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Navigating Asia
Your compass to cross-border fund distribution

HONG KONG

Level of complexity

Private placement

An offer to less than 50 people (including non-professionals) in Hong Kong is exempt from registration. However, the offering documentation must display a clear warning that no regulatory authority has reviewed or approved the document.

The offering period is usually for 12 months.

Offer to professional investors
Foreign funds are exempt from registration with the SFC when only targeting professional investors. Professional investors include among other financial institutions, collective investment schemes, financial intermediaries, corporate professional investors with total assets of at least HK$40 million & certain HNWI's having a portfolio of HK$8 million.

De minimis/minimum offers
An offer with an aggregate amount of less than HK$5 million is exempt from the prospectus requirements, provided that a prescribed warning is contained in the offering materials. The same applies if the minimum subscription amount is HK$500,000.

Level of complexity

Public Distribution

Preliminary requirements
The public distribution of foreign funds is subject to prior authorization by the SFC. The authorization process is complex, detailed and can be time consuming.

Various local investment restrictions apply to the fund. The fund manager/adviser and custodian must satisfy various requirements, including the need to be incorporated in jurisdictions acceptable to the SFC.

Local agents (mandatory)
A local representative must be appointed if the management company is not incorporated or has a place of business in Hong Kong. In addition, a correctly licensed local distributor is required.

Regulatory fee

- Application fee: HK$40,000 (umbrella fund)/HK$20,000 (single fund) + HK$5,000 per sub-fund
- Authorization fee: HK$20,000 (umbrella fund)/HK$10,000 (single fund) + HK$2,500 per sub-fund

Time to market (authorisation)
Depending on the complexity of the application, the following types of applications apply:

- Standard Application: Approval usually within 1 to 2 months
- Non-standard Application: Approval often within 2 to 3 months but can be longer

Other specifics
A local Key Fact Statement (KFS) must be issued based on the investment strategy, fund structure, details, etc.

The offering documents (prospectus, HK wrapper, KFS etc.) must be provided in English and Chinese.

Level of complexity

Tax reporting

No tax reporting requirements are imposed on the foreign fund in relation to Hong Kong investors. The foreign fund is not required to appoint a tax representative in Hong Kong.

Overall regulatory complexity

A regional snapshot of foreign fund distribution
Market Overview

An international finance market with high foreign fund penetration, moderate barriers to entry and an opportunity to distribute cross-border into the China's fund market, Hong Kong offers substantial opportunities to international fund managers. The local institutional market is significant and the primary target of many foreign funds to gain exemption from authorization if targeting professional investors. Retail distribution is a smaller segment of the total funds market and more complex to navigate with complex regulatory approval containing specific product investment restrictions, the need of a local representative and considerable time to market. International managers are able to access the new corporate style fund product and the opportunity to distribute directly to Mainland retail investors through a mutual recognition regime. Hong Kong is yet to agree to participate in the Asia Region Funds Passport regime.

AUSTRALIA

Level of complexity

Private placement

Private placement (either a "one-off" or as a repetitive activity) but undertaken towards only wholesale investors may be exempt from the need to:
01. Register the foreign collective investment scheme
02. Obtain an Australian financial services license (AFSL)

Relief from the need to prepare an Australian specific product Disclosure Statement (PDS) is available if:

- the price of the investment is at least AUD$500,000, or
- the investor has net assets of AUD$2.5 million, or
- has annual income of at least AUD$250,000, or
- the investor is defined as a "professional investor"

An Australian business license may still be required notwithstanding an exemption from needing an AFSL depending on the marketing activity.

An entity (or its representative), undertaking any form of marketing (inducement) or distribution of a foreign fund in Australia, (e.g. UCITS fund manager or AIFM), would usually need to hold an appropriate AFSL. Exemptions from needing an AFSL are available. However, the above exemption rules are likely to be changed and instead introduce the requirement of a foreign fund manager license.

Level of complexity

Public Distribution

Preliminary requirements
01. The foreign collective investment scheme satisfies regulations similar to a local fund and register with ASIC
02. The fund manager/promoter/marketing entity must hold an AFSL to conduct financial services in Australia or appoints a local agent with an AFSL
03. The offering documentation of the fund contains all appropriate disclosures

Reliefs/exemptions
The foreign collective investment scheme/fund manager may benefit from available exemptions from 1, 2 or 3 above under certain conditions subject to cooperation agreements in place between ASIC and a number of foreign regulatory authorities (of which the Luxembourg CSSF is NOT a party):

- Registration relief (no registration in Australia required)
- Licensing relief (for a foreign collective investment scheme operator)
- Product disclosure relief

The ASIC aims to process an AFSL application and product registration within 16 weeks. However, additional questions, confirmations and information will add to this timeline.

