

## Newsletter

October 2019

### Financial Services Regulatory Developments in Thailand in the 3<sup>rd</sup> Quarter of 2019

#### 1. **ACMF Pass and Cross-Border Publication of Research Reports of ASEAN Capital Market Products**

On 16 July 2019, a new exemption on securities business licenses for ASEAN investment insights publications issued by the Office of the Securities and Exchange Commission of Thailand ("**SEC**") took effect. The SEC launched this as a part of the collaboration contributed under the ASEAN Capital Market Professional Mobility Framework ("**Professional Mobility Framework**").

#### **What is the Professional Mobility Framework?**

The ASEAN Capital Markets Forum ("**ACMF**"), with the SEC as the current chair, introduced the Professional Mobility Framework to boost greater connectivity and mobility of ASEAN capital market professionals and provide ASEAN investors access to professional services and investment knowledge concerning **ASEAN Capital Market Products**<sup>1</sup> by authorized professionals across the region.

#### **What are the initiatives now available in Thailand?**

##### **A. ACMF Pass**

Licensed, registered or authorized professionals from the Signatory ASEAN Jurisdictions (as of now, i.e. Malaysia, the Philippines and Singapore) can now provide **general investment advisory services** to Thailand-based investors by acting as an investment consultant or investment analyst—by obtaining an authorization from the SEC to be qualified as a Recognised Representative ("**RR**") in Thailand, the so-called "**ACMF Pass**." The scope of services, that can and cannot be provided by an RR, are set out in the figure below and subject to conditions prescribed by respective authorities in the RR's home jurisdiction.

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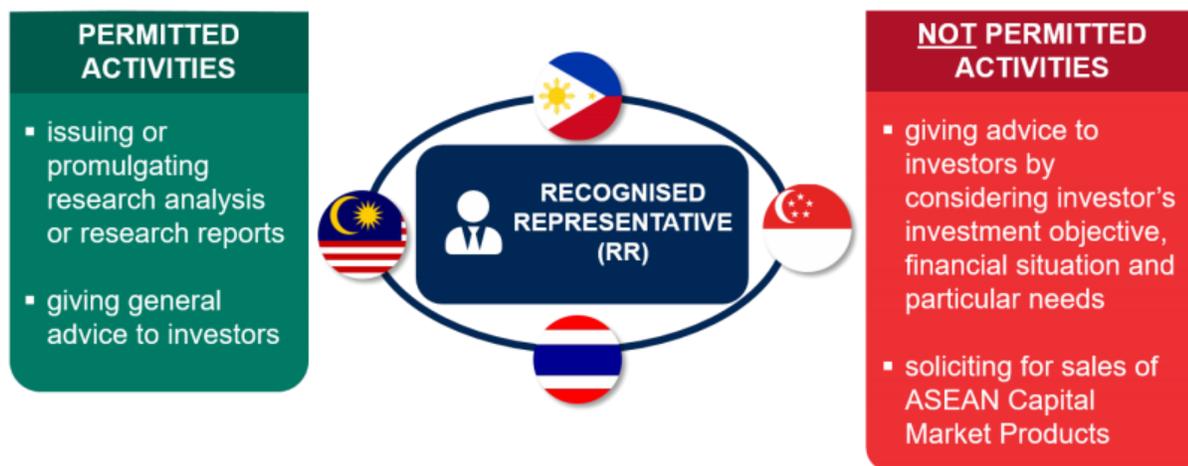
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<sup>1</sup> Without complex characteristics, (i) shares listed on an ASEAN securities exchange, (ii) investment units without high-risk or complex characteristics issued and offered for sale in an ASEAN country, and (iii) debt instruments or sukuk without high-risk or complex characteristics issued or offered for sale in an ASEAN country, are collectively called, "**ASEAN Capital Market Products**."



To be an RR in Thailand, offshore professionals must apply, be sponsored by a host licensed firm in Thailand, for being recognized as either an **ASEAN Investment Consultant**<sup>2</sup> or **ASEAN Investment Analyst**.<sup>3</sup> There is no application fee and no additional license or training is required.



Source: ACMF

## B. New IA license exemption for publishing of cross-border research reports

Advisory by way of broadcasting an offshore investment insights report related to ASEAN Capital Market Products can be provided in Thailand without the need to obtain an investment advisory license, provided that the criteria set out by the SEC below must be met.<sup>4</sup> The SEC has adopted this investment analysis sharing initiative starting from 16 July 2019.

<sup>2</sup> A person giving general consultation to investors related to any ASEAN Capital Market Products, performing the duty as an investment consultant in one of the Signatory ASEAN Jurisdictions.

<sup>3</sup> A person eligible to analyze investment and give investment consultation, performing the duty as investment analyst in one of the Signatory ASEAN Jurisdictions.

<sup>4</sup> SEC Notification No. Kor Thor. 16/2562 Re: Prescribing Natures of Giving Advice to Public Not Being Regarded as Engagement in the Securities Business of Investment Advisory Service (No. 4) amending the SEC Notification No. KorThor. 1/2560 regarding the same (the "IA Exemption Rule").



