

Collective Investment Schemes Administration in Emerging Markets



OICU-IOSCO

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INDEX

1. Introduction.....	3
2. CIS Structure	4
3. CIS Administrator	6
4. CIS Governance.....	10
5. Conclusions and further developments	12
ANNEX1: Responses to the Questionnaire.....	14

1. Introduction

In June 2006 at its meeting in Hong Kong, the IOSCO Emerging Markets Committee (EMC) EMC Working Group on Investment Management (WG5) approved the initiative to carry out a mandate on the basis of the Collective Investment Schemes Administration (“CIS Administration”) in emerging markets. To this end the group has set itself the goal of examining through a survey the principles on which the regulation of CIS Administration is based in the jurisdictions of the group to outline the similarities and differences existing.

A questionnaire was drawn up and distributed at the following WG5 meeting, in Shanghai, September 2006. On that occasion, some suggestions on the questionnaire were discussed and the 15th October 2006 was set as a deadline for new suggestions and comments to be sent. Valuable comments and suggestions were made by some jurisdictions.

The final questionnaire was then sent to the jurisdictions, which had up to the end of January 2007, later extended to August 2007, to fill it in and send it back. It was completed by 25 jurisdictions. The jurisdictions that responded to the questionnaire were:

#	Jurisdiction	#	Jurisdiction
1	ARGENTINA	14	MACEDONIA
2	BAHAMAS	15	MALAYSIA
3	BULGARIA	16	MAURITIUS
4	BRAZIL	17	MONTENEGRO
5	CHILE	18	OMAN
6	CHINA	19	PAKISTAN
7	COLOMBIA	20	PERU
8	COSTA RICA	21	ROMANIA
9	CROATIA	22	SOUTH AFRICA
10	CZECH REPUBLIC	23	THAILAND
11	INDIA	24	TUNISIA
12	KAZAKHSTAN	25	TURKEY
13	LITHUANIA		

The data presented in this report is based on the completed questionnaires returned by EMC members. There is the possibility that at times jurisdictions have used differing interpretations of the concepts involved.

The intention of this document is to focus on the aspects and conclusions that appear most relevant, representative or conclusive. A full overview of responses is taken up in Annex 1.

2. CIS Structure

The first section of the questionnaire focused on the regulatory basis for CIS in the respondent jurisdictions. The first question, copied below, dealt with the nature of the main documents related to CIS in the jurisdictions.

1.1 What is (are) the regulation basis for CIS in your jurisdiction?

A law, issued by the Legislative Branch

A normative rule issued by a regulatory authority

A normative rule issued by a self-regulatory entity

Other (please specify):

To this question, the majority of the respondents (64% of the jurisdictions) replied it was composed both of a law issued by the Legislative and of a normative rule issued by the regulator. A normative rule issued by a self-regulatory entity was mentioned by two of these jurisdictions. In 24% of the cases the answer was only a law and in 12% only a normative rule.

The second question of the questionnaire tried to identify the models of CIS adopted in the jurisdictions. It was mentioned that a survey¹ conducted among SC5 jurisdictions had identified two main models of CIS that existed among them: contractual and corporate. These two models, according to the SC5 survey would be most commonly found as four subspecies, depending on the supervisor entity. It was then asked that the respondent jurisdictions chose which one of those four models would better describe their CIS structure.

1.2 According to a survey conducted among SC5, two main models of CIS are adopted by those jurisdictions, the contractual and the corporate. Which one of these models is mainly followed by CIS in your jurisdiction? (See IOSCO, 2006)

Contractual – Depositary

Contractual - Trustee

Corporate – Board of Directors

Corporate - Depositary

Other (please explain)

Most jurisdictions, 14, 56% of the total, replied that their CIS follow only contractual models, 20% corporate models, and 20% both. One jurisdiction mentioned the use of a “mixed model”. In regard to the supervisory entity, 48% mentioned that the depositary would have this duty (‘Contractual – Depositary’ and ‘Corporate – Depositary’ models), 32% the trustee, and 36% the board of directors. The total sum is larger than 100% as more than one model is used in some jurisdictions. The actual number of jurisdictions that follow each model is presented in the table below. Once again, the sum is larger than the total of participant jurisdictions because some respondents have more than one model in use.

¹ <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD219.pdf>

Model	Jurisdictions
Contractual – Depositary	11
Contractual - Trustee	9
Corporate – Board of Directors	9
Corporate - Depositary	4
Other	1

The third point that the questionnaire sought to identify was how the investors acknowledge the rules of the CIS and whether they have to formally declare accordance to these rules or not.

1.3 Is it required that investors be given a copy of the CIS rules (statute, prospectus, by-law, etc)?

Yes

No

1.3.1 Is it required that investors expressly declare accordance to the CIS rules (statute, prospectus, by-law, etc)?

Yes

No

The vast majority of the jurisdictions, 84%, answered that it is required that investors be given a copy of the CIS rules upon the investment. In 52% of the jurisdictions the investors must also expressly declare accordance to the CIS rules.

Question 1.4 tried to assess the state of development of the CIS industry and its regulation in the different jurisdictions by asking whether some entities usually involved in CIS administration existed and were regulated in each jurisdiction or not.

1.4 Which ones of the following entities involved in CIS administration are regulated and/or exist in your jurisdiction?

Administrator

Manager

Board of directors

Trustee

Custodian

Auditor

Distributor

Depositary

Others (please specify)

In the majority of the jurisdictions most of the entities exist and are regulated. Many jurisdictions, however, as can be observed by the answers given, listed in annex 1, have listed more regulated types of entities than existent ones. This may arguably be seen as an indication that the regulators are aware of the development of the CIS industry and keeping their jurisdictions' legislation prepared for it.

3. CIS Administrator

The second part of the questionnaire focused on the CIS Administrator itself and tried to identify the basis of its regulation in the respondent jurisdictions.

The first question in this section enquired on the requirements to conduct CIS administration activities in each jurisdiction.

2.1 Is it mandatory for the CIS administrators to register with the regulator? Is an authorisation necessary? If so, what are the requirements to have it granted?

In all cases but one, 96% of the sample therefore, it is necessary to obtain a license in order to carry out CIS administration activities. In the remaining case the system used was not detailed.

In regard to the requirements to have an authorisation to administer CIS granted, in almost all jurisdictions (96%) it is mandatory that the CIS administrator be a company, ie individuals are not allowed to carry out this kind of activity. In all these cases the statutes of the company must declare that its purpose is to administer CIS. In 88% of the jurisdictions there is the requirement that, when a company, the CIS administrator indicate at least one individual at directorial level to be personally responsible to the regulator for the CIS administered.

Examples of other requirements mentioned include: the prohibition that representatives of the CIS administrator have a seat on any custodian company's body, the obligation that the CIS administrator form a department specialised in the analysis of bonds and securities, etc. The restriction that the sole purpose of the company be to administer CIS was also mentioned by some of the respondents.

