*

For the accomplishment of their tasks, the conducting officers (of which there must be at least two) should, in principle, be permanently located in Luxembourg. This does not, however, prevent them from having their domicile in another place that allows them to come to Luxembourg every day.

The AIFM must employ at least two conducting officers in Luxembourg (i.e., bound to the AIFM by an employment contract as employees of the AIFM) who spend a FTE on their duties in the AIFM. The CSSF may accept that one or more conducting officers (including the two legally required conducting officers) are contractors or secondees. Conducting officers must be appropriately supported in

their work by qualified staff that are sufficient in number and working in Luxembourg. The staff employed in one or more branches of the AIFM may be taken into account. In any case, every AIFM must employ at least three people full-time at the head office in Luxembourg (i.e., senior management and/or staff) who perform key functions.

MALAYSIA

At least one director or two directors, depending on whether the asset management company is a private company or a public company respectively, is required to reside in Malaysia by having a principal place of residence in Malaysia.

PHILIPPINES

Yes. A majority of the board of directors of an asset management company organized under Philippine law must be residents of the Philippines. Likewise, the chief executive (or functional equivalent to the president of a company), its treasurer and corporate secretary must be residents of the Philippines.

SINGAPORE

A licensed asset manager must have at least one executive director and chief executive officer employed full-time in the day-to-day operations of the asset manager who is resident in Singapore.

SWITZERLAND

Based on corporate law, the company is required to have at least one member of the board of directors or one member of management who has their place of residence in Switzerland. Such a person must have sole signatory power. The residency requirement may also be fulfilled by two persons, in which case both must be resident in Switzerland and they must have joint signatory power.

TAIWAN

The general manager is expected by the FSC to be a resident in Taiwan.

* The questions and answers are limited to alternative investment managers.

9 Is there a residency requirement for directors/senior management of an asset management company (eg. primary residence must be in each local jurisdiction)? (Continued)

THAILAND

None. However, in practice, the Office of the SEC encourages directors of asset management companies to at least have temporary residence in Thailand. However, if the asset management company is a public limited company, the residency requirement would apply (i.e. at least five directors of which not less than one half reside in Thailand).

UNITED KINGDOM

There is no strict requirement, however, when assessing whether firms meet the minimum standards for authorization (and continue to do so) a key factor for the regulator is the location of the directors and senior management who take material day-to-day decisions about the firm's central direction. These go to whether the firm has sufficient resources in place and to demonstrate that it is capable of being supervised effectively.

UNITED STATES

No.

VIETNAM

For VAMC: Members of the Members' Council and the general director must reside in Vietnam during their term.

For other AMCs: No specific requirement.

10 Does the asset management company need to evaluate its directors/senior management before appointing such persons? What certifications, if any, must the company provide to the regulatory authority in respect of its directors/senior management?

LUXEMBOURG*

We are not aware of any such provisions in national regulations. Nevertheless, due to the fact that the CSSF approve such appointments, an AIFM should verify that its directors/senior management possess adequate professional experience by having previously exercised similar activities at a high level of responsibility and autonomy before appointing them.

PHILIPPINES

Yes. An asset management company is expected to review, assess and evaluate, in respect of any director or key executive person, prior to his or her appointment as such and for the duration of his or her term in office, (a) the fitness and propriety of any director or key executive persons, (b) any potential conflict of interest, and (c) continuing compliance with the minimum prescribed qualifications for such office or such functions under applicable regulations.

SINGAPORE

Yes. A licensed asset management company is expected to (i) assess the fitness and propriety of its directors, chief executive officer and representatives carrying on fund management activities (including investment research and advice); and (ii) assess whether the appointment will cause any conflicts of interest, including any conflict arising from the individual's shareholdings and/or directorships.

SWITZERLAND

The company has to evaluate its candidates to ensure that they have the necessary experience and expertise to assume the relevant function within the company.

The following information has to be provided to the regulator with regard to each member of the board of directors and each member of the executive board: identity, curriculum vitae, criminal records, excerpt from the debt collection register, confirmation that no major court proceedings are pending, declaration about qualified shareholdings in financial institutions, declaration about positions with other companies.

TAIWAN

Yes. An asset management company needs to make sure that its directors/senior management meet the statutory qualification requirements before applying to the SITCA for the registration of such persons.

THAILAND

Yes. Before appointing a director or senior manager, an asset management company should assess the candidate's qualifications and characteristics (to prevent being deemed by the Office of the SEC as breaching the regulatory requirements, and suffering criminal sanctions). The asset management company must also submit to the Office of the SEC a form of certification for each director to enable the Office of the SEC to consider whether the person to be appointed has any prohibited characteristics.

UNITED KINGDOM

Under the Approved Persons Regime, while it is the FCA that approves (or refuses) a candidate as fit and proper, it expects firms to perform due and diligent enquiries into their candidates before they submit an application. It is for firms to decide what checks are appropriate but these should include checks to verify relevant qualifications and previous employment. The position remains the same under the SM&CR for senior management function holders (SMFs), e.g., executive directors, but for less senior managers who are certified persons the duty to assess and certify as fit and proper rests with the firm. Firms and candidates for SMFs must disclose to the FCA if a candidate has a criminal record.

UNITED STATES

No such certifications are required, but the company must provide certain disciplinary information with respect to employees. The CFTC registration process also requires disclosure of certain biographical, professional and educational details of APs and principals.

VIETNAM

No specific requirement.

* The questions and answers are limited to alternative investment managers.

