

MEMORANDUM OF UNDERSTANDING ON THE ASEAN COMMON PROSPECTUS STREAMLINED REVIEW FRAMEWORK

A. This Memorandum of Understanding sets out the understanding amongst the Signatories in respect of a framework for the streamlined review of applications for approval to list or make offers of Equity Securities or Plain Debt Securities in multiple ASEAN jurisdictions and of Prospectuses to be issued in relation to such offers (“**Framework**”).

B. The Framework is developed pursuant to the ASEAN Capital Markets Forum (“**ACMF**”) Implementation Plan endorsed at the 13th ASEAN Finance Ministers Meeting.

C. The objective of the Framework is to facilitate cross-border offerings of Equity Securities and Plain Debt Securities in ASEAN jurisdictions to foster ASEAN capital markets integration.

1. Definitions

For the purposes of this Framework (including the Appendices), unless the context requires otherwise:

“**ACMF member**” means the securities regulator of an ASEAN jurisdiction;

“**AML/CFT**” means Anti-Money Laundering and Combating the Financing of Terrorism;

“**ASEAN Disclosure Standards**” means the ASEAN Equity Securities Disclosure Standards and the ASEAN Debt Securities Disclosure Standards as revised from time to time;

“**Authority**” means an ACMF member, or, in an ASEAN jurisdiction where applications to list on the main board of its stock exchange are reviewed and subject to approval by the stock exchange, the ACMF member and the stock exchange of that jurisdiction, and all ACMF members and such stock exchanges are collectively referred as “**the Authorities**”;

“**CRA**” means credit rating agency;

“**director**”, in relation to a corporation, includes:

- (a) a member of the corporation’s board of directors, board of commissioners or equivalent governing body by whatever name called;
- (b) a person in accordance with whose directions or instructions the members of the corporation’s board of directors, board of commissioners or equivalent governing body (by whatever name called) is accustomed to act; and

- (c) an alternate or substitute member of the corporation's board of directors, board of commissioners or equivalent governing body by whatever name called.

“Issuer” means a corporation that intends to submit to two or more Signatories –

- (a) an application for approval to list (other than by way of introduction) or to make an offer of Equity Securities or Plain Debt Securities and a Prospectus for registration in relation to such an offer or
- (b) a Prospectus for registration in relation to such an offer ;

“Equity Securities” means shares or stocks in a corporation other than shares or stocks in a special purpose acquisition company or units in a real estate investment trust, business trust or closed-end fund;

“FATF” means the Financial Action Task Force;

“Plain Debt Securities” has the meaning ascribed to it under the ASEAN Debt Securities Disclosure Standards;

“Home Jurisdiction”, in relation to an Issuer, means the jurisdiction as determined under Article 4;

“Home Authority”, in relation to an Issuer, means the Signatory whose jurisdiction is the Home Jurisdiction of the Issuer;

“Host Jurisdiction”, in relation to an Issuer, means a jurisdiction, other than its Home Jurisdiction, in which the Issuer seeks to list or offer Equity Securities or Plain Debt Securities and to register its Prospectus to be issued in relation to such an offer;

“Host Authority”, in relation to an Issuer, means a Signatory whose jurisdiction is a Host Jurisdiction of the Issuer;

“International CRA” means Standard & Poor's, Moody's Investor Service or Fitch Ratings;

“IOSCO” means the International Organization of Securities Commissions;

“Laws and Regulations” means any law, regulation or regulatory requirement applicable in the jurisdiction of a Signatory, and where the context permits includes any rule, direction, requirement, or policy made or given by or to be taken into account by the Signatory in its jurisdiction, and includes such rules and requirements imposed by the respective stock exchanges;

“Prospectus” means a prospectus that is required to be issued by an Issuer under the Laws and Regulations of its Home Jurisdiction or a Host Jurisdiction when making a public offer of Equity Securities or Plain Debt Securities and that is prepared in accordance with the ASEAN Equity Securities Disclosure Standards or ASEAN Debt Securities Disclosure Standards respectively;

“**person**” means a natural person, legal entity, partnership or unincorporated association;

“**Signatory**” means any Authority who has signed this Framework and is listed in Appendix A to this Framework, and all the Authorities who have signed this Framework and are listed in Appendix A to this Framework are collectively referred to as “**the Signatories**”; and

“**Signatory Jurisdiction**” means the jurisdiction of a Signatory, and jurisdictions of all the Signatories are collectively referred to as “**the Signatory Jurisdictions**”.

