

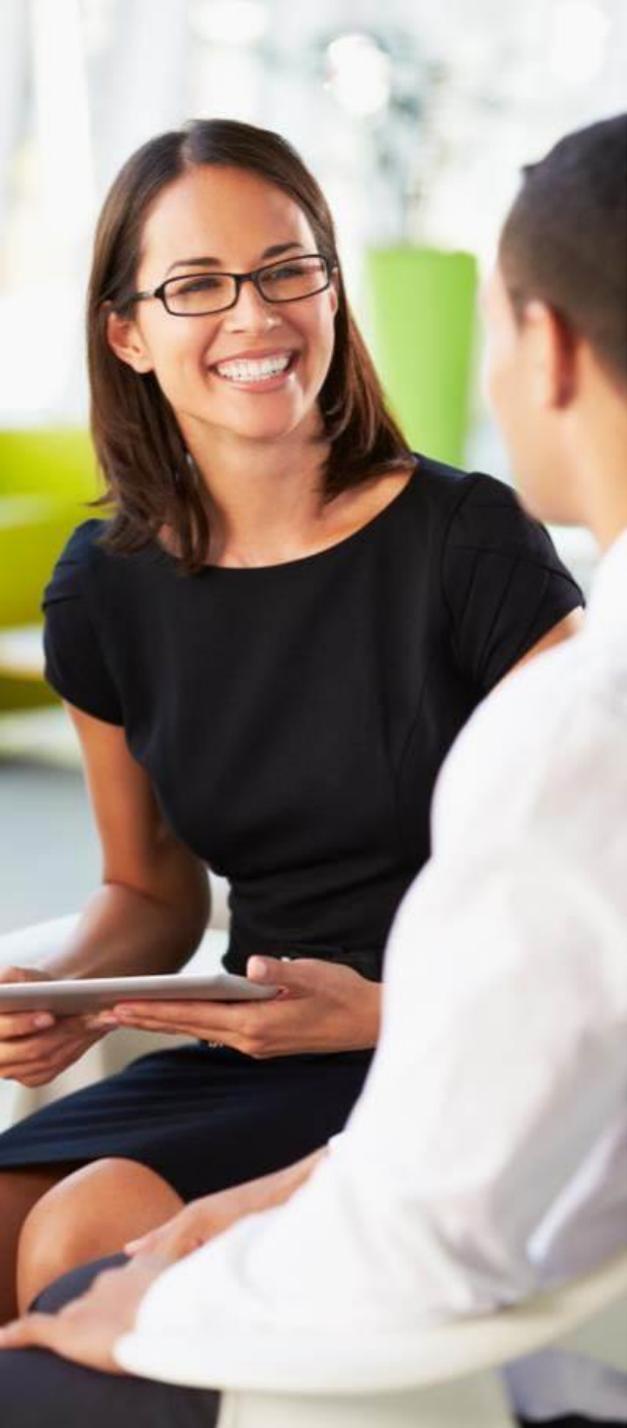
**Baker  
McKenzie  
Wong & Leow.**

# Global Regulatory Roundup and Updates - Asia

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# Agenda

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# 1

## Introduction



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Hong Kong

# Hong Kong

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## Amendments to the Code on Unit Trusts and Mutual Funds (UT Code)

- The revised UT Code effective on 1 January 2019:
  - applies to new schemes and new investment managers immediately;
  - 12-month transition period for existing schemes and existing operators
- Public fund experience requirement of the key personnel may be satisfied on a group-wide basis
- Enhanced scope and level of review of internal controls and systems so as to further strengthen the ongoing monitoring on trustees / custodians
- In relation to derivative funds, the revised UT Code specifies how derivative exposure is calculated
- Amendments to the categories of scheme changes that require SFC's prior approval

# Hong Kong

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## Mutual recognition of funds and ETF Connect

- Mutual recognition of funds: extended to UK in 2018 and Luxembourg in 2019 (other existing jurisdictions are mainland China, Switzerland and France)
- ETF Connect between mainland China and Hong Kong is yet to be introduced, as SFC is still working with relevant Chinese authorities on different options and technical issues
- One option that SFC and the Chinese authorities are considering is to implement ETF Connect through the mutual recognition of funds between mainland China and Hong Kong
- Current difficulties of implementing ETF Connect through the mutual recognition of funds include a long approval process and relatively stringent eligibility requirements

# Hong Kong

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## ESG funds

- Increasing regulatory scrutiny on funds focused on climate, green, environmental or sustainable development
- The SFC published a strategic framework in September 2018 which set out its agenda to contribute to Hong Kong's green finance development, and has continued to survey market practice
- In December 2018, the SFC conducted a soft consultation meeting with industry participants regarding eligibility and disclosure requirements for Green/ESG funds
- Area of increasing interest from the SFC:
  - Environmental disclosures by listed companies
  - Integration of ESG factors by asset managers into their own investment processes

# Hong Kong

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## CSRC allows HK entities to provide investment advisory services and research reports to mainland Chinese investors