11 Generally, are there any distinctions in the duties and responsibilities or the regulatory treatment of EDs and NEDs?

AUSTRALIA

Generally, the board is collectively responsible for the operations of the asset management company. The core duties for both executive and non-executive directors are the same. A non-executive director's responsibilities will normally be outlined in the corporate governance charter and may also be touched on in a director's letter of appointment. Specific terms will vary from organisation to organisation, however, there is a perceived advantage of having a majority of non-executive directors on a board which is their independence and objectivity (and also considered to be good practice from a governance perspective).

CHINA

Only a limited liability company with relatively few shareholders or of a relatively small size may have one executive director instead of a board of directors under China Law. In practice, the scenario where the Chinese financial institutions have one executive director instead of a board of directors does not exist, therefore the directors of Chinese asset management institutions do not distinguish between EDs and NEDs under China Law.

HONG KONG

Generally, the board and senior management are collectively responsible for the operations of the asset management company.

However, in determining where responsibility lies and the degree of responsibility of a particular individual, the SFC will have regard to that individual's apparent or actual authority in relation to the particular business operations, that individual's levels of responsibility within the company, any supervisory duties the individual may perform, and the levels of control or knowledge that person may have concerning any failure by the company or persons under their supervision.

INDONESIA

Indonesian law does not distinguish between EDs and NEDs. As such, the board of directors is collectively responsible for the operations of the asset management company. Separately, the board of commissioners is charged with the supervision of directorial conduct and policy.

JAPAN

The Financial Instruments and Exchange Act (hereinafter referred to as FIEA) specifically requires managing directors (EDs) to have sufficient knowledge and experience: (i) to operate asset management companies in accordance with the FIEA and other applicable regulations; and (ii) to control and manage compliance and risks. There are no such specific requirements for NEDs.

LUXEMBOURG*

Both executives and non-executives have board-level roles and both have a fiduciary duty to the company and must act in its best interests.

Generally, executive directors have "executive responsibility" for running the company's business. Non-executive directors challenge, question and monitor the CEO and senior management; they bring an independent perspective to decision-making; they hold senior management to account; they also support and mentor the CEO and senior management. They must act in the interests of the company's stakeholders (e.g., shareholders, employees, pensioners, suppliers).

MALAYSIA

Generally, the board is collectively responsible for the operations of the asset management company.

PHILIPPINES

Generally, the board of directors is collectively responsible for the operations of an asset management company. EDs and NEDs are not treated differently from a regulatory perspective with respect to their duties, responsibilities and obligations as directors of an asset management company, though EDs are subject to additional regulatory oversight in connection with their discharge of their additional executive functions in accordance with the particular requirements applicable to each such function under prevailing regulations or under the internal corporate governance rules of an asset management company.

* The questions and answers are limited to alternative investment managers.

11 Generally, are there any distinctions in the duties and responsibilities or the regulatory treatment of EDs and NEDs? (Continued)

SINGAPORE

Generally, the board is collectively responsible for the operations of the asset management company. There are no distinctions between the duties and responsibilities of EDs and NEDs.

SWITZERLAND

Generally, each ED and NED takes the responsibility with regard to the function that they assume within the company. However, besides that, there are no particular distinctions in the duties and responsibilities or the regulatory treatment.

TAIWAN

In general, there are no distinctions between the duties and responsibilities of EDs and NEDs.

THAILAND

Generally, the board of directors is collectively responsible for the operations of an asset management company. However, directors with executive power (EDs) are expected to have more duties and responsibilities in supervising the operations of an asset management company. The Securities and Exchange Act imposes additional criminal sanctions on directors, managers, or persons with responsibility for the operations of an asset management company if that company fails to comply with requirements in the Act that apply to the orders, actions, or non-actions of those persons.

UNITED KINGDOM

Under UK company law, all directors owe the same duties to the company. A director must exercise the care, skill and diligence that would be exercised by a reasonably diligent person with (1) the general knowledge, skill and experience to be reasonably expected of a person carrying out the functions of a director in relation to the company, and (2) the actual general knowledge, skill and experience possessed by that director. Nonetheless, the steps EDs and NEDs need to take to discharge their duties vary because of their different roles on the board. At a minimum, NEDs must take reasonable steps to place themselves in a position to guide and monitor the management of the

company. With respect to regulatory treatment, the FCA has published guidance on the role and responsibilities of NEDs under the SM&CR. At a high level, the role of a NED is to provide effective oversight and challenge and help develop proposals on strategy. If a NED chairs the board or certain key committees, they will have additional responsibilities in that respect. According to the FCA, as NEDs individually do not manage a firm's business, as do executive directors, the responsibilities for which they are accountable are likely to be more limited.

UNITED STATES

Not generally. Certain additional requirements may apply to executive officers of publicly traded companies (including publicly traded or retail funds).

VIETNAM

For VAMC: Generally, the management is collectively responsible for the operations of VAMC. The members of the board of directors, Members' Council, Control Committee and the general directors and deputy general directors also have different powers and obligations.

For other AMCs: Generally, the director is responsible for the operations of the AMC.

12 Are there any overarching duties and responsibilities for directors/senior management of asset management companies arising from regulations that apply specifically to asset managers in your jurisdiction (in addition to general corporate laws)?

AUSTRALIA

Generally, the board is collectively responsible for the management of the company. Overarching duties and responsibilities for directors/senior management include acting for the 'company as a whole.' This means the board must act in the interests of all members collectively. Key duties include acting in good faith, exercising powers for proper purpose, acting with reasonable care and diligence, avoiding conflicts of interest and not acting improperly to gain an advantage for themselves, someone else or cause detriment to the company.