Regarding the qualifications that the CIS administrator must have it was mentioned in most cases that these must satisfy, cumulatively, requirements related to academic qualifications, experience, and unblemished reputation. In only five cases (20%) these aspects were not mentioned to be all required cumulatively. In the first one of these cases it is not required to have a certain level of academic qualification, in the second the unblemished reputation does not have to be proved, in the third case only the unblemished reputation is required, and in the two remaining jurisdictions none of these three aspects are taken into consideration and no comments were made about the criteria actually used.

It was also asked if it would be necessary for a CIS administrator to observe minimum capital requirements. In only one jurisdiction there is no such requirement, in the others it goes from about US\$ 50,000 up to US\$12.8 million.

The questionnaire inquired also on the main obligations of a CIS administrator towards not only its unit holders, but also the regulator and the general public.

2.2 What are the main obligations of a CIS administrator towards its unit holders, the regulator and the general public?

2.2.1 Are there specific rules to deal with the following issues?

- a. Compliance with the CIS's investment policy
- b. Information to unit holders of relevant information regarding the CIS investments, including the potential risks of its investment strategy
- c. Change of fees levied on the unit holder
- d. Information to unit holders regarding principal transactions involving affiliated third parties
- e. Information to unit holders regarding joint transactions involving affiliated third parties
- f. Purchase of securities underwritten by an affiliate
- g. Use of affiliated brokers
- h. CIS administrator's employees' transactions for their own account
- i. Soft commissions

Most jurisdictions have rules to deal with the first three aspects suggested, 24 (96%) for compliance with the CIS' investment policy, 23 (92%) for information to unit holders of relevant information regarding the CIS' investments, and 23 (92%) for change of fees levied on the unit holder. The other aspects are less dealt with by the regulation in the jurisdictions under study: 18 (72%) for the transactions of the CIS administrator employees for their own account, 15 (60%) have rules regarding information to unit holders on principal transactions involving affiliated third parties, 13 (52%) for information to unit holders on joint transactions involving affiliated third parties, 13 (52%) for purchase of securities underwritten by an affiliate, 10 (40%) for the use of affiliated brokers, and 7 (28%) for soft commissions.

The most cited obligations were on administering the CIS pursuant to the law, to the best interests of its unit holders, and to provide adequate, timely and complete information. In some cases it was specifically mentioned that the administrator must not treat unit holders differently, must not guarantee a specific return to the investors, must not use information gained because of its duties to obtain improper advantages for himself or others, and that he must cooperate with the regulator in case of investigations.

In regard to the information that the CIS administrator must provide to the CIS unit holders and/or to the regulator, it was not expressly asked in the questionnaire what this should be. Some of the respondents, however, mentioned the existence of a duty to submit financial reports, balance sheets, to inform about changes in the structure of the portfolio, number and price of shares/units issued and/or sold, and management expenses. Some participants also stressed the importance of the accuracy of the information and the reasonability of the way used to disclose it.

One participant mentioned that any distribution of advertisement material of the CIS is subject to prior submission to the regulator.

The next question sought to identify the entity responsible for starting a punitive process in case of misconduct of a CIS administrator. This question attempted to assess in principle how easy would it be to punish an administrator in each jurisdiction.

2.2.2 In case of misconduct of a CIS administrator who starts the punitive process?

*Self-regulatory entity
Regulator
Courts of law
Other (please specify)*

In only one case the regulator was not cited. In this jurisdiction the self-regulatory entity is responsible for starting the punitive process. In two others a self-regulatory entity was mentioned alongside the regulator. In other five jurisdictions, courts of law were mentioned, always together with the regulator.

2.2.2.1 What are the punitive powers that each one of these institutions (Self-regulatory entity, regulator, courts of law, other) has in case of misconduct of a CIS administrator?

*Issue warnings
Fine
Suspend temporarily from CIS administration activities
Suspend temporarily from other activities in the financial markets
Revoke license to work as CIS administrator
Imprison
Others (please describe)*

In regard to the powers that the regulator has in case of misconduct of a CIS administrator, in only one jurisdiction the regulator cannot issue warnings, while in 20% it cannot fine the administrator. In all jurisdictions the regulator has the power to suspend the administrator from CIS administration activities, in 96% to revoke its license, and in 84% to suspend the administrator also from other activities in the financial markets. In one case the regulator was said to have powers to imprison the administrator. As to the powers of the self-regulatory agency, in two jurisdictions it can issue warnings, and in one it can also fine the administrator. The courts of law can imprison in 88% of the cases, fine in 44%, suspend from other activities in the financial markets in 12% of the jurisdictions, revoke license to work as CIS administrator in 8%, and suspend from CIS administration activities in 4% (one case only). Even though this kind of penalty was not an option presented in the questionnaire, two jurisdictions spontaneously mentioned the payment of indemnity of losses arising from the CIS administrator misconduct.

The questionnaire went on to investigate what services related to CIS administration could and/or should be outsourced in each jurisdiction.

2.3 In relation to those services necessary for the efficient functioning of the CIS, which may be outsourced, and in which must there be a separation of activities?

*Trading of assets
Consultancy
Treasury
Custody of assets
Deposit of assets⁴
Registry of unit holders
Risk rating
Independent auditing*

Technical analysis
Distribution of the CIS's units
Other (please specify)

Most activities may be outsourced in most jurisdictions, and among the ones that must be separated from other services the most cited were the trading of the CIS' assets, the custody of assets, and the independent auditing.

4. CIS Governance

The third section of the questionnaire looked into the governance of the CIS itself in each jurisdiction. The first question asked whether the assets, the accountancy, and the personnel of the CIS should be segregated from those of the other activities of the administrator.

3.1 Is it required that the activities of the CIS be segregated from other activities undertaken by the administrator?

Segregated custody of assets

Segregated accountancy

Segregation of personnel

Other activities that must be segregated (Please specify):

In only 12% of jurisdictions it is not prescribed that the custody of CIS' assets be segregated, in 20% the accountancy does not have to be segregated, and in 48% there is no requirement to segregate personnel.

The next question in the questionnaire enquired into the existence of any code of conduct, besides the normative texts, that should be followed by CIS administrators.

3.2 In your jurisdiction is there any code of conduct besides the normative texts that have to be followed by CIS administrators?

3.2.1 What is the entity responsible for the issuance and updating of this code?

In 56% of the jurisdictions there is such a code. In these places the codes are usually produced and updated by the regulator itself, or by self-regulatory entities.

The next questions were on the necessity or not of supervision, review, or approval of the CIS administrator activities by an independent entity. It was also asked how this independence is defined.

3.3 Is it prescribed by the applicable regulation that the CIS administrator's activities must be supervised/review/approved by an independent entity?