With effect from 1 July 2018:

- Chinese fund managers can now directly engage Hong Kong asset managers with both Type 4 (advising on securities) and Type 9 (asset management) licenses granted by SFC
- Such Hong Kong asset managers will now be permitted to act as investment advisors to domestic Chinese funds that invest in HK equities via Stock Connect
- Research reports limited to “southbound” stocks (i.e. HK-listed equities eligible for Stock Connect) issued by HK institutions with Type 4 licenses will now be permitted to be distributed in mainland China subject to certain conditions



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Thailand

# Thailand

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## Additional foreign collective investment scheme for offering to Thai investors

- Adding to CIS established under the ASEAN MOU ("ASEAN CIS"), the Thai SEC has issued a new regulation, effective as of 16 February 2018, which allows these 2 additional types of CIS to be eligible:
  - CIS established pursuant to the Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport ("ARFP CIS"); and
  - foreign exchange traded fund
- these three types of CIS must meet certain conditions to be eligible for unit offering

# Thailand

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## Relaxation of language requirement for filing documents of CIS operators

- on 16 February 2018, the Thai SEC permitted the submission of documents in Thai or English, or both:
- note requirements for filing translated documents

# Thailand

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## Additional restrictions on outsourcing requirements

- new outsourcing regulation issued on 1 October 2018 (with effect from 16 November 2018)
- aimed at relaxing outsourcing requirements
- regulation revised to impose the empty box restriction on every type of securities company (including private fund management company)

# Thailand

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## Fund governance

- Thai SEC plans to amend the Securities and Exchange Act to impose fiduciary duties on Thai asset management companies
- to require Thai asset management companies appoint Investment Management Compliance Officer to monitor asset management functions
- the Investment Management Compliance Officer must:
  - be independent from management of the asset management company (e.g.by being appointed by and reporting directly to the board of directors);
  - be under the supervision of a high-ranking managing officer; and
  - have sufficient knowledge and capability to perform their duties
- asset management company must report the information on the Investment Management Compliance Officer, including their duties, to the Thai SEC



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Malaysia

# Malaysia

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## Revisions to the SC Guidelines on Compliance Function for Fund Management Companies (updated 17 December 2018)

Some of the new Compliance Guidelines revisions include the following:

- New requirement to clarify the expectations on treatment of client's money, namely to ensure that the:
  - account must be designated or evidenced as trust; and
  - clients' assets must be transferred to the trust account maintained by the custodian not later than the next business day; and
- Clarification on the custodial arrangement under an omnibus structure that a digital investment management company ("DIM Company") shall comply with, among others include:
  - co-mingling of assets at custodian level is confined to clients of the same DIM Company;
  - in terms of naming conventions, "clients' account" or "clients' trust account" is maintained in substitution of the unique identifier of client;
  - clients agree to have their assets held under an omnibus structure;
  - clients are notified of the risks of their assets held under an omnibus structure and information relating to the custodial arrangement; and
  - the custodian conducts daily reconciliation of the trust against third-party records, maintains records that enable assets to be identified to the DIM Company, and immediately credits into the trust account all proceeds generated from the clients' investments.

# Malaysia

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## New Guidelines on Compliance with the Continuing Professional Education Requirement (1 August 2018)

- This introduces the framework on Continuing Professional Education (CPE) obligations that will apply to asset managers.
- Under this framework, asset managers will be required to obtain 20 CPE points in a year on or before the anniversary date of their licence or cycle period in order to continue carrying out their regulated activity.



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Australia

# Australia

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## ASIC releases suite of new updated Regulatory Guides for the funds management industry – July 2018

- ASIC issued 7 new updated regulatory guides which has been updated for changes arising from the Asia Region Funds Passport and also updates and consolidates all of ASIC's funds management policies to help promote industry-wide consistency:
  - RG 131 Funds management: Establishing and registering a fund
  - RG 132 Funds management: Compliance and oversight
  - RG 133 Funds management and custodial services: Holding assets
  - RG 134 Funds management: Constitutions
  - RG 136 Funds management: Discretionary powers
  - RG 137 Constitution requirements for schemes registered before 1 October 2013
  - RG 138 Foreign passport fund

# Australia

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## Bill for new design and distribution, and ASIC product intervention powers, introduced – September 2018

- Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Bill 2018 introduces new design, distribution regime to improve consumer protection for financial, credit products
- Significantly amends Corporations Act 2001 and National Consumer Credit Protection Act 2009
- The obligations will affect:
  - product offerors who prepare product disclosure statements (insurers and asset managers); and
  - distributors who arrange for the issue of products and distribute disclosure documents (fund managers)
- New design and distribution regime applies 24 months after the Bill receives the Royal Assent.

# Australia

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## Final Report of Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry — February 2019

- 72 recommendations in the Final Report, one of the key discussions on needing to manage conflicts of interest through breaking up the vertical integration model
- also some changes affecting:
  - superannuation; and
  - commissions

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