CHINA

Generally, the directors and senior management of asset management companies shall have a duty of loyalty to and protect the lawful interests of the company and the customers.

HONG KONG

Generally, senior management (including the board) is collectively responsible for the operations of the asset management company. Under the Fund Manager Code of Conduct, the senior management of an asset manager should: (i) be principally responsible for compliance by the asset manager with all relevant legal and regulatory requirements, as well as the nurturing of a good compliance culture within the asset manager; (ii) maintain clear reporting lines, with supervisory and reporting responsibilities assigned to qualified and experienced persons; (iii) ensure that all persons performing functions on behalf of the asset manager are provided adequate and up-to-date information about the asset manager's policies and procedures applicable to them; and (iv) ensure that the performance of the asset manager in managing funds is reviewed at least annually.

INDONESIA

In general, the board is collectively responsible for the management of the asset management company based on the company's articles of association.

JAPAN

An asset management company owes a duty of loyalty to its customers and shall perform its duties with the due care of a prudent manager. In this regard, the directors/officers of an asset management company must ensure that it duly discharges such duties.

LUXEMBOURG*

We are not aware of any overarching duty or responsibility.

MALAYSIA

The board retains overall responsibility over the operations of the asset management company. The board must ensure that the company complies with the core principles set by the SCM, which include conducting the business with integrity, skill, care and diligence; acting in the client's interests; and maintaining adequate risk management and supervisory system etc.

PHILIPPINES

Yes. Asset management companies organized as investment houses authorized to engage in investment management activities or as fund managers of investment companies organized in the Philippines are considered as reporting companies under Philippine securities regulations, and as such, are generally subject to additional periodic disclosure and reporting obligations (as compared to ordinary corporations). In addition, as reporting companies, such entities are expected to have (a) at least 2 independent directors (or at least 20% of its board of directors as independent, whichever is lesser), and (b) certain board committees (compensation, nomination, audit) with specific tasks and oversight functions.

SINGAPORE

Specific duties and responsibilities for the board and chief executive officer of a licensed asset manager include:

(a) put in place a risk management framework that identifies, addresses and monitors the risks associated with assets under its management and is appropriate to the nature, scale and complexity of the assets.

* The questions and answers are limited to alternative investment managers.

12 Are there any overarching duties and responsibilities for directors/senior management of asset management companies arising from regulations that apply specifically to asset managers in your jurisdiction (in addition to general corporate laws)? (Continued)

(b) subject assets under management to independent valuation for the purpose of determining their respective net asset values, and ensure that a party independent of the asset manager conveys such values to the customers to which the assets relate or, if the assets are in the form of units in a closed-end fund or collective investment scheme, to the unitholders of the fund or scheme

(c) segregate assets under its management (unless excepted), from the proprietary assets of the asset manager or its related corporations or connected persons, and maintain them in an appropriate trust account or custody account (as the case may be)

(d) accord priority to transactions for the purchase or sale of securities or futures contracts, or to investments, made on behalf of its customers, over those made for any of the following persons: (i) the asset manager; (ii) its associated persons; (iii) its officers; (iv) its employees; (v) its representatives; (vi) any person whom the asset manager knows to be an associated person of any person referred to in sub-paragraph (iii), (iv) or (v)

(e) mitigate conflicts of interest arising from the management of assets and, where appropriate, disclose such conflicts of interest to the customer concerned

TAIWAN

Directors and senior management are responsible for the operations of the SITE or SICE, including compliance with applicable regulatory requirements under the Securities Investment Trust and Consulting Act and relevant regulations and rulings promulgated by the FSC and the SITCA.

THAILAND

Yes. Directors, senior managements and fund managers are responsible for the operations of asset management companies and the funds. Recently, the securities act imposes fiduciary duty to asset management company in managing mutual funds for the interest of unitholders and with professional skill and competent. Such fiduciary duty could be expanded to the directors, senior managements and fund managers.

UNITED KINGDOM

Asset managers and their directors/senior managers are under a duty to act in the best interest of the funds and their investors and to take reasonable steps to avoid conflicts of interest. They also are subject to the Statements of Principle for Approved Persons and, from 9 December 2019, to the Code of Conduct under the SM&CR. The principles and the code require them, for example, to disclose appropriately any information of which supervisors would reasonably expect notice, or to take reasonable steps to see that the part of the business for which they are responsible complies with the relevant requirements and standards. Under the SM&CR, a senior manager (e.g., the board chair) of an authorized fund manager (AFM) (i.e., the manager of an authorized open-ended collective investment scheme) will have a prescribed responsibility to take reasonable steps to ensure the firm assesses whether it offers value for money, to recruit independent directors and to act in the best interests of fund investors.

UNITED STATES

Directors and senior management of asset management companies are fiduciaries and subject to each regulator's specific formulation of fiduciary duty (which may differ significantly from the fiduciary duty framework applicable under general corporate principles). In particular, directors and senior management are subject to a duty of care and a duty of loyalty to their clients. While the US generally permits clients to vary the duty of care and loyalty, the US asset management regulations overrule such general principals (e.g., certain trading conflicts of interest cannot be waived by clients; certain breaches of securities laws cannot be indemnified by clients).

VIETNAM

For VAMC: Generally, the management is collectively responsible for the operations of VAMC.

For other AMCs: Generally, the director is responsible for the operation of the AMC.

13 Will directors/senior management be personally liable for breach of asset management regulations by the asset management company? What penalties are there, if any?