## CONDITIONS

- a Report must be produced in Signatory ASEAN Jurisdictions;
- b Report must be produced legally by an authorized editor under respective law in home Signatory ASEAN Jurisdictions
- c Consent of the editor of the report must be granted
- d Report must be published in exact manner and content as published in home Signatory ASEAN Jurisdictions where it is produced and specifying fulfillment to conditions b above

Conditions prescribed under IA Exemption Rule

## 2. Non-Resident Baht Accounts Daily Limit Reduced to Baht 200 Million

On 12 July 2019, the Bank of Thailand ("**BOT**") issued new Thai Baht speculation measures<sup>5</sup> due to the constant appreciation of the Thai Baht, which took effect since 22 July 2019.

The key measures are as follows:

- A. The daily limit of aggregated Thai Baht maintained in Non-Resident Baht Account ("**NRBA**") and/or Non-Resident Baht Account for Securities ("**NRBS**") for each non-resident ("**NR**") opened with any financial institutions in Thailand is reduced from Baht 300 million to **Baht 200 million**. For avoidance of doubt, the daily limit of NRBA and NRBS is calculated separately.

In effect, an NR must reduce the aggregated Thai Baht maintained in NRBA/NRBS to be not exceeding Baht 200 million by 3.30 pm (UTC+ 07:00) of any day.

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<sup>5</sup> The Bank of Thailand Circular Letter No. BOT.ForGorNgor.(21) Wor. 1035/2562



B. **For NRBA**, an NR who meets all of the following criteria may **seek approval from the BOT** on a case-by-case basis to expand the daily limit:

- not a financial institution or operating a business in relation to financial transactions;
- has trades or investments in Thailand;
- makes or receives payments from business partners in Thai Baht;
- has NRBA opened directly with a financial institution in Thailand.

The application for BOT approval must be submitted through the account bank of the NR.

C. For an NR who has already obtained BOT approval to have aggregated daily balance in an NRBA/NRBS of exceeding Baht 300 million (the previous limit) and such BOT approval is still effective, the NR can still enjoy benefits from such effective BOT approval. However, the BOT reserves the right to prescribe further conditions to such approval which will be further notified in writing.

D. For an NR who has aggregated Thai Baht maintained in an NRBA/NRBS exceeding Baht 200 million due to the following, the financial institution may allow the NR to maintain the exceeding amount in the NRBA/NRBS if the NR can provide the relevant supporting documents to the satisfaction of the financial institution:

- The Thai Baht is for the purpose of settlement under trades or investments in Thailand in the following business day;
- The NR makes or receives payment in Thai Baht with respect to trades or investments in Thailand on the public holiday of the relevant foreign currency;
- The NR receives Thai Baht check from trades or investments in Thailand and deposits such Thai Baht check in the NRBA/NRBS which is subject to clearing process of one business day.

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### 3. UBO Reporting Requirement for Debt Securities issued in Thailand

On 12 July 2019, the BOT issued a circular letter<sup>6</sup> requires an ultimate beneficiary owner ("**UBO**")<sup>7</sup> (e.g. the non-resident investor), a foreign custodian, or a foreign broker who deposits the debt securities issued in Thailand with a local custodian shall disclose or report the information about the UBO of such debt securities to the BOT through a local custodian whose debt securities are deposited with. The disclosure or reporting of the information about the UBO of such debt securities shall be done respectively from the UBO to the foreign custodian or the foreign broker and then to the local custodian, so that the local custodian shall be able to disclose or report such information to the BOT.

The UBO information required to be reported are:

- End Beneficiary Institutional Sector
- End Beneficiary Country Code
- End Beneficiary Legal Id
- End Beneficiary Unique Id Type
- End Beneficiary Full Legal Name

The last three information used to be optional, but now becomes mandatory since July 2019 reporting period onwards.

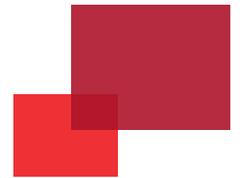
The local custodian shall procure the UBO information and submit such report to the BOT on a monthly basis, i.e. within 10 days after the end of each month.

In case where a UBO, a foreign custodian, or a foreign broker is unable to disclose or report the UBO information to the BOT through a local custodian, such person shall submit a waiving request application with reasonable rationale to seek waiving approval from the BOT by completing and passing on the application to the local custodian whose debt securities are deposited with (or to foreign custodian/broker, to be

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<sup>6</sup> The Circular Letter of the BOT No. ForBorKho.(Wor.) 38/2562 Re: *Amendments to the conditions and format of reporting requirements for ultimate beneficiary owners' holdings of debt securities issued in Thailand*, dated 12 July 2019 (the "**BOT Circular Letter No. 38/2562**").

<sup>7</sup> Ultimate Beneficial Owner means (1) a non-resident who ultimately owns debt securities issued in Thailand or ultimately receives benefits from such debt securities holdings; (2) a non-resident who has either direct or indirect power in making the decisions to own or invest in debt securities issued in Thailand, including a foreign mutual fund, private fund, trust, or any foreign funds which has the right to set investment policies on their ownership of debt securities.



forwarded to the local custodian), so that the local custodian shall be able to collect and submit those applications to the BOT.

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