Authorisation and time to market
The cost of registering a foreign collective investment scheme is considerable (consider case-by-case) and the procedure can be very time consuming.

Other retail distribution methodologies
A UCITS can be indirectly marketed to Australian retail investors by means of establishing a publicly distributed Australian managed investment scheme as a feeder fund. Another strategy would be to clone part(s) of the UCITS into an Australian managed fund. These alternatives would mean establishing a branch or subsidiary in Australia that would hold an appropriate AFSL.

Level of complexity

Tax reporting

A foreign fund that is not registered in Australia, and does not have any business operations/physical assets in Australia, would not have any Australian tax reporting obligations.
The marketing and distribution activities of a foreign fund/manager in Australia may by such as to create a permanent establishment and subsequent tax presence.
A foreign fund holding Australian based investments as part of its portfolio may have WHT obligations. Australian investors in a foreign fund would usually need to disclose any income and/or gains derived from the foreign fund on an annual basis whether a distribution is paid or not. Therefore, at least an annual summary of the various income and capital gain components distributed or attributed to the Australian investor in respect of the income year, should be provided to allow Australian investors sufficient time to enable them to meet their tax obligations.
The tax year in Australia operates from 1 July to 30 June.
Any Australian investor in the foreign fund would need to disclose their interest in and any income derived from the foreign fund.

Overall regulatory complexity

A regional snapshot of foreign fund distribution
Market Overview

A sophisticated and mature market, Australia contains significant and growing opportunities for foreign fund managers looking to gather assets. However, with high barriers for entry including complex regulation, heavy licensing requirements and high levels of competition; retail fund distribution poses significant challenges for foreign funds. Foreign managers are more likely to find success in targeting key institutional and professional investors, (most notably large pension funds that have significant and growing asset bases and are increasing their exposure to foreign investments). Private placement rules permit foreign funds to target institutional type investors by removing many of the regulatory burdens associated with retail fund distribution. These include product registration, disclosure and licensing requirements, although this is likely to change in 2019 to a foreign fund license requirement. Australia is a key participant in the Asia Region Funds Passport regime and has launched a new corporate style fund.

SINGAPORE

Level of complexity

Private placement

It is possible to privately place foreign funds without authorization from the MAS or to prepare a Singapore prospectus, provided a maximum of only 50 investors over a 12-month period are targeted. This restriction includes offers that do not result in a subscription.

Offers to institutional investors
The distribution of foreign funds to institutional investors only, as defined, does not require authorization by the MAS nor the preparation of a local prospectus. However, in practice, the vast majority of Singapore domiciled institutional investors require foreign funds to be registered as "restricted schemes", due to their own internal investment requirements/criteria.

Offers to relevant persons (incl. accredited investors)
Preliminary requirements
Offering a foreign fund to accredited investors or relevant persons requires the fund to be included in the list of "restricted schemes" via a light notification process with the MAS. Fund documentation and information is required in English. A short version of prospectus is required.

Local agents (mandatory)
A local distributor must be appointed, that holds the necessary licenses (or is exempt from such a requirement).

Regulatory fee
S$250 must be paid per scheme via the CISNet platform for registration of a foreign fund on the list of "restricted schemes".

Time to market
The MAS approval is usually obtained within 2 to 3 business days after online completion and payment of the fee.

Level of complexity

Public Distribution

It is possible to distribute foreign funds to retail investors in Singapore where private placement is not suitable and the target investors do not satisfy the definitions of institutional or accredited investors. Retail distribution requires prior approval and authorization from the MAS.

Preliminary requirements
The foreign fund must be registered with the MAS as a "recognized scheme". The manager of the foreign fund must be licensed in its home jurisdiction and manage at least S$500 million of discretionary funds.

Local agents (mandatory)
A Singapore representative and local distributor must be appointed.