AUSTRALIA

Yes. While the board is collectively responsible for the operations of the asset management company, directors/senior management may be personally liable in some circumstances. For example, breaching their director duties or trading while the company is insolvent would result in personal liability amounting to penalties. Such penalties include being guilty of a criminal offence with a fine of up to \$200,000 and/or imprisonment of up to 5 years. Furthermore, these breaches may also amount to a contravention of a civil penalty provision, resulting in a payment of up to \$200,000, being personally liable to compensate the company or others for any loss/damage suffered and an order to be prohibited from managing the company.

CHINA

Yes. In general, where the asset management company violates relevant laws or regulations, the director or senior management executive who is the person in charge directly may be subject to the administrative liabilities and criminal liabilities, etc.

HONG KONG

Yes. Directors/senior management could be personally liable, depending on circumstances. For example, where the asset management company is guilty of misconduct as a result of the commission of any conduct occurring with the consent or connivance of, or attributable to any neglect on the part of, a person involved in the management of the business of the asset manager, the person is also guilty of the same misconduct. Senior management may also be subject to disciplinary sanctions by the SFC.

INDONESIA

Directors may be severally (but not jointly) liable for any breaches of regulations which are directly caused by the error or negligence of a director's actions. However, personal liability does not apply in cases where (i) the director acted in good faith and prudential principles; (ii) there was no direct or indirect conflict of interest in the action that caused the breach; and (iii) there were preventive or corrective measures with regard to the breach.

JAPAN

If the asset management company violates the FIEA, the directors/senior management who engaged in such violation is subject to criminal punishment. The punishment differs depending on the gravity of violation, but for example, imprisonment of not more than three years and/or a fine of not more than JPY 3 million may be imposed for non-delivery of investment report.

LUXEMBOURG*

Administrative penalties:

- a warning
- a reprimand
- a fine of between EUR 250 and EUR 250,000
- and, in some cases, one or several of the following measures:

(a) a temporary or permanent prohibition on carrying out operations or activities, as well as any other restrictions on the activity of the person or entity

(b) a temporary or permanent prohibition on acting as directors, managers or as managers, whether de jure or de facto, of persons or entities subject to the supervision of the CSSF

Criminal penalties:

- penalty of imprisonment of eight days to five years and a fine of EUR 5,000 to EUR 125,000

MALAYSIA

Yes. Where an offense against asset management regulations (i.e., the CMSA or any regulation made thereunder) has been committed by the asset management company, any person who at the time of the commission of the offense was a director, a chief executive officer, an officer or a representative of the asset management company or was purporting to act in such capacity is deemed to have committed that offense unless they can prove that the offense was committed without their consent or connivance and that they exercised such diligence to prevent the commission of the offense as they ought to have exercised, having regard to the nature of their functions in that capacity and to all the circumstances.

* The questions and answers are limited to alternative investment managers.

13 Will directors/senior management be personally liable for breach of asset management regulations by the asset management company? What penalties are there, if any? (Continued)

PHILIPPINES

Yes. As a rule, directors and senior management are considered as "responsible officers" of a juridical entity such as an asset management company. Accordingly, a director or senior management executive may be personally liable for the breach of asset management regulations by the asset management company to the extent such directors or senior management are found to have willfully violated (or have willfully caused the asset management company to violate) the provisions of relevant regulations. Penalties include monetary fines, suspension or removal of the responsible directors and/or senior management and, in depending on the nature of the violation, imprisonment. If convicted of any offense involving the violation of applicable banking or securities regulations, such director or senior management executive may further be disqualified from becoming a director or senior manager in other asset management companies in the future.

SINGAPORE

Generally, the board is collectively responsible for the operations of the asset management company. However, any officer of a licensed asset manager who fails to take all reasonable steps to secure compliance with any provision of the Securities and Futures Act (Cap. 289 of the Republic of Singapore) ("SFA"), or the accuracy and correctness of any statement submitted under the SFA, shall be guilty of an offense and shall be liable on conviction to a fine not exceeding SGD 100,000 or to imprisonment for a term not exceeding two years or to both. An officer shall not be sentenced to imprisonment for any such offense unless, in the opinion of the court, they committed the offense willfully.

TAIWAN

Directors and senior management of SITE or SICE shall conduct business in good faith and with the duties of due care, diligence, and fidelity as good administrators. If they violate these principles, they shall be liable for compensation for damage incurred by a beneficiary or contractual counterparty of the securities investment trust fund.

THAILAND

Yes. If the order, action, or non-action of a director, manager, or person having responsibility for the operation of an asset management company results in that company failing to comply with certain requirements in the Securities and

Exchange Act, that director, manager, or person will be subject to the same criminal and civil penalties imposed on the asset management company. Apart from the claim by the unitholders under Securities and Exchange Act, there may be exposures under general tort law.

UNITED KINGDOM

A person may be "knowingly concerned" in an asset manager's contravention of requirements imposed under (1) the Financial Services and Markets Act 2000, (2) the Alternative Investment Fund Managers Regulations 2013, (3) the Undertaking for Collective Investment in Transferable Securities Regulations 2011, and (4) a qualifying EU provision. From 9 December 2019, under the SM&CR, senior managers may be guilty of misconduct where there has been (or continues to be) a contravention of any of these requirements by the firm and, at the time they were responsible for the management of the activities in relation to which the contravention occurred and, they failed to take such steps as a senior manager in their position could reasonably be expected to take.

A range of disciplinary and protective sanctions are available, from the imposition of a penalty of such amount the FCA considers appropriate, a time-limited suspension and a public censure. The FCA may also withdraw that person's approval to perform a senior management function and, potentially, impose a prohibition order with respect to working in the sector as a senior manager or at all.