3.3.1 What entity is (are) this (these)?

Board of Directors

Depositary

Trustee

Other (please specify)

3.3.2 What are the criteria used to define the independence between the CIS administrator and the supervisory entity?

Criterion

Must be a totally different legal entity whose owner is distinct of the CIS administrator one

May be a company of the same conglomerate but activities must be totally segregated ("Chinese wall")

There must be a minimum number of independent/unaffiliated directors in the board

Other (please describe)

In 80% of the jurisdictions it is prescribed that the CIS administrator be supervised by an independent entity. The criteria most cited (64% of the jurisdictions) for the definition of independence was that the supervisor entity must be a totally different legal entity, ie whose owner is distinct from that of the CIS administrator. 8% of the jurisdictions (2) mentioned the exclusive use of 'Chinese Walls', one requires only a certain number of independent/unaffiliated members in the board. One jurisdiction mentioned other criterion and four did not answer to the question. In 72% of all jurisdictions the supervisory entities can be held responsible if a failure in the CIS administrator work is detected.

The process of evaluating the units/shares of the funds was also inquired into due to its importance to the investor.

3.4 Who is responsible for the evaluation of CIS's units/shares?

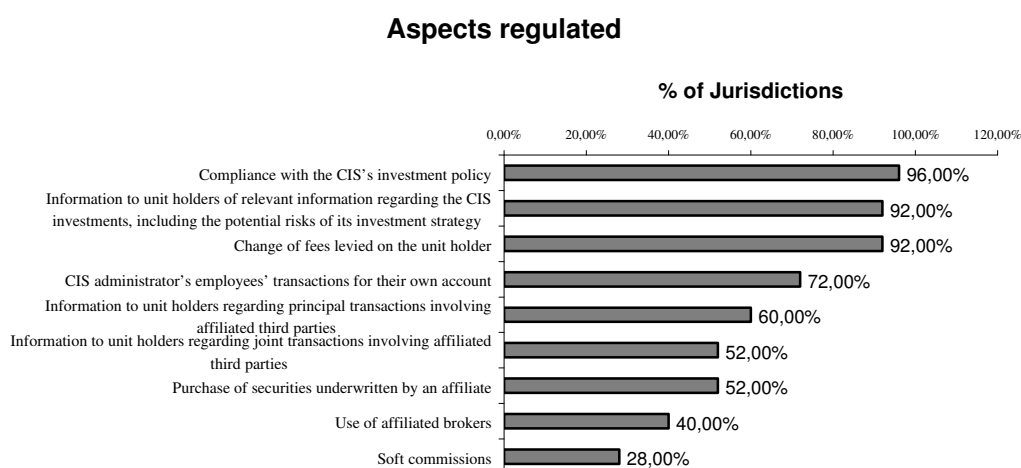
3.4.1 Is this process supervised/review by any other entity?

The most usual answer to this question was that the administrator himself is in charge of evaluating the units/shares of the CIS he administers. In some cases this duty falls on the depository or custodian and/or must be supervised for compliance by this entity or by an external auditor.

5. Conclusions and further developments

It can be concluded by analysing the answers to the questionnaires that the securities commissions of the EMC are quite concerned with the proper regulation of their CIS industry. The fact that in all jurisdictions the basis of the regulation is found in laws and normative texts issued by the regulator is a first clue in order to reach this conclusion. Also, all jurisdictions have powers to suspend administrators when necessary.

The graph below shows some topics covered by the legislation in the participant jurisdictions.



It can most definitely be seen as a positive aspect that almost all respondents oblige the administrator to pass on relevant information about the CIS to unit holders. They also have the means to enforce compliance with the investment policy of the CIS, and their regulations cover the change of fees levied on the unit holder, the administrator's employees transactions for their own account, and the information that must be disclosed in regard to principal transactions involving third parties.

Some aspects, however, were mentioned by less than half of the jurisdictions. The state of development of the CIS industry in the jurisdictions may not yet justify the existence of rules dealing with aspects such as soft commissions, for instance. It seems, however, taking the SC5 works as an example, that developments on this kind of issues is probably a good way to move forward in the near future.

Another point of vital importance is perceived in the answers to section three of the questionnaire where it can be verified that in almost all jurisdictions the CIS administrator must have his activities supervised by an independent entity. And it is worth noting that the independence criteria used for the supervisory entities in 60% of the jurisdictions in the sample, ie to be a totally different legal entity, with owners distinct from those of the CIS administrator, is more rigid than the criteria used in many developed countries. On the other hand, in many jurisdictions there is no external supervision on the evaluation of units/shares, task usually performed by the CIS administrator himself. This could be a good subject for study in a future mandate due to

the undeniable importance of the evaluation of the CIS' units/shares and assets to the interests of the investors.

In regard to the minimum capital requirements for CIS administration companies some considerations may be drawn. On the one hand a higher threshold may select more solid administrators and give the investors more security. On the other hand, the higher the threshold the less likely it is that competition will arise as the capital requirement would work as a barrier to the entrance of new competitors. And less competition could mean higher fees and less diversification of services offered to the investors.

Still on the requirements for the administrators, it was verified that in 48% of the jurisdictions there is no need to segregate personnel from other activities conducted by the administrator. Once again this would be a good topic for future mandates whose objective could be to analyse if this kind of segregation is not an important measure to avoid the arise of situations that could possibly harm the investors' interests.

One jurisdiction raised the issue of the publicity of the CIS. In this jurisdiction it is mandatory that any advertisement be submitted to the regulator prior to its publication. Once again it is a controversial issue that involves a trade-off between trying to protect the investors and limiting the dynamics of the market. One other model that could be discussed would be one where the analysis ex-ante of the publicity was done by a self-regulatory entity if at all, and the regulator would only analyse ex-post and when needed, punishing the administrator when necessary. This model would arguably bring more dynamics to the markets benefiting the investors with more fierce competition among the CIS administrators. The crucial point to the matter, however, is to ensure that the publicity is made always in accordance to the legislation and to the CIS' rules.

To conclude it may be said that the survey has reached its main objective, mentioned in the introduction, ie to outline the main similarities and differences among the group pertaining to the regulation of CIS administrators.

ANNEX1: Responses to the Questionnaire

1.1 What is (are) the regulation basis for CIS in your jurisdiction?

- a) A law, issued by the Legislative Branch
- b) A normative rule issued by a regulatory authority
- c) A normative rule issued by a self-regulatory entity
- d) Other (please specify):

	a	b	c	d
Argentina	X	X		X Executive Order (Decree N° 174/93)
Bahamas	X			
Bulgaria	X	X		
Brazil	X	X		
Chile	X			
China	X	X		
Colombia	X	X		
Costa Rica	X	X		
Croatia	X			
Czech Republic	X	X		
India		X		
Kazakhstan	X	X		
Lithuania	X			
Macedonia	X			
Malaysia	X	X		X
Mauritius		X		
Montenegro	X			
Oman		X		
Pakistan	X	X		
Peru	X	X		
Romania	X	X		
South Africa	X	X	X	
Thailand	X	X	X	
Tunisia	X	X		
Turkey	X	X		

Argentina

<http://www.cnv.gov.ar/LeyesReg/Leyes/ing/LEY24083.htm>

<http://www.cnv.gov.ar/LeyesReg/Decretos/ing/DEC174-93.htm>

Bahamas

The law in question is the Investment Funds Act 2003 (IFA), which is available at www.scb.gov.bs