An Issuer is considered to be “**primary-listed**” on an exchange A if, under the terms of its listing on exchange A, the Issuer is required to comply with the ongoing obligations or requirements of exchange A.

An Issuer is considered to be “**secondary-listed**” on an exchange B if-

- (a) it is already or will be concurrently primarily-listed on an exchange A; and
- (b) under the terms of its listing on exchange B, the Issuer is not required to comply with the ongoing obligations or requirements of exchange B or other relevant authorities in the jurisdiction where exchange B is situated, save for specific obligations or requirements that exchange B or the relevant authorities may impose.

2 **Pre-requisites to Becoming a Signatory**

2.1 Any Authority may become a Signatory under this Framework provided all the following are satisfied:

2.1.1 The ACMF member must be listed on Appendix A of the IOSCO Multilateral Memorandum of Understanding (“**IOSCO MMOU**”) Concerning Consultation and Cooperation and the Exchange of Information;

2.1.2 The ACMF member’s jurisdiction must have been assessed to have at least “Broadly Implemented” IOSCO Principles 16, 17 and 18 pursuant to the IOSCO Principles Assessment and Implementation Program or the Financial Sector Assessment Program (“**FSAP**”) as follows:

- (a) Principle 16 – There should be full, accurate and timely disclosure of financial results, risk and other information, which is material to investors’ decisions.
- (b) Principle 17 – Holders of securities in a company should be treated in a fair and equitable manner.

- (c) Principle 18 – Accounting standards used by Issuers to prepare financial statements should be of a high and internationally acceptable quality;
- 2.1.3 The ACMF member’s jurisdiction must not be listed by FATF as a “non-cooperative country” due to a deficiency with regard to the AML/CTF measures in its securities regulatory regime;
- 2.1.4 The ACMF member’s jurisdiction must have implemented the ASEAN Disclosure Standards such that Prospectuses intended to be used for offers in two or more Signatory Jurisdictions must comply with the ASEAN Disclosure Standards;
- 2.1.5 Where the ACMF member’s jurisdiction is a Host Jurisdiction, the Laws and Regulations of the ACMF member’s jurisdiction does not prevent debenture trustees or bondholder representatives who are registered or licensed under the Laws and Regulations of the Home Jurisdiction to be appointed as trustees or bondholder representatives for holders of the Plain Debt Securities within the ACMF member’s jurisdiction; and
- 2.1.6 Regulatory mapping of the relevant Laws and Regulations of the ACMF member’s jurisdiction against the Laws and Regulations of the jurisdictions of other ACMF members who are applying to or have already signed this Framework is satisfactory to all the other ACMF members who are applying to or have already signed this Framework.

3 General Principles

- 3.1 This Framework serves as a basis for co-operation among the Signatories and does not modify or supersede any Laws and Regulations in force or applying in their respective jurisdictions. This Framework does not create any enforceable rights, nor does it affect any arrangements between the Signatories under any other Memoranda of Understanding.
- 3.2 The performance of the provisions of this Framework will be consistent with and subject to the Laws and Regulations, and conventions of the respective jurisdictions of the Signatories and the performance of the provisions will not be contrary to the public interests of their respective jurisdictions, including essential national interests.
- 3.3 This Framework sets out the parameters for the streamlined review of an application for approval to list or make an offer of Equity Securities or Plain Debt Securities in its Home Jurisdiction and one or more Host Jurisdictions and of Prospectuses to be issued in relation to such an offer.

4. Determination of Home Jurisdiction

- 4.1 Subject to Article 4.2, the Home Jurisdiction of an Issuer is the Signatory Jurisdiction in which it is or will be primary-listed.
- 4.2 Where the Issuer is or will be primary-listed in more than one Signatory Jurisdiction, the Home Jurisdiction will be determined as follows:
- (a) If the Issuer is incorporated in one of the Signatory Jurisdictions in which it is or will be primary-listed, the Home Jurisdiction will be the Signatory Jurisdiction in which it is incorporated; or
 - (b) If the Issuer is not incorporated in one of the Signatory Jurisdictions in which it is or will be primary-listed, the Home Jurisdiction will be the Signatory Jurisdiction chosen by the Issuer to be the Home Jurisdiction for the purpose of this Framework.