UNITED STATES

Yes, directors/senior management may be personally liability for the breach of federal and state securities laws. These laws differ significantly from jurisdiction to jurisdiction depending on the nature of the breach (for example, making false or misleading statements to investors may incur significant fines and imprisonment for up to 20 years).

VIETNAM

For VAMC: Generally, the management is collectively responsible for the operations of VAMC.

For other AMCs: Generally, the director is responsible before the parent bank and the law for management of the operations of the AMC.

14 Are directors/senior management of an asset management company subject to any periodic filing/notification requirements? What are they?

LUXEMBOURG*

Should the information they provided to the CSSF about themselves or the company change, they should notify the CSSF.

PHILIPPINES

Generally, no periodic filings apply to directors or senior management executives except to the extent of their equity interest in the asset management company. In addition, directors or senior management executives (to the extent such persons are aware) are required to report relevant conflicts of interest (or potential conflicts), any material development or breach of the provisions or covenants with asset management company, or other instances necessitating required disclosures or reports from the asset management company (as a reporting company under Philippine securities regulations). However, these notifications are generally to be filed by the asset management company itself.

SINGAPORE

Generally, no periodic filings apply to directors. However, ad hoc filings may apply to resignation or cessation of appointment, notification to the MAS of any new roles/ appointment and instances where conflicts of interest arise or there are changes in fit and proper status.

However, these notifications are generally to be filed by the asset management company. Licensed asset managers are also generally subject to a license condition to notify the MAS of any changes to the business interests or shareholdings of their directors as originally disclosed in Form T1 submitted to the MAS in respect of the appointment as directors.

If the directors are also representatives of the company, further notification and filing requirements may apply, such as in relation to the maintenance of a register of interest in securities.

TAIWAN

No periodic filings apply to directors/senior management. However, the SITE and SICE need to make a filing to the SITCA when there is an appointment or resignation of directors/senior management, or when there is a change to the shares held by directors, etc.

THAILAND

Generally, periodic filing does not apply to directors. However, an asset management company, as an employer, must notify the Office of the SEC whenever any of the following events occurs: (i) appointment of a director or senior manager; (ii) termination or resignation of a director or senior manager; and (iii) if it appears that a director or senior manager is no longer qualified, or possesses any prohibited characteristic.

UNITED KINGDOM

While ad hoc filing obligations may arise on resignation/ cessation of appointment, change of role or if there are changes in fit and proper status, these notifications are submitted by the asset manager with Companies House or financial regulators.

UNITED STATES

Not directly, although their information may be required to be updated in connection with mandatory annual updates of the asset management company's registration documents.

VIETNAM

Generally, no periodic filings apply to directors. However, ad hoc filings may apply to instances where conflicts of interest arise.

CORPORATE GOVERNANCE & CONFLICTS OF INTEREST



15 Is there a required minimum number for the board of directors of an asset management company?

AUSTRALIA

Yes. A proprietary company must have at least one director who ordinarily resides in Australia. For public companies, there must be a minimum of three directors, at least two of whom must ordinarily reside in Australia. Further, public companies must also have at least one secretary, and the secretary must reside in Australia.

CHINA

Yes. For a joint share limited company, the board of directors shall be composed of 5 to 19 directors. For a limited liability company, the board of directors shall be composed of 3 to 13 directors.

HONG KONG

Yes. There must be at least one responsible officer who is a director of the asset management company.

INDONESIA

Yes. Indonesian-incorporated asset management companies are required to have at least two directors and two commissioners.

JAPAN

Japan-incorporated asset management companies are required to have at least three directors.

LUXEMBOURG*

There must be at least three members of the management body/governing body. However, in case of a two-tier system in which the supervisory and management functions are separate, the supervisory board must be composed of at least three members and the management board must be composed of at least two members.

MALAYSIA

Yes. A private Malaysia-incorporated asset management company is required to have at least one director while a public Malaysia-incorporated asset management company is required to have at least two directors.

PHILIPPINES

Yes. As a rule, corporate entities organized under Philippine law (including asset management companies) must have at least five directors.

SINGAPORE

Yes. Singapore-incorporated asset management companies are required to have at least three directors.

TAIWAN

Yes. For a public asset management company, there should be at least five directors and for a private asset management company, three.

THAILAND

Generally, companies (including asset management companies) must have at least two directors. However, the Office of the SEC permits and encourages each asset management company to have an appropriate number of directors to correspond with the nature of the company and its volume of business.

UNITED KINGDOM

Under company law, a private company must have at least one director who must be 16 years of age or over and not be disqualified from being a director. In contrast, a public company must appoint at least two directors and a company secretary. At least one of the directors must be an individual, and the secretary must be qualified to fill the post.

UNITED STATES

No. Asset management companies are not required to have boards of directors.

VIETNAM

For VAMC: No. However, the Member's Council cannot have more than seven members while the Control Commit cannot have more than three members. VAMC has one director and some deputy directors.

For other AMCs: No specific requirement.

* The questions and answers are limited to alternative investment managers.

16 Are there any rules around composition of the board of directors or equivalent (eg, independence requirement or the number of executive- or management-level directors)?

AUSTRALIA

No. There is no independence requirement for the board of directors however, in Australia, it is considered good practice from a governance perspective for a majority of directors on a board to be non-executive and independent, especially in listed companies (see above in question 11). For the composition, refer above to question 15 for minimum board of directors.

CHINA

For asset management companies organized as (a) retail/mutual fund management companies, (b) securities companies, (c) commercial banks, (d) trust companies, and (e) insurance companies, are required to have a minimum number of independence directors.