1.2 According to a survey conducted among SC5, two main models of CIS are adopted by those jurisdictions, the contractual and the corporate. Which one of these models is mainly followed by CIS in your jurisdiction? (See IOSCO, 2006)

- a) Contractual – Depositary
- b) Contractual - Trustee
- c) Corporate – Board of Directors
- d) Corporate - Depositary
- e) Other (please explain)

	a	b	c	d	e
Argentina	X ²				Contractual - Custodian
Bahamas			X		
Bulgaria		X	X		
Brazil	X				
Chile	X				
China		X			
Colombia	X				
Costa Rica	X				
Croatia			X	X	
Czech Republic	X				
India		X			
Kazakhstan		X			
Lithuania	X			X	
Macedonia			X		
Malaysia		X			
Mauritius					X Mixed model
Montenegro			X		
Oman			X		
Pakistan		X	X		
Peru		X			
Romania	X		X	X	
South Africa	X				
Thailand		X			
Tunisia	X	X	X	X	
Turkey	X				

Brazil

The CIS in Brazil follow a contractual model, even though it is not forbidden by the legislation the creation of investment companies. The supervision duty falls on the custodian. There is however a second instance of supervision, as there are usually two different entities involved in the CIS administration, an administrator and a manager, and one is responsible for the supervision of the other. The administrator is in charge of the bureaucratic duties of the CIS, as its registry and the documentation, and the manager is entrusted with the actual trading of the CIS' assets.

² The actual answer given was Other / Contractual – Custodian. In the consolidation of the answers, however, we considered custodian and depositary to be similar entities and therefore the same to the matters here discussed.

1.3 Is it required that investors be given a copy of the CIS rules (statute, prospectus, by-law, etc)?

Yes

No

1.3.1 Is it required that investors expressly declare accordance to the CIS rules (statute, prospectus, by-law, etc)?

Yes

No

	1.3		1.3.1	
	yes	no	yes	no
Argentina	X		X	
Bahamas	X			X
Bulgaria	X		X	
Brazil	X		X	
Chile	X		X	
China	X			X
Colombia	X		X	
Costa Rica	X		X	
Croatia	X		X	
Czech Republic		X		X
India		X		X
Kazakhstan	X		X	
Lithuania	X			X
Macedonia	X			X
Malaysia	X			X
Mauritius	X			
Montenegro	X		X	
Oman		X		X
Pakistan		X	X	
Peru	X		X	
Romania	X		X	
South Africa	X			X
Thailand	X		X	
Tunisia	X			X
Turkey	X			X

Bahamas

This requirement relates only to the prospectus. Other documents are made available as a best practice.

1.4 Which ones of the following entities involved in CIS administration are regulated and/or exist in your jurisdiction?

Regulated

	Administrator	Manager	Board of directors	Trustee	Custodian	Auditor	Distributor	Depository	Others
Argentina	X		X		X	X	X	X	
Bahamas	X								
Bulgaria	X	X	X	X	X		X	X	
Brazil	X	X			X	X	X	X	
Chile	X					X			
China	X	X		X	X	X	X	X	
Colombia	X	X	X			X		X	X
Costa Rica	X	X			X	X	X		
Croatia									
Czech Republic	X	X	X		X		X	X	
India			X	X	X			X	
Kazakhstan				X	X	X		X	
Lithuania	X	X				X	X	X	
Macedonia			X					X	
Malaysia									
Mauritius	X	X		X	X	X	X	X	
Montenegro	X	X	X			X			
Oman					X			X	
Pakistan	X	X	X	X	X	X	X	X	X
Peru	X	X	X		X		X		
Romania		X	X		X	X	X		
South Africa		X	X	X	X	X	X		
Thailand	X	X				X	X		X Mutual fund supervisor
Tunisia	X	X	X		X	X	X	X	
Turkey		X	X			X	X	X	X Founder of the fund

Exist

	Administrator	Manager	Board of directors	Trustee	Custodian	Auditor	Distributor	Depository	Others
Argentina		X				X		X	
Bahamas		X	X	X	X	X	X		X Representatives
Bulgaria						X			
Brazil	X	X			X	X	X	X	
Chile	X		X			X			
China	X	X		X	X	X	X	X	
Colombia	X	X	X			X		X	X
Costa Rica	X	X			X	X	X		
Croatia			X					X	
Czech Republic	X	X	X		X	X	X	X	
India			X	X	X	X	X	X	
Kazakhstan			X	X	X	X		X	
Lithuania			X						
Macedonia									
Malaysia									
Mauritius			X						
Montenegro	X	X	X			X			
Oman		X	X		X	X	X	X	
Pakistan									
Peru	X	X	X		X	X	X		
Romania		X	X		X	X	X		
South Africa		X	X	X	X	X	X		
Thailand	X	X				X	X		X Mutual fund supervisor
Tunisia	X	X	X		X	X	X	X	
Turkey	X								

Bahamas

Save for the administrator, the other entities are not regulated in the sense that they do not have separate registration and are therefore not subject to ongoing filing and other regulatory requirements. Their fitness and propriety is however established at the time of licensing of the administrator whose responsibility it is to ensure that the same is maintained and the regulator advised should there be any neglect of the same.

China

In China, a fund management company plays roles both as administrator and trustee. Besides, custodian is also deemed as co-trustee with fund management company. The board of directors mentioned above is assumed as the board in CIS corporate model rather than the board in CIS administrator's corporate governance.

Colombia

Investment Analysis Committee, Oversight Committee. The Investment Analysis Committee operates at funds administered by Stock Brokers Firms and Investment Administration Societies. On other hand, the "Oversight Committee" is exclusive of Private Equity Funds

Section 2 – CIS administrator

2.1 Is it mandatory for the CIS administrators to register with the regulator? Is an authorization necessary? If so, what are the requirements to have it granted?

Simple Registration (Cadastral)?
Previous Authorization?