5. Streamlined Review

- 5.1 Provided that the Issuer satisfies the criteria set forth in Article 6, when
- (a) an application for approval to list (other than by way of introduction) or to make an offer of Equity Securities or Plain Debt Securities; and a Prospectus to be registered and issued in relation to such an offer; or
 - (b) a Prospectus to be registered and issued in relation to such an offer
- are submitted by an Issuer to its Home Authority and one or more Host Authorities for approval or registration, the Home Authority and the Host Authority(ies) will, within the parameters of this Framework, aim to review the application and the Prospectus, and inform the Issuer of the result of the application and the result of the review of the Prospectus within **3 to 4 months** from the date of submission of the application and Prospectus.
- 5.2 Signatories will develop a Streamlined Review Protocol to facilitate the expedited review envisaged under Article 5.1.

6. Criteria for Issuers

- 6.1 The Issuer must satisfy the following criteria:
- 6.1.1 it must be incorporated in a Signatory Jurisdiction;
 - 6.1.2 it must have sufficient connection with a Signatory Jurisdiction; and
 - 6.1.3 (a) in the case of an Equity Securities offer,

(i) it is or will be primary-listed on the main board of at least one stock exchange situated in any Signatory Jurisdiction provided that where the Issuer is or intends to be primary-listed on the main board of more than one such stock exchange, the Issuer has consulted ~~with and obtained the consent of~~ the Authorities of all the Signatory Jurisdictions in which the offer will be made prior to submitting its application and/or prospectus for the streamlined review contemplated under Article 5; and

Comment [m1]: Amendment suggested by SEC Thailand. Consent of the Authorities should not be required in order for the Issuer to have multiple primary listings. Such an Issuer need only consult with the Authorities so that the Authorities may consider how the Issuer may comply with the ongoing listing requirements of all the jurisdictions in which it will be primary-listed.

(i) it is or will be in full compliance with all applicable listing requirements of the exchange on which it is or will be primary-listed without any waiver of such requirements; or

(b) in the case of a Plain Debt Securities offer,

(i) it is already primary-listed on the main board of at least one stock exchange situated in any Signatory Jurisdiction provided that where the Issuer is already primary-listed on the main board of more than one such stock exchange, the Issuer has consulted ~~with and obtained the consent of~~ the Authorities of all the Signatory Jurisdictions in which the offer will be made prior to submitting its application and/or prospectus for the streamlined review contemplated under Article 5;

Comment [m2]: See previous comment for the rationale for this amendment.

(ii) the Plain Debt Securities have been rated by an International CRA; and

(iii) the Issuer will be making the Plain Debt Securities offer in its Home Jurisdiction.

6.2 For the purpose of Article 6.1.2, an Issuer will be considered as having sufficient connection with a Signatory Jurisdiction if –

6.2.1 the majority of its non-independent directors are ordinarily resident in that Signatory Jurisdiction; and

6.2.2 either –

(a) the majority of the voting rights of its shares are held ultimately by an individual or individuals who are ordinarily resident in that Signatory Jurisdiction; or

(b) its main operations are located in that Signatory Jurisdiction.

6.3 For the purpose of Article 6.2:

- (a) an individual is ordinarily resident in a Signatory Jurisdiction if he has been physically within that Signatory Jurisdiction for at least 180 days in the preceding 12 months; and
- (b) the main operations of an Issuer are deemed to be located in a Signatory Jurisdiction if –
 - (i) More than 50% of its employees are located in one or more Signatory Jurisdictions;
 - (ii) More than 50% of its fixed assets are located in one or more Signatory Jurisdictions; or
 - (iii) More than 50% of its revenue in the 3 most recent financial years is derived from one or more Signatory Jurisdictions (being the country or countries where more than 50% of its revenue is booked or the majority of its customers are located).

6.4 For the avoidance of doubt, the Signatory Jurisdiction referred to in Articles 6.1.1, 6.1.2 and 6.1.3 need not be the same Signatory Jurisdiction.

7. Cooperation and Exchange of Information

7.1 Any exchange of information made for the purposes set out in this Framework will be made through the Signatories within the terms, and subject to the conditions, of this Framework and, where applicable, the IOSCO MMOU.

7.2 The Signatories will cooperate and share information for the purposes of this Framework, to the extent permissible under the Laws and Regulations of their respective jurisdictions, as follows:

7.2.1 The Home Authority and the Host Authority(ies) of an Issuer will inform one another of the comments and issues that they have raised with the Issuer in respect of the Issuer's application for approval to list or make an offer and in respect of the Issuer's Prospectus in accordance with the Streamlined Review Protocol ~~set out in Appendix C~~ to be developed by the Signatories;

Comment [m3]: Amendment suggested by SEC Thailand.