For other types of asset management companies, there is no specific requirement related to the composition of the board of directors.

HONG KONG

Yes. There must be at least one responsible officer who is a director of the asset management company.

INDONESIA

None for the board of directors. However, the board of commissioners must have at least one Independent Commissioner.

JAPAN

Japan-incorporated asset management companies are not required to have independent directors. There is no regulation regarding the required number of directors. However, as a general requirement, a sufficient number of management-level executives to properly conduct investment management business is required.

LUXEMBOURG*

The members of the board must exercise their mandate with independence. In this respect, the management body/governing body cannot have a majority of persons among its members who have an executive role within the AIFM (conducting officers or other employees of the AIFM,

with the exception of staff representatives) unless this is adequately justified.

Members of the board of directors can be members of the senior management as executive directors.

An executive director in one management company cannot be a conducting officer in another management company.

MALAYSIA

No. However, it is noteworthy that the Malaysian Code on Corporate Governance encourages non-listed companies to have a majority of independent directors.

PHILIPPINES

Yes. As a reporting company under Philippine securities regulations, an asset management company must have at least 2 independent directors (or at least 20% of its board must be independent, whichever is lesser). Persons proposed to be appointed as a director of an asset management company are likewise subject to more stringent qualification requirements (as compared to directors of ordinary corporations) including relevant experience, education and other fit and proper guidelines.

SINGAPORE

There is no independence requirement in respect of the board of directors of a licensed asset manager, provided that the company is not publicly listed. Please refer to the response to question 15 for further information on other composition requirements.

TAIWAN

No. Independent directors are not mandatory for a SICE. However, a public SITE is required by the FSC to have at least three independent directors to form an audit committee.

THAILAND

No. However, the Office of the SEC encourages securities companies to have directors who act in both an executive capacity and nonexecutive capacity. This is to ensure checks and balances within boards of directors.

* The questions and answers are limited to alternative investment managers.

16 Are there any rules around composition of the board of directors or equivalent (eg, independence requirement or the number of executive- or management-level directors)? (Continued)

UNITED KINGDOM

There are no rules on the composition of the board of directors (or equivalent) of a private company. However, best practice (see Wates Principles) provides that effective board composition requires an effective chair and a balance of skills, backgrounds, experience and knowledge, with individual directors having sufficient capacity to make a valuable contribution. The size of a board depends on the scale and complexity of the company.

In case of public and listed companies, there are extensive corporate governance requirements. With respect to financial regulation, the Approved Persons Regime and the new SM&CR specify functions and responsibilities and distinguish between executive and non-executive directors. Finally, there is a requirement under MiFID II for firms to have a policy in place that promotes diversity among the firm's management body.

UNITED STATES

No.

VIETNAM

There is no specific requirement for the board of directors.

17 Are there any mandatory requirements for setting up other committees (e.g., audit, remuneration committees)? If so, briefly describe the responsibilities of these committees.

AUSTRALIA

Yes. Section 198D of the Corporations Act allows boards to delegate some of their powers to a committee of directors unless the company's constitution disallows it. If directors of a company set up other committees, the exercise of power must comply with the company's constitution and be recorded in the company's minute book. Generally, the director is responsible for the exercise of power by the committee unless there are 'reasonable grounds' that the committee exercised the power in conformity with the duties imposed on directors and the company's constitution. Additionally, the director must believe on (i) reasonable grounds, (ii) good faith (iii) and after making proper inquiry, that the delegate was reliable and competent in relation to the power delegated.

CHINA

For asset management companies organized as (a) securities companies, (b) commercial banks, (c) trust companies, and (d) insurance companies, are required to set up several committees, which may include but not limited (shall depend on the certain type of players):

- a remuneration and nomination committee – responsible for the remuneration management and matters regarding the appointment of directors and senior management
- an audit committee – responsible for the auditing functions
- a risk control committee – responsible for the risk management

For other types of asset management companies, there are no mandatory requirements for setting up other committees.

HONG KONG

There are no mandatory requirements for setting up other committees.

INDONESIA

Indonesian-incorporated asset management companies are required to set up an investment committee (which is responsible for directing and supervising the investment management team in implementing investment policies and strategies).

- Any other committee and supporting units of BOC (e.g., audit, governance, or nomination and remuneration committees) and BOD (e.g. risk management or human resources committees) are not mandatory.

JAPAN

No. Japan-incorporated asset management companies are not required to set up other committees unless they chose to do so.

LUXEMBOURG*

The compliance committee is responsible for matters including identifying and assessing compliance risks and reporting on the governance of the management company. The compliance function can be delegated to a third party.

The internal audit has to be independent, governed by the principle of segregation of powers and be a permanent function. It provides a critical assessment of the adequacy and effectiveness of the central administration, internal governance and business and risk management.

A compliance charter has to be established which has to be approved by the audit committee and by the compliance committee, depending on the situation.

The portfolio management committee is composed of members of senior management and of the staff of the management company. Its functions include taking investment decisions in line with the investment strategy set out by the management company in compliance with the investment objectives and preferences of investors.

In the case of an AIFM, a valuation committee must be established. It has to be independent from the portfolio management committee and its functions have to be separate from risk management. The valuation committee is charged with the valuation of the fund's assets.

* The questions and answers are limited to alternative investment managers.

17 Are there any mandatory requirements for setting up other committees (e.g., audit, remuneration committees)? If so, briefly describe the responsibilities of these committees. (Continued)

MALAYSIA

No mandatory requirements for setting up other committees pursuant to asset management regulations.