	Simple Registration (Cadastral)?	Previous Authorization?
Argentina		X
Bahamas	X	
Brazil		X
Bulgaria		X
Chile		X
China		X
Colombia		X
Costa Rica		X
Croatia	X	X
Czech Republic		X
India		X
Kazakhstan	X	
Lithuania		X
Macedonia		X
Malaysia		X
Mauritius		X
Montenegro	X	X
Oman	X	X
Pakistan	X	X
Peru		X
Romania		X
South Africa	X	X
Thailand		X
Tunisia		X
Turkey		

Requirements

	Must be a company (ie individuals are not allowed)?	When a company, must its statutes state that it is meant to administer CIS?	When a company, must someone at the director level (or all the board) be made responsible to the regulator for the CIS administered?	Must the individual responsible for CIS administration satisfy requirements relating to: (i) qualifications?	(ii) experience?	(iii) unblemished reputation?	Must a company that administer CIS observe minimum capital requirements?	How much (in US\$)?
Argentina	X	X	X			X	X	50.000
Bahamas	X	X	X				X	150.000
Brazil	X	X	X	X	X	X	X	
Bulgaria	X	X	X	X	X	X	X	162.806
Chile	X	X	X	X	X	X	X	225.000
China	X	X	X	X	X	X	X	12.8 million
Colombia	X	X	X	X	X	X	X	830.357
Costa Rica	X	X	X	X	X	X	X	139.000
Croatia	X	X	X	X	X	X	X	900.000.00
Czech Republic	X	X	X	X	X	X	X	160.000
India	X	X	X		X	X	X	2.26 million
Kazakhstan	X	X		X	X	X	X	402.344
Lithuania	X	X	X	X	X	X	X	194.407
Macedonia	X	X	X	X	X	X	X	330.000
Malaysia	X	X	X	X	X	X	X	2.85m
Mauritius				X	X	X	X	
Montenegro	X	X	X	X	X	X	X	
Oman	X	X					X	260000
Pakistan	X	X	X	X	X	X	X	500000
Peru	X	X	X	X	X	X	X	325000
Romania	X	X	X	X	X	X	X	
South Africa	X	X	X	X	X	X	X	
Thailand	X	X	X	X	X	X	X	
Tunisia	X	X	X	X	X	X	X	100000
Turkey	X	X	X	X	X	X	X	

Are there any other requirements? (Please describe)

Argentina

- Its sole purpose must be to administer CIS;- It must be a company (as fund management corporation, or by a financial institution authorised by the Argentine Central Bank);- Fund management corporation's directors, managers, legal representatives and members of the internal oversight board cannot have a seat in any custodian company's body.

Bahamas

Capital requirement: Unrestricted administrator- US\$500,000;Restricted administrator US\$250,000;Exempted administrator US\$150,000.(Please refer to Regulation 14 of the Investment Funds Regulations 2003 for amplification of the above requirements.

As with the Act, the regulations are available at www.scb.gov.bs)

Other requirements: Fit and proper directors

Brazil

The administrator must implement a department specialised in the analysis of bonds and securities, and the management activities must be totally segregated of any other developed by the company.

Bulgaria

Capital requirement: In Art. 203 of the Law on Public Offering of Securities (LPOS), the minimum capital requirements are settled:(1) The capital of a management company at any time may not be less than the BGN equivalence of 125 000 euro (US 162 806), whose structure and ratio to the balance sheet assets and liabilities of the company are determined by an ordinance.(2) If the management company manages the operation of collective investment undertakings, whose assets individually or in aggregate exceed the BGN equivalence of 250 000 000 euro (US 325 612 500), it must increase the amount of capital under para 1 with not less than 0,02 per cent of the sum, being the difference between their book asset value and the BGN equivalence of 250 000 000 euro (US 325 612 500). Sentence one shall not apply when the capital of the management company reaches the BGN equivalence of 10 000 000 euro (US 13 024 500) *Exchange rate - EUR/USD = 1,30245

Chile

The fund administrator must have an insurance guaranty policy equal to at least 1% of fund assets

China

Articles of association must comply with the provisions of Law of The People's Republic of China on Securities Investment Fund and of the Company Law of the People's Republic of China;The major shareholders must have good managerial achievements to their credit and enjoy popular reputation in the securities business, securities investment consultancy, the management of trust assets, or the management of other financial assets, have no law-breaking record in the three preceding years, and have each a registered capital not less than 300 million yuan RMB;The number of staff who have obtained the professional qualifications for the fund business must reach the quorum;The company must have the business premises, security facilities and other facilities relating to the fund management business which satisfy the relevant requirements;The company must have a perfect internal auditing and monitoring system and a perfect risk control system.

Colombia

There are two requirements in terms of minimum capital in Colombia. The first must be fulfilled in order to constitute the society and the amounts are as follows: (i) for Stock Brokers Firms: COP \$ 899'000.000 (USD\$ 401.339); (ii) for Investment Administration Societies: COP \$1.860'000.000 (USD\$ 830.357) and for the (iii) Trust Companies: COP \$4.309'000.000 (USD\$ 1.923.660). On the other hand, the minimum capital required to administer specific Open funds and Fondos Comunes Ordinarios, must be calculated with the following formula: $\text{Open Funds (Paid in Capital} + \text{Premium on Stock} + \text{Legal Reserve} - \text{Accumulated Losses Previous Exercises} - \text{Current Exercise Loss}) \times 48] = > \text{ or } = 1 \text{ Portfolio Value Fondos Comunes Ordinarios (Paid in Capital} + \text{Subscribed Capital} + \text{Legal Reserve} - \text{Accumulated Losses Previous Exercises} - \text{Current Exercise Loss}) \times 48] - \text{Fiduciary Creditors}) = > \text{ or } = 1$

Costa Rica

1. Financial Risk Management Unit 2. Technological requirements (logical security policies, hardware & communications procedures, software and data base procedures, e-banking procedures and business continuity plan) 3. Marketing and selling policies

Czech Republic

At the time of granting a license to perform activities of an investment company, the equity capital of the investment company must equal an amount in Czech crowns corresponding to at least EUR 125,000. The equity capital may not fall under the above-specified amount during the entire existence of the investment company. If an investment company manages the assets of a collective investment funds whose aggregate value in Czech crowns exceeds an amount corresponding to EUR 250,000,000, it shall increase its equity capital (EUR 125,000) above by at least an amount equal to 0.02% of the value of the managed assets of the collective investment funds exceeding an amount in Czech crowns corresponding to EUR 250,000,000, however, up to a maximum amount in Czech crowns corresponding to EUR 10,000,000. Without respect to the amounts specified in paragraphs above, an investment company must have a minimum equity capital in the amount of one quarter of its administrative costs and one quarter of the depreciation of its long-term tangible assets recorded in the accounting books in the previous year, taking account of any changes in the scope of its activities. If an investment company did not perform its activities during the entire previous year, the calculation of its minimum equity capital shall be based on the projected costs according to the business plan. That part of the registered capital may be covered by a guarantee provided by a bank or insurance company with registered office in a Member State of the European Union up to 50% of its value. In addition to collective investment, an investment company may manage the assets of a client on the basis of a contract with the client, provided that the assets include an investment instrument and that this activity is set forth in the license of the company. An investment company shall comply with the rules for capital adequacy of a stockbroker who is not a bank in relation to the investment instruments to which the service relates.

India

More than 50% of directors of the AMC shall be independent

Kazakhstan

According to points 15,16 of the Management of investment portfolio rules, approved by the Decree of the Agency's Board №137, manager retains confidential about client and his information in the process of conclusion and execution of Treaty, except for cases set by the legislation of Republic of Kazakhstan. During contractual time manager notifies a client of: 1) facts and reasons of his financial condition's deterioration and prudential norms' violation; 2) sanctions applied to the manager or his employees by authority or other governmental bodies; 3) data variance in client's assets in the manager's register system, presented by a custodian or data variance about securities, presented by nominal holder in the process of revision between the manager and custodian of personal account of the client and of the reasons why this variance occurred.