7.2.2 The Home Authority and the Host Authority(ies) will share substantive feedback and comments on the Issuer's Prospectus that it may receive through public exposure of the Prospectus in accordance with the Streamlined Review Protocol ~~set out in Appendix C~~ to be developed by the Signatories;

Comment [m4]: Amendment suggested by SEC Thailand.

7.2.3 The Home Authority and the Host Authority(ies) of an Issuer will inform one another regarding any application by the Issuer for waiver or exemption in respect of any Prospectus disclosure requirements before making a decision on the application in accordance with the

Streamlined Review Protocol ~~set out in Appendix C~~ to be developed by the Signatories;

Comment [m5]: Amendment suggested by SEC Thailand.

- 7.2.4 A Host Authority of an Issuer may request the Home Authority of that Issuer to provide information in the possession of the Home Authority that is necessary to assist in expediting its review of the Issuer's Prospectus, and the Home Authority will provide the information requested provided that it is practicable for the Home Authority to do so taking into consideration the sensitivity of such information;
- 7.2.5 A Home Authority of an Issuer may request the Host Authority of that Issuer to provide information in the possession of the Host Authority that is necessary to assist in expediting its review of the Issuer's Prospectus, and the Host Authority will provide the information requested provided that it is practicable for the Host Authority to do so taking into consideration the sensitivity of such information;
- 7.2.6 Where a Signatory is prevented by the Laws and Regulations of its jurisdiction to exchange information with another Signatory, it will endeavour to accord assistance to the other Signatory to the extent such assistance is permitted by its Laws and Regulations;
- 7.2.7 The Signatories will consult with one another on any relevant matters arising from this Framework; and
- 7.2.8 The Signatories will inform one another of any significant change in the Laws and Regulations of their respective jurisdiction, which affects or is relevant to this Framework, or will have significant impact on the protection afforded to shareholders or investors in Issuers that have made offerings using this Framework.

8. Confidentiality

- 8.1 Assistance or information will be provided under this Framework by one Signatory (“**the Disclosing Signatory**”) only for the purpose of assisting another Signatory (“**the Receiving Signatory**”) in the performance of its regulatory functions under this Framework. Any non-public information provided under this Framework should only be used by the Receiving Signatory for such purpose and should not be disclosed to any third parties without the prior consent of the Disclosing Signatory except when such disclosure is required pursuant to a legally enforceable demand. Each Signatory will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.
- 8.2 If a Receiving Signatory intends to use or disclose information furnished under this Framework for any purpose other than those stated in this Framework and in the request for the information, including the transmission of the information to other competent authorities, it must obtain the prior written consent of the Disclosing Signatory, which provided the information except when such disclosure is required pursuant to a legally enforceable

demand. The Disclosing Signatory may give consent subject to such conditions as it may impose at its discretion.

8.3 When the Receiving Signatory, upon obtaining the prior written consent of the Disclosing Signatory, discloses information to another person, the Receiving Signatory will obtain an undertaking from such other person that it will maintain the confidentiality of the information, except when such disclosure is required pursuant to a legally enforceable demand.

8.4 In the event of a legally enforceable demand, the Receiving Signatory will notify the Disclosing Authority prior to complying with the demand, and will assert such appropriate legal exemptions or privileges with respect to such information as may be available. The Receiving Authority will use its best efforts to protect the confidentiality of non-public information received under this MOU.

9. Signing Procedure

Authorities may become Signatories in accordance with the procedures set out in *Appendix B*.

10. Additional Signatories

Additional Authorities may be added as Signatories under *Appendix A* of this Framework in accordance with the procedures set forth in *Appendix B* of this Framework upon meeting the requirements of this Framework.

11. Effective Date

11.1 Cooperation in accordance with this Framework will commence with effect from a date to be agreed among the first Signatories to this Framework.

11.2 For any additional Authority who signs on thereafter, the Framework will be effective in respect of that Authority from the date on which it becomes a Signatory.

12. REVISIONS

This MOU may be amended or revised with mutual written consent of the Signatories from time to time in light of the experience in applying this MOU, in order to improve the efficacy of the MOU herein. In addition, before amending or revising the MOU, the ACMF Secretariat may request comments on the proposed amendments from all ACMF members.

13. Termination

13.1 Signatories to this Framework may terminate their participation in this Framework at any time by giving at least 30 days prior written notice to every other Signatory.