PHILIPPINES

Yes. Generally, subject to certain exceptions, asset management companies are considered under Philippine securities regulations as reporting companies and therefore subject to the rules under the Manual of Corporate Governance. Under the Manual of Corporate Governance, a public company (which includes reporting companies) are required to establish the following board committees: (a) nomination committee, tasked with identifying candidates and reviewing nominations of directors and other key executives, (b) remuneration committee, tasked with developing and regulating the company's remuneration framework, (c) audit committee, tasked with overseeing the audit functions of the company, and (d) corporate governance committee, tasked with developing and enforcing the company's corporate governance rules and regulations.

SINGAPORE

There are no mandatory requirements for setting up committees, provided that the asset manager is not publicly listed.

TAIWAN

A public SITE is required by the FSC to set up an audit committee, while a SICE is not required to do so.

THAILAND

An asset management company must set up at least the following committee:

- an investment committee – responsible for the investment framework (not applicable to private fund management)
- an audit committee – responsible for the auditing functions

UNITED KINGDOM

Companies are not obliged by company law or financial regulations to establish specific board committees but corporate governance requirements, particularly in large entities, may require certain committees. Key committees and their responsibilities are: risk committee — oversight of the risk management systems, policies and procedures of the firm; audit committee — oversight of the internal audit system of the firm; remuneration committee — oversight of the design and the implementation of the remuneration policies of a firm; nominations committee — evaluation of the board of directors and examining the skills and characteristics needed in board candidates. The new SM&CR will require NEDs who chair these committees to be pre-approved by the FCA.

UNITED STATES

No.

VIETNAM

No specific requirement.

18 Are directors of an asset management company permitted to hold other passive business interests (e.g., non-executive directorships and investments/shareholdings in other corporations)?

What disclosures, if any, need to be made to the relevant regulatory authorities? Are there restrictions on the number of positions board members can hold?

AUSTRALIA

Yes directors are permitted to hold other passive business interests as long as there is no conflict of interest between the director and the company. If there is a conflict of interest, directors must disclose the interest to the board (see s 191 of Corporations Act). There are no restrictions on the number of positions board members can hold.

CHINA

For the directors or senior management executives of (a) retail / mutual fund management companies, (b) commercial banks, (c) futures companies and their asset management subsidiaries, and (d) financial asset management company, subject to applicable regulations if there is no conflict of interest, they may be permitted to hold other passive business interests.

For other types of asset management companies, there is no specific requirement for the directors or senior management executives to hold other passive business interests.

HONG KONG

Yes, they are permitted. However, the SFC is unlikely to be satisfied that an individual is fit and proper to be licensed or to remain licensed if that person holds a directorship in, or is engaged in the business of, a company other than the principal, where such directorship or engagement will likely prejudice the interests of investors due to conflicts of interest, confidentiality concerns or other factors. Such interests will need to be disclosed to the SFC.

INDONESIA

Directors may not hold any concurrent positions in other corporations, except as a commissioner of the stock exchange, clearing house or central custodian. Shareholding in other corporations is permitted.

JAPAN

If the director or executive officer of an asset management company assumes the position of executive officer of another company, that person must notify the regulator thereof. Those directors or officers have a duty of loyalty to their customers as explained in No. 12 above, and the authority may take administrative action if the assumption of the position can cause conflicts of interest to arise.

LUXEMBOURG*

Directors are allowed to perform several mandates. A director shall have not more than 20 mandates and the hours dedicated to all the mandates shall not exceed 1,920 hours.

Where one of the thresholds is exceeded, the candidate must enclose with their authorization request a description of the measures implemented to ensure their additional mandate receives the required time and attention. This description must include, in particular, a justification on how the candidate intends to organize themselves to fulfil their responsibilities by taking into account the existing and future workload. The application must detail, in particular, the technical and administrative support the candidate requires or will require.

These thresholds must be revised downwards when the nature, scope or complexity of the activities so justifies or when the candidates' working time is reduced.

It has to be underlined that a director who is also a conducting officer in one management company cannot be a conducting officer in another management company.

MALAYSIA

Generally yes, provided that there is no conflict of interest. The Licensed Director will also be required to disclose its interests in securities, and other directorships to the SCM at the point of application for a CMSRL in the prescribed form.

Additionally, directors of an asset management company are under an obligation to disclose their interests in securities,

18 Are directors of an asset management company permitted to hold other passive business interests (e.g., non-executive directorships and investments/shareholdings in other corporations)?

What disclosures, if any, need to be made to the relevant regulatory authorities? Are there restrictions on the number of positions board members can hold?
(Continued)

other assets and any interests in SPV arrangement to the asset management company. Where the director is an executive director, prior approval of any other directors or compliance officer must be obtained before carrying out such an investment. The asset management company is similarly under an obligation to disclose their interests in securities, other assets and any interests in SPV arrangement to its clients.

For completeness, asset management companies are also under an obligation to notify the SCM of any establishment of any new business or acquisition of interest via a prescribed form.

PHILIPPINES

Yes, though the declared policy under prevailing regulations is that directors and officers must endeavor to minimize, manage, and disclose transactions where their interest may conflict with the interest of the assets or funds under management. Asset managers are required to uphold the best interests of the shareholders/unitholders and shall avoid conflict of interest situations; if unavoidable, a disclosure must promptly be made to the Philippine SEC. It should be noted further that the directors, chief executive officer, key executive officer or managers of an asset management company organized as a fund manager is prohibited from holding more than 50% of the members of the board of any investment company under its management.