Regulatory fee

- Initial registration: S$2,000 for lodgment of prospectus + S$1,200 for each sub-fund to be registered
- Registration of new sub-funds: As above
- Lodge new prospectus: S$2,000
- Lodge supp. prospectus: S$2,000
- Lodge amendments to prospectus before registration: S$1,000 re-lodgment of the prospectus (in framework of annual filing): S$1,000

Time to market
The MAS approval can often be obtained within 21 business days after the file is submitted via the OPERA system.

Offering documents
A Singapore specific prospectus, (known as the Singapore "wrapper" prospectus) and Product Highlight Sheets (PHS) must be filed and approved by the MAS.

Level of complexity

Tax reporting

No tax reporting requirements are directly imposed on a foreign fund distributed either on a private placement, restricted or full public distribution basis, either to the MAS, Singapore tax administration or to local investors.

Overall regulatory complexity

A regional snapshot of foreign fund distribution
Market Overview

A large and growing private banking industry, a regional base for many international asset managers, Singapore is also a fund hub and by providing efficient market access it has the highest level of foreign fund penetration in Asia. Key foreign fund investors are institutional, professional and wealthy investors, successfully targeted via the "restricted scheme" regime that reduces or eliminates most regulatory requirements imposed on retail fund distribution. Market access remains straightforward and relatively quick and no specific tax reporting requirements are imposed. Whilst the banking sector is key to fund distribution, many other channels exist, including a growing IFA network. Many foreign funds target institutional investors; including the two large SWF's and an expanding pension fund industry that permits investment into foreign funds. Singapore is launching a new corporate style fund and participating in the ASEAN CIS cross-border fund regime, but is yet to join the Asia Region Funds Passport regime.

TAIWAN

Level of complexity

Private placement

Foreign funds (UCITS and AIF) can be privately marketed to institutional and sophisticated investors provided that the notification process is completed. All marketing materials must be approved by the regulator before their dissemination to investors in Taiwan. No public marketing is allowed under the private placement regime.

Institutional investors include most types of financial entities. Sophisticated investors include natural and legal persons, and funds that meet various asset thresholds.

A foreign fund manager may itself target an unlimited number of institutional investors. To target sophisticated investors (a maximum limit of 99 exists) a licensed private placement agent must be engaged (usually a SICE, SITE or bank).

Requirements to consider
01. Engaging a placement agent
02. Conducting investor(s) due diligence
03. Filings to SITCA post-sale within five days
04. Monthly reporting to SITCA
05. There are also rules on resale and investor disclosure

Local agents (mandatory)
A tax agent and a litigious agent must be appointed. Where sophisticated investors are targeted; a placement agent is also required.

Regulatory fee
No regulatory fees apply, but local agent fees will usually be incurred.

Time to market
No regulatory approval is required. However, the process could be delayed due to the need for local agents prior to commencing private placement.

Level of complexity

Public Distribution

Foreign funds are able to be publicly marketed in Taiwan provided that they have been duly registered with the FSC. A Taiwanese master agent must be appointed to act as local representative of the fund and lead distributor.

Preliminary requirements to consider
The foreign fund must be authorized for public distribution in its domicile. Both the fund manager and fund must satisfy strictly applied eligibility requirements and conditions on a range of topics, including net assets, experience levels, resources, processes, due diligence, credit ratings, and investment restrictions. The registration file typically includes confirmation letters, certificates, plans and documents evidencing many areas of fund operations; i.e. fund incorporation, annual reports, auditor confirmations, the investment portfolio, custody, derivatives used, and fund administration. Moreover, details of the working processes between the fund manager and the local master agent, together with a copy of their legal agreement must be included in the registration file.

Local agent (mandatory)
A local representative/master agent (or a local lawyer) must be appointed to perform initial and ongoing filings to the regulator.

Regulatory fee
SITCA fees range from NT$7,000 to NT$20,000 depending on the number of funds. No fees are charged by the FSC.

Time to market
SITCA usually takes approximately 1 month to review the application. Once approved, the file is submitted to the FSC for their review, which can take an additional 4 to 6 months.

Other specifics
An investor brochure/prospectus must be produced in Chinese.

Level of complexity

Tax reporting

There are no specific tax reporting requirements imposed on a foreign fund distributed in Taiwan for local investors or to the Taiwanese tax administration in connection solely with distribution.