Lithuania

Neither initial nor the authorised capital of a management company may be lower than 150,000 euros. In case the value of the investment portfolios managed by the management company exceeds 250,000,000 euros, the management company shall increase the own capital by the amount which shall be not less than 0,02 % of the amount in excess of the value of the managed investment portfolios. In case the value of the investment portfolio is increasing such ratio of the managed and the own capital shall be maintained stable to the extent the value of the own capital reaches 10,000,000 euros.

Macedonia

Working with fund asset to lead carefully the good owner - Right to dispose with fund asset - Responsibility in working the fund-Modification in investments

Malaysia

To be a CIS administrator one has to be a management company approved by the SC according to section 98 of the SCA. In addition they must be registered with a body approved by the SC and the dealing in securities (ie unit trusts) by such person in relation to the arranging or offering for the sale or purchase of or any interest in a unit trust scheme, is subject to any term or condition as may from time to time be specified by the Commission. The various criteria for a management company are outlined in Chapter 4 of the Guidelines on Unit Trust Funds (GUTF), specifically 4.02

South Africa

Difficult to quantify minimum capital requirement as it consists of a basic requirement plus percentages of different types of investment in other funds.

Investable instruments are determined and there are various maximum investment limits applicable to different funds.

2.2 What are the main obligations of a CIS administrator towards its unit holders, the regulator and the general public?

Argentina

a) The main obligation consist in administering the CIS pursuant to the Mutual Fund Act (Law N° 24.083), Executive Order (Decree N°174/93), COMISION NACIONAL DE VALORES regulations, and the offering document .b) Also, fund management corporation act on behalf its unit holders fund so as to protect their rights; c) CIS administrators must provide timely complete information about the mutual funds characteristics.

Bahamas

The obligations are outlined in part III of the Investment Funds Act 2003, and Regulations 17&18 of the Investment Funds Regulations 2003.

Brazil

The main obligations of the CIS administrator are listed in 'Instrução CVM n° 409', whose English version can be found at http://www.cvm.gov.br/ingl/regu/cvm_409.ASP. In a nutshell, these obligations refer to the fiduciary duty that the administrator must have towards the investors. Some of the obligations listed in the legislation are: 1. To hire the service providers of the fund (and remain responsible for these services); 2. Diligence so that the documentation of the fund be kept, at his/her expenses, updated and in perfect order; 3. Act accordingly to the fund's bylaws and prospectuses, and to the deliberations of the fund's general assembly; 4. Provide information to the investors and to the regulator (it is explicit in 'Instrução CVM n°409 what information must be disclosed and on what basis, for an instance, the value of the quota and the value of the Net Assets of the fund must be disclosed daily); 5. To treat unit holders equally; 6. To disclose to the unit holders any relevant information

Bulgaria

A management company must:1. observe investment restrictions as set out in the law, prospectus or management agreement with any persons whose activities or portfolio are managed by it; 2. provide to investors and to shareholders/ unit holders in investment companies/ contractual funds managed by it any information they need in a prompt, accurate and reasonable way; The investment company, respectively the management company when managing a contractual fund, must permanently offer the shares of CIS to the investors at their issue price based on the net asset value and, upon request of the shareholders/ unit holders, to redeem those shares/ units at the price based on the net asset value. The issue price and the redemption price shall be calculated at least twice a week. An investment company and the management company of the contractual fund shall submit to the Commission: an annual report within 90 days after the closing of the financial year; a three-month report within 30 days after the expiration of each quarter; a notice of the submission of the annual report and the three-month report and about the place, time and way of inspecting such report in one central daily newspaper within seven days after the report is submitted with the Commission; a monthly balance-sheets, as well as a written report containing the following minimum information:1. any changes made in the structure of the portfolio and a rationale for them; 2. the value of the portfolio at the beginning and at the end of the reporting period;3. the expenses of managing the activities or the portfolio in the reporting period.4. the volume and structure of the investments in the portfolio, by sectors included;5. the financial condition of the other assets at the beginning and at the end of the reporting period;6. the company's net asset value at the beginning and at the end of the reporting period; the average monthly net asset value;7. data about the issue value and redemption price declared and the dates on which they were declared;8. the number and prices of issued (sold) shares;9. the number and prices of shares redeemed;10. the effected transactions in assets in the portfolio of the investment company.The reports and the notifications shall contain information which is necessary for the investors to make informed investment decisions. These reports and notifications may not contain false, misleading or incomplete particulars.The issuer shall notify the Commission of the inside information pursuant to Art. 4 of the Law on Measures Against Market Abuse with Financial Instruments, which directly relates to it. A management company shall prepare and submits to the Commission a quarterly report on

its capital adequacy and liquidity An investment company or, respectively, a management company when managing a contractual fund, may not distribute any advertisements, including leaflets, brochures, form letters, visual or any other materials related to the public offering of shares in the investment company or, respectively, units of the contractual fund, and addressed to potential investors if they have not submitted a copy of the full text of these materials to the Commission. Any change to any materials referred to in the foregoing sentence need not be submitted to the Commission if it only updates existing materials. The contents of any advertising materials relating to the offering of shares of an open-end investment company and units in the contractual fund shall contain: 1. information about the place where the prospectus and the constitutive documents are accessible to the public; 2. information that the value of the shares, respectively the units, and the income thereon may be lowered, that no profit is guaranteed and the investors are bearing the risk not to recover the full amount of the funds invested; 3. previous operating performance of the company or, respectively, of the contractual fund, is not necessarily related to future performance.

Chile

To manage funds in accordance with the fund's bylaw

China

Obligations to unit holders: to execute securities portfolio investment for the interest of fund unit holders, to accurately and thoroughly disclose information relating to funds in required period of time, to fulfil its fiduciary duty both as trustee and CIS administrator. Obligation to regulator: to comply with relevant laws and regulations, to cooperate with regulators in conducting investigation and performing other duties, to faithfully provide relevant documents and materials on regulators requirement. Obligations to the public: to accurately and thoroughly disclose information relating to funds in required period of time

Colombia

Unit holders

- *Disclosure of information*
- *Adequate constitution of the portfolio*
- *Non discriminative treatment toward unit holders*
- *Obligation of means not of results*
- *Professionals in charge with expertise*
- *Information to the unit holders to be before the investment is done on risks, rewards, etc, of CIS Regulator*
- *Disclosure of information (accountable, unit/shares, value of the portfolio, number of unit holders, etc)*
- *Norms and rules compliance and accomplishment*
- *Minimum capital requirements*
- *Risk management (Market, Credit, Operational Risks)*

General Public

- *Disclosure of information*

Costa Rica

CIS Administrator should provide information about mutual funds (prospectus, annual report, quarterly report, others) CIS Administrator is responsible for applying the investment policies indicated in the fund's prospectuses. CIS Administrator cannot invest its capital in its own funds. The mutual funds (CIS) cannot invest in securities issued by the CIS Administrator. CIS Administrator cannot guarantee a specific return to investors. CIS Administrator cannot discriminate among unit holders. CIS Administrator cannot invest its capital in shares issued by other firms. CIS Administrator shall be corporately responsible before their unit holders for damages and losses caused by their directors, employees or people contracted to render services to the mutual fund (CIS), resulting from carrying out actions that are prohibited by the prospectus or by the Law, or resulting from the failure to carry out actions required by the prospectus or the Law.