SINGAPORE

Yes, provided that there is no conflict of interest and subject to an independence rule where the director concerned makes up the independent composition. Such interests will need to be disclosed to the MAS and a report on the assessment of conflict of interest will need to be submitted.

TAIWAN

Yes, provided that there is no conflict of interest or such conflict of interest is adequately mitigated. Disclosure of the business interests and shareholdings of the director (and chief executive officer), including the nature and

extent (such as percentage shareholding) must be made through Form 11 seeking the appointment of the director and resubmitted to the MAS in the event of any changes.

THAILAND

A director is allowed to hold a position in, and hold shares in, another company, with approval from a meeting of shareholders, and on the condition that it will not result in the director being considered as competing with the asset management company.

To illustrate, the director of an asset management company cannot be a major shareholder in another asset management company. Under the securities law, a director of an asset management company (the First AMC) is allowed to be an executive or adviser in another securities company (including another asset management company) (the Latter Securities Company), with approval from the meeting of shareholders — provided that the Latter Securities Company has an internal operational system that can prevent a conflict of interest.

If a conflict of interest results from the appointment, the Latter Securities Company must notify the Office of the SEC in writing and have the conflict rectified within a time period prescribed by the Office of the SEC. This notification obligation is imposed on the Latter Securities Company (and not the First AMC).

UNITED KINGDOM

Directors may hold other passive business interests providing there is no conflict of interest between the director and the company. If there is a conflict of interest, directors must disclose the interest to the board. There is no restriction on the number of positions board members can hold, however, the FCA will wish to be satisfied that directors have sufficient time to devote to their responsibilities thereby limiting their number, particularly where the role is executive in nature.

18 Are directors of an asset management company permitted to hold other passive business interests (e.g., non-executive directorships and investments/shareholdings in other corporations)?

What disclosures, if any, need to be made to the relevant regulatory authorities? Are there restrictions on the number of positions board members can hold?
(Continued)

UNITED STATES

No.

VIETNAM

For VAMC: Yes. Members of the Members' Council, Control Committee, the general director and the deputy general director must disclose information on the enterprises in which (i) they or their related persons own or have authorized, entrusted other individuals and/or organizations to own 5% or more of the charter capital; and (ii) they or their related persons are members of the Board of Management, Members' Council, Control Committee, or the (general) director.

For other AMCs: No specific requirement.

19 Is there any requirement or prohibition for an asset management company with regard to making a payment to its directors/senior management?

AUSTRALIA

No specific requirement or prohibition. However, restrictions based on conflict of interest and corporate governance principles should be considered. Also note, director remuneration is generally dealt with under section 202 of the Corporations Act which provides that a company must disclose the remuneration paid to each director of the relevant company (or its subsidiary).

CHINA

For the chief compliance officer of (a) retail / mutual fund management companies, and (b) securities companies, the total amount of his/her annual remunerations shall not be lower than the average of the total annual remunerations among all senior management executives.

For the directors and senior management executives of insurance companies and the senior management executives other than the chief compliance officer of securities companies, their performance-related remuneration shall be paid in a deferred manner.

For other types of asset management companies, there is no specific requirement or prohibition.

HONG KONG

No specific requirement or prohibition. However, corporate governance rules and conflict of interest principles should be taken into account.

INDONESIA

No specific requirements or prohibitions. However, directors' salaries and benefits are determined through a general meeting of shareholders or decision by the board of commissioners.

JAPAN

No specific requirement or prohibition. However, a Japan-incorporated asset management company must comply with the Companies Act of Japan.

LUXEMBOURG*

AIFMs must have remuneration policies and practices for those categories of staff, including senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the AIFMs or of the AIFs they manage. Such policies must be consistent and promote sound and effective risk management and not encourage risk-taking which is inconsistent with risk profiles, management regulations* or the instruments of incorporation of the AIFs they manage.

In addition, the general provisions of the Law of 12 November 2004 on combatting money laundering and terrorist financing, as amended, will apply.

MALAYSIA

No specific requirement or prohibition. However, corporate governance rules apply in respect of the remuneration framework for directors. In addition, there are prohibitions on granting loans to directors.

PHILIPPINES

None, except that any such payments must be in accordance with applicable corporate governance rules as adopted by the asset management company or as prescribed under prevailing regulations (e.g., causing payments out of funds under management any fees, commissions or other expenses that have not been disclosed in the registration statement and prospectus of the investment company under management).

SINGAPORE

No specific requirement or prohibition. However, there are restrictions on granting loans (including any unsecured advance, unsecured loan or unsecured credit facility which, in turn, includes any guarantee or performance bond) to directors.

* The questions and answers are limited to alternative investment managers.

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Is there any requirement or prohibition for an asset management company with regard to making a payment to its directors/senior management? (Continued)

TAIWAN

No specific requirement or prohibition on remuneration to directors/senior management.

THAILAND

No specific requirement or prohibition, except if a shareholders' meeting has passed a resolution specifying otherwise. An asset management company may also form a remuneration committee to consider payment to directors and senior managers.

UNITED KINGDOM

Remuneration (and payment) is subject to the requirements of company law and governance principles. Additionally, the FCA's handbook generally limits the amount of variable remuneration as against fixed remuneration and requires contractual provisions for malus and clawback provisions in respect of variable remuneration. Whether and quite how these requirements apply depend on the level of remuneration, the size of the firm and its status (i.e., whether it is an alternative investment fund manager, UK UCITS management companies or other MiFID investment firm).

UNITED STATES

No, other than standard regulation of conflicts of interest.

VIETNAM

No specific requirement or prohibition.

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