Overall regulatory complexity

A regional snapshot of foreign fund distribution
Market Overview

With large and growing retail and affluent investor market segments, supported by a high savings rate, rapidly ageing population, and a strong interest in foreign investment, opportunities exist for foreign products. Foreign funds have been very successful with Taiwan (the third largest Asian market for UCITS), although time to market and other restrictions on retail distribution have increased significantly in recent times. Domestic funds are growing strongly and a number of large international managers have launched domestic fund ranges in recent years. Foreign managers are generally under pressure to increase their local substance. Strong cultural practices, regulations and tightly controlled distribution channels require the appointment of a local master agent, tax agent and litigious agent. Private placement to certain investors is possible and does reduce various regulatory requirements, although some initial and ongoing reporting is still required. Taiwan does not participate in the Asia Region Funds Passport regime.

SOUTH KOREA

Level of complexity

Private placement

Foreign funds can be privately marketed to Qualified Professional Investors (QPI) only provided that a basic registration with the FSC is completed.

Any private placement must be conducted by and through an appointed and appropriately licensed financial entity.

Preliminary requirements
Registration is performed via an application that includes various fund information and documents including disclosure of fees, due diligence and review of the asset manager and details of the local distributor appointed.

A QPI is defined to include government institutions, financial institutions, HNWI's meeting certain requirements, listed entities and investment funds.

Regulatory fee
No regulatory fees apply, but local legal fees would usually be incurred.

Time to market
As a less detailed registration, the FSC often takes 3 to 4 weeks to review the application. File preparation usually takes 2 to 3 weeks.

Level of complexity

Public Distribution

Foreign funds are able to be publicly marketed provided that they have been duly registered with the FSC. All public marketing must be conducted by a South Korean licensed financial entity appointed by the foreign fund as a distributor.

Preliminary requirements
A formal registration application, (a securities registration statement) is submitted to the FSC with all required supporting documentation, satisfaction of various investment restrictions and relevant information on the proposed distribution. The distribution agreement must also be included. The notification file is submitted to the FSC via the online DART system. There are also ongoing regulatory reporting, usually the responsibility of the local distributor.

Local agents (mandatory)
A local agent, distributor and custodian must be appointed. Note: An offshore fund to be sold only to a Korean domiciled feeder fund is no longer required to appoint a Korean distributor with respect to its sales to the feeder fund. Nevertheless, the requirement for a local distributor in case of direct sales to end investors is still applicable.

Regulatory fee
No registration fee applies. An annual registration tax fee payable (KRW67,500).

Time to market
In practice, the preparation of the application package lasts approximately 2 months, and another 1-2 months are required for regulator's review. Therefore, the registration can be completed within 4-6 months.

Level of complexity

Tax reporting

To allow Korean resident investors to take advantage of the tax exemption, a "qualifying fund" will need to calculate and report a specific Korean Taxable NAV ("KTNAV") for those investors to determine the taxable portion of their investment in the "qualifying fund".

Overall regulatory complexity

A regional snapshot of foreign fund distribution
Market Overview

South Korea has a strong savings culture, an ageing population and reforms aimed at boosting pension assets. Both the retail and institutional segments are large, especially HNWI's. The institutional target market is expected to enjoy strong asset growth in the medium to long-term as pension funds benefit from regulations increasing their assets and permitted exposure to foreign investments. South Korea has a strongly localized market and foreign funds have enjoyed mixed success at the retail level with modest penetration over the years. Local feeder funds are often used to attract retail sales. The regulatory requirements are significant, especially for retail distribution. Private placement is also used by foreign funds towards various qualified professional investors and requires a "light" approval process. More stringent requirements apply to retail distribution. Qualifying funds must perform country-specific tax reporting to allow their investors to benefit from tax exemptions. South Korea is a participant in the Asia Region Funds Passport regime.

JAPAN

Level of complexity

Private placement

Where a foreign fund is privately marketed to less than 50 local investors, the fund would be exempted from the need to be authorized by the FSA for public offering and to prepare a Japanese prospectus. An exemption further applies to certain periodic reporting obligations and on certain obligations imposed on Public Offerings to the FSA. "Marketing documentation" must indicate, inter alia, that the fund is privately placed. However, ITICA rules still require the privately placed foreign fund to submit a SRS in Japanese to the FSA in order to register the fund prior to the offering of any securities in Japan.