Croatia

CIS administrator: must be in compliance with the CIS investment policy, must give information to unit holders regarding the CIS investments, change of fees levied on the unit holders. As legally prescribed, they have to Publish the Prospect and the Statute in the "Official Gazette", so that the future unit holder can be informed, within 7 days of receiving Authorization by the Regulator.

Czech Republic

The main obligations of a CIS administrator towards its unit holders and regulator: Annual report of an investment company and an annual report for each unit trust managed by investment company shall be published in a manner allowing for a remote access and shall be obliged to send to the Czech National Bank in an electronic form within 4 months of the end of an accounting period. Semi-annual report of unit trust and the investment company are obliged to send their semi-annual report to the Czech National Bank in an electronic form and to make it public in a manner allowing for a remote access within 2 months of expiry of the first 6 months of an accounting period. An open-end unit trust shall make public in a manner allowing for a remote access: a) at least once every 2 weeks, information on the current value of the equity capital of the collective investment fund and information on current value of a unit certificate, b) for each calendar month, information on the number of unit certificates issued and repurchased and on the amounts for which the unit certificates were issued and repurchase, c) at least once a month, information on the structure of the assets in the open-end unit trust. This information about the open-end unit trust investment company is obliged to send to the Czech National Bank without undue delay.

A collective investment fund must publish the statute and simplified statute in a manner allowing for a remote access.

India

Ans. The obligations of an asset management company are elaborated in Regulation 25 of SEBI (Mutual Funds) Regulations 1996 and in the code of conduct as provided in Fifth Schedule which is given in Annexure.

Lithuania

The main obligations of a CIS administrator toward its unit holders: § To redeem the units presented by the participants and ensure the settlement for the same not later than within 7 days from the redemption request; § Provide the participants with the information about the CIS, its investment and risks related; § Publicly announce the CIS unit value and NAV; § Publish the full and simplified prospects, annual and semi-annual operating reports. The main obligations of a CIS administrator toward the regulator – Lithuanian Securities Commission (hereinafter – LSC): § Submit the periodic reports, full and the simplified prospectus, communications; § Obtain the advance permits for: o adoption, amending and supplementing of the instruments of incorporation;

o choice or replacement of a depositary or a management company; o transfer of the assets of an investment fund to another management company; o conclusion or amending of an agreement with the depositary; o amending or supplementing of a simplified or full prospectus. The main obligations of a CIS administrator toward the general public: § adequately disclose to clients information which concerns them and is necessary to them; § publicly announce the CIS unit price and NAV; § publish full or simplified prospectus, annual and semi-annual operating reports; § Submit notices on the suspension of the unit redemption and the renewal of the unit redemption.

Malaysia

According to 4.02(4) of the GUTF, the management company or the CIS administrator may only be engaged in 1. the business of managing investment portfolio and administering unit trust funds; 2. the business of marketing and distributing unit trust funds subject to compliance with the requirements set out under the Guidelines for Registration of Institutional Agents for the Marketing and Distribution of Unit Trusts; 3. the business of providing investment advisory services; and 4. where the management company is a universal broker the activities allowed for a universal broker under the Guidelines for a Universal Broker. The management company along with the trustee must safeguard the interests of unitholders. They must fulfil the duties and responsibilities imposed on them by the deed of the fund, the Guidelines (GUTF) and securities laws. There are also requirements of the deed imposed on them by the regulator and they are all outlined in section 106 to 108 of the SCA. Notwithstanding that there are also requirements imposed under Schedule G of the Guidelines on requirements which are imposed by the regulator as covenants in the deed.

Mauritius

Answer : PART VIII of the Securities Act 2005 on Collective Investment Schemes Sub –Part B- Section 105 Duties of CIS managers and officers refers as follows: (1) Notwithstanding any other obligation arising under the Companies Act 2001 or under a contract with respect to the duties of a director, the CIS manager and its officers shall, in exercising their powers and duties –(a) act honestly; (b) exercise the degree of care and diligence that would be reasonably expected of a person in that position; (c) act in the best interests of the participants in the scheme and, where there is conflict between the interests of the participants and their own interests, give priority to the participant's interests; (d) treat the participants who hold interests in the same class equally and participants who hold interests of different classes fairly; (e) not make use of information acquired through being CIS manager or officer to –(i) gain an improper advantage for themselves or another person; or (ii) cause detriment to the participants in the scheme; (f) ensure that all payments out of the scheme property are made in accordance with the constitutive documents of the scheme, this Act, any regulations made under the Act and any FSC rules; and (g) report to the Commission, as soon as practicable after it becomes aware of any breach of – (i) this Act, any regulations made under this Act or any FSC rules; or (ii) the scheme's constitutive documents that has had, or is likely to have a materially adverse effect on the interests of participants. (2) Any person who contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 500,000 rupees together with imprisonment for a term not exceeding 5 years. (3) Notwithstanding section 103, this section shall apply to a company managing its own scheme. (4) Regulations made under this Act and FSC Rules may provide for additional duties of CIS managers, their officers and employees.

Montenegro

- announcing to shareholders about the main decision of CIS management - periodical and annual financial reports to regulator and shareholders - public access to all CIS data

Oman

The CIS administrator is required to ensure all clauses that have been mentioned in the offer document is followed. CIS Administrator is required to Ensure that the Invest Management Regulations Issued by CMA is complied with in full CIS Administrator is required to ensure full a complete disclosure is issued to public and ensure no false or misleading statements are made in public forum

Pakistan

Issue offering documents (Investment policy, Risk Factor, Calculation of NAV, Credit Ratings etc) CIS Administrator shall also ensure that the Business is carried out in the best interest of the investors. CIS administrator shall comply with the prevailing laws as well.

Peru

CIS administrators should act in favor of CIS's Investors interests. The main duties of CIS administrators toward their unit holders are to offer all available information about funds' investments, their profitability, risk and liquidity, as well as to indemnify investors for any damage caused to the fund. CIS administrators are also required to timely disclose any relevant information and to fulfill rules and regulations established by CONASEV.

Romania

Unit holders: The CIS administrator shall operate in accordance with the fund rules or the instruments of incorporations of the investment company. The administrator is forbidden to perform transaction with the CIS it manages. According to the Romanian legislation in force, CIS administrator shall act honestly and fairly and with due skill, care and diligence in the best interests of the investors in the UCITS it manages, shall avoid conflicts of interests and, when they cannot be avoided, ensure that the UCITS it manages are correctly and fairly treated. Regulator: The CIS administrator shall apply for licence and comply with authorisation conditions, prudential and capital adequacy requirements and shall notify or first submit for authorisation, as the case may be, any change in its organisation and functioning. CIS administrator submits to CNVM periodic reports and pay to CNVM taxes, fees, commissions owed by the managed funds. Also, the administrator shall comply with the rules of conduct issued by Romanian National Securities Commission. General public: The CIS administrator shall publish the periodic reports and the net asset values.