- 13.2 In the event of the termination of a Signatory's participation in this Framework, information obtained under this Framework will continue to be treated confidentially in the manner prescribed in Article 8 and cooperation under this Framework will continue among the other Signatories.

VERSION dated 25 Aug 2014

APPENDIX A – LIST OF SIGNATORIES
[To be completed.]

APPENDIX B - SIGNING PROCEDURE

Application to Become a Signatory to the ASEAN Capital Markets Forum's (ACMF) MEMORANDUM OF UNDERSTANDING ON THE ASEAN COMMON PROSPECTUS STREAMLINED REVIEW FRAMEWORK

1. ACMF members who satisfy Article 2 of this Framework are eligible to apply to participate in this Framework at any time. Applications should be submitted to the ACMF Secretariat, who will administer the procedures for members wishing to sign on to this Framework.
2. ACMF members will rely on the results rated by Financial Sector Assessment Program (FSAP) or the IOSCO Principles Assessment and Implementation Program of attaining at least a "Broadly Implemented" rating for IOSCO Principles 16, 17 and 18 in order to qualify to sign onto this Framework. Applicants should provide the relevant supporting documents to the ACMF Secretariat when applying to sign onto this Framework.
3. Upon receiving an application to become a Signatory to this Framework, the ACMF Secretariat will:
 - (i) check the application to verify the following:
 - a) all questions have been answered;
 - b) the exact location of any supporting material that is to be found on web page(s), if any, is clearly stated (if necessary); and
 - c) the application includes complete contact details of at least one (1) contact person;
 - (ii) circulate to each existing Signatory to the Framework, a copy of the application together with copies of all supporting documents submitted by the applicant;
 - (iii) compile a questionnaire for the purpose of the regulatory mapping required under Article 2.1.6 of this Framework and forward the questionnaire to the applicant for completion;
 - (iv) coordinate with the applicant and the existing Signatories on the regulatory mapping;
 - (v) provide general administrative support to the existing Signatories for the purpose of the application and act as the main point of contact between the Signatories and the applicant;
 - (vi) monitor progress of the application;
 - (vii) put up the application to the existing Signatories for approval; and
 - (viii) maintain Appendix A, which is the list of Signatories to this Framework.

Application to Become a Signatory to the ASEAN Capital Markets Forum's (ACMF) MEMORANDUM OF UNDERSTANDING ON THE ASEAN COMMON PROSPECTUS STREAMLINED REVIEW FRAMEWORK

I. APPLICANT INFORMATION

1. Jurisdiction: _____

2. Name and description of authorities:

3. Contact(s) (name, job title, email, telephone and fax):

II. QUESTIONS

GENERAL INSTRUCTIONS:

The responses to the questions below and the accompanying supporting documents should be provided in English.

The following questions request for information indicating your ability to satisfy the pre-requisites for becoming a Signatory to the ACMF Memorandum Of Understanding on the ASEAN Common Prospectus Streamlined Review Framework ("the Framework").

Please provide your response to each question, and where applicable, any relevant documents that support each response.

Completed application forms should be sent to the ACMF Secretariat.

Completed application forms will be reviewed in accordance with the procedures described in **Appendix B** of the Framework.

QUESTIONS:

1. Is the securities regulator in your country listed in Appendix A of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information?

YES NO

(As required by Article 2.1.1 of the Framework)

2. Has your country been assessed to have attained at least the "Broadly Implemented" rating for IOSCO Principles 16, 17 and 18, pursuant to the IOSCO Principles Assessment and Implementation Program or the Financial Sector Assessment Program (FSAP)?

YES NO

If answered "NO", please answer following questions:

- a) Which Principle has been rated lower than "Broadly Implemented"?

(As required by Article 2.1.2 of the Framework)

- b) Please provide a description of measures that have been implemented to address the shortcomings on principles specified in a).

3. Has your country been listed as a “Non-cooperative country” by Financial Action Task Force (FATF) due to a deficiency with regards to Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) measures in its securities regulatory regime?

YES NO

(As required by Article 2.1.3 of the Framework)

4. Has your country implemented the ASEAN Disclosure Standards such that Prospectuses intended to be used for offers in two or more Signatory Jurisdictions must comply with the ASEAN Disclosure Standards)?

YES NO

(As required by paragraph 2.1.4 of the Framework)

For each question above, please provide supporting documents.

Authorised Signatory of the ACMF Member: _____

Title : _____

Date (dd/mm/yy) : _____

If you have any queries when completing this application form, please do not hesitate to contact the ACMF Secretariat.

VERSION dated 25 Aug 2014