Local agents (mandatory)
A legal representative, usually the locally appointed lawyer; a local distributor licensed to conduct any marketing activities in Japan (Type 1 or Type 2 Broker Dealer).

Qualified institutional investors
Where the fund is privately placed towards an unlimited number of Qualified Institutional investors only, the above exemptions also apply.

Professional investors
Where the fund is privately placed towards an unlimited number of Professional Investors only, the above exemptions also apply.

Need for registration
Irrespective of the type of private placement regime used as indicated above, a "Registration Statement" must be submitted to the FSA in order to register the foreign fund.

Regulatory fees
No regulatory fees apply, but local legal fees and fees for local licensed distributor(s) will be incurred and can be substantial.

Time to market
The local legal expert submits the "Registration Statement" as representative on behalf of the foreign fund to the FSA. Marketing can commence the day after the submission of the "Registration Statement" towards the FSA.

Level of complexity

Public Distribution

Preliminary requirements
It is possible to publicly distribute foreign funds in Japan, but the process is complex and the time to market can be cumbersome. Only a limited number of foreign funds are authorized for public distribution in Japan.

Local agents (mandatory)
A legal representative, usually the locally appointed lawyer; a Japanese agent of the management company ("Agent Association Member"). This entity is authorized to conduct any judicial or extrajudicial acts in Japan vis-à-vis the JSDA and FSA to perform the requirements under the JSDA rules; a local distributor licensed to conduct any marketing activities in Japan (Type 1 or Type 2 Broker Dealer).

Documentation to be submitted for initial registration
Specific documentation in accordance with both JSDA Regulations and other relevant regulatory provisions must be prepared and submitted in the appropriate formats for the JSDA, FSA and KLFB, such as the Securities Registration Statement in Japanese.

Documentation to be submitted periodically
Specific documentation need to be submitted to the JSDA, FSA and/or KLFB on a semi-annual or annual basis such as: SRS (as it expires in one year) and any amendment thereto; annual and semi-annual Securities Report; annual Investment Management Report; prospectus in Japanese; extraordinary Report in case of any material changes or any significant event for the foreign fund such as replacement of related parties to the fund, an amalgamation or termination of the fund.

Regulatory fees
No filing fees apply, but legal fees and fees for local licensed distributor(s) will likely be incurred to assist in the process.

Time to market
Once all documentation is prepared and submitted , the FSA may take between 4 to 8 weeks for review and approval (subject to the absence of any unexpected difficulties). It would usually take approximately 2 months for the preparation of the application file.

Level of complexity

Tax reporting

There are no tax reporting requirements imposed on a foreign fund marketed in Japan.

Overall regulatory complexity

A regional snapshot of foreign fund distribution
Market Overview

A highly "localized" market with strong cultural practices, complex regulations and concentrated distribution channels, makes direct foreign fund distribution a significant challenge, especially so at the retail level. Government policies are attempting to shift the massive levels of household wealth out of bank deposits and into higher yielding investments. Coupled with local institutional investors seeking greater offshore exposure, foreign fund managers have significant market opportunities. The use of local feeder funds and private placement are popular strategies. Retail distribution is complex and securing appropriate local distributors is essential for success. Japan is a key participate country in the Asia Region Funds Passport regime.

PEOPLE'S REPUBLIC OF CHINA

A regional snapshot of foreign fund distribution
Market Overview

There are currently no regulations available that permit the authorization or direct registration of foreign funds for either public or private distribution in China (except for certain funds domiciled in Hong Kong, Macau or Taiwan where specific regulatory arrangements are in place that enable some form of distribution). Alternatively, foreign fund managers could establish Chinese domiciled investment funds (typically through joint ventures with Chinese licensed asset managers or more recently wholly owned fund companies using the Qualified Domestic Limited Partner (QDLP) private funds regime to raise funds in China and invest in overseas secondary markets).

However, since 2006 the Qualified Domestic Institutional Investor (QDII) regime permitted certain types of Chinese investors to access foreign investment funds via approved domestic financial entities. The QDII is subject to a quota system and investment restrictions that limits the total amount of such investments.

Since 2014, qualified fund management companies are able to set-up funds in Shenzhen, and these funds are able to invest in overseas markets that may include funds. The QDIE is subject to a quota system.

Please note that this brief summary will be expanded to a more detailed analysis of the Chinese financial services and funds management sector in the next periodic update.

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