South Africa

Must act honestly and fairly, with skill, care and diligence and in the best interests of investors and avoid conflict between its own interest and that of investors. Must disclose relevant information before accepting an investment. Obligated to repurchase investments on request from investor. Compliance with legal requirements and report non-compliance to regulator. Regular reporting to regulator.

Thailand

The management company (CIS administrator) is obliged to manage the investment funds, with its best effort to protect customers' interest taking into account customers' optimum benefit, and on the basis of integrity, prudence and due care. In order to ensure that each management company conduct its business as professional, the management company is obliged to: (1) Arrange to have an operating system ensuring allocation of duties and responsibilities to the respective work units; supervision of its operation; risk management; selection and monitoring of its personnel assuring that they have and maintain such qualifications that correspond to the nature of their duties; measures to prevent improper access to inside information among work units and personnel; and internal control measures to audit and counterbalance the operation and to prevent any transactions which may give rise to a conflict of interest, including keeping documents and evidence relating to the operation to facilitate the operation audit; (2) Arrange to have personnel to perform duties as fund manager, subject to approval of the SEC Office, and arrange to have contact persons with investors, subject to approval of the Office, to sell investment units or to solicit customers or to prepare investment plans for customers. Any person so approved by the Office must possess knowledge, ability and understanding in fund management business and the relevant rules and regulations, be a person of integrity and honesty and without any disgraceful record, and must comply with the performance standards as specified in the notification of the Office;(3) Supervise and monitor to ensure that its personnel perform in compliance with the laws on securities and exchange and rules issued under such laws, including the performance standards as specified in the notification of the Office or by the association with the approval of the Office; and(4) Refrain from violating the relevant professional code of conduct and standards as specified by the association, in any aspects material to maintaining its status as professional, or in any aspects which would affect the overall creditworthiness as professional. (See SEC Notification No. GorNor.30/2547) Besides the obligations towards its unit holders as mentioned above, the asset management company is obliged to submit periodic reports to the SEC and ensure that the company performs its functions according to the prescribed rules, conditions and procedures. As for the obligations towards the general public, the asset management company must provide accurate and adequate information necessary for making investment decision in the prospectus to be distributed to prospective investors. Such information must neither be misleading nor distorted. This is to enable the general public to make a well-informed decision to invest in the mutual fund which suits their objectives. Similar disclosure requirement is applied to advertising materials. The advertisement made to the public must not be misleading nor deceptive. Moreover, the advertisement must contain a warning to investors concerning risks associated with the mutual fund, for instance, "a mutual fund is not a deposit and is subject to investment risks, returns on investment can be more or less than the initial outlay", etc.

Tunisia

Among the obligations of a CIS administrator towards its unit holders, the CMF and the general public are timely information, good governance and efficient disclosure.

Turkey

The main responsible is the pension fund or CIS founder. If CIS administration is outsourced, they will be responsible to the pension fund company or CIS founder.

2.2.1 Are there specific rules to deal with the following issues?

	Compliance with the CIS's investment policy	Information to unit holders of relevant information regarding the CIS investments, including the potential risks of its investment strategy	Change of fees levied on the unit holder	Information to unit holders regarding principal transactions	Information to unit holders regarding joint transactions	Purchase of securities underwritten by an affiliate	Use of affiliated brokers	CIS administrator's employees' transactions for their own account	Soft commissions
Argentina	X	X	X			X			
Bahamas	X	X	X	X	X	X	X	X	X
Brazil	X	X	X			X		X	
Bulgaria	X	X	X	X	X	X	X	X	X
Chile			X						
China	X	X	X	X	X	X	X		
Colombia	X	X	X	X	X				
Costa Rica	X	X	X	X				X	
Croatia	X	X	X		X	X		X	
Czech	X	X	X	X				X	
India	X	X	X	X			X	X	
Kazakhstan		X							
Lithuania	X	X	X					X	X
Macedonia	X	X		X	X			X	
Malaysia	X	X	X	X	X	X	X	X	X
Mauritius	X	X	X	X	X	X	X	X	
Montenegro	X	X	X	X	X	X	X	X	
Oman	X	X	X	X					
Pakistan	X	X	X	X	X	X	X	X	
Peru	X	X	X					X	
Romania	X	X	X				X	X	
South Africa	X	X	X					X	X
Thailand	X	X	X	X	X	X	X	X	X
Tunisia	X	X	X		X	X		X	X
Turkey	X	X	X	X	X	X			

2.2.2 In case of misconduct of a CIS administrator who starts the punitive process?

	Self-regulatory entity	Regulator	Courts of law	Other (please specify)
Argentina		X		
Bahamas		X		
Brazil		X	X	
Bulgaria		X		
Chile	X			
China		X		
Colombia	X	X		
Costa Rica		X	X	
Croatia		X		
Czech Republic		X	X	
India		X		
Kazakhstan		X		
Lithuania		X		
Macedonia		X		
Malaysia		X		
Mauritius		X		
Montenegro		X		
Oman		X		
Pakistan		X		
Peru		X		
Romania		X		
South Africa	X	X		
Thailand		X	X	X
Tunisia		X		
Turkey		X	X	

Thailand

There are two different systems in initiating punitive process depending on the nature of the misconduct itself. To sum up, (i) if the misconduct is a criminal offence, the punitive process can be initiated either by submission of complaint made by injured parties or by lodging of denunciation by any person (including a regulator), to an inquiry officer, except for the offence that can be settled by the Settlement Committee, of which the punitive process will be initiated by the regulator. (ii) in case that the misconduct gives rise to administrative sanctions, the punitive process will be initiated by the regulator.

2.2.2.1 What are the punitive powers that each one of these institutions has?

Powers of the Self-regulatory Entity

	Issue warnings	Fine	Suspend temporarily from CIS administration activities	Suspend temporarily from other activities in the financial markets	Revoke license to work as CIS administrator	Imprison	Others
Argentina							
Bahamas							
Brazil							
Bulgaria	X						
Chile							
China							
Colombia	X	X					
Costa Rica							
Croatia							
Czech Republic							
India							
Kazakhstan							
Lithuania							
Macedonia							
Malaysia							
Mauritius							
Montenegro							
Oman							
Pakistan							
Peru							
Romania							
South Africa							
Thailand							
Tunisia							
Turkey							

Powers of the regulator

	Issue warnings	Fine	Suspend temporarily from CIS administration activities	Suspend temporarily from other activities in the financial markets	Revoke license to work as CIS administrator	Imprison	Others
Argentina	X	X	X	X	X		
Bahamas	X	X	X		X		
Brazil	X	X	X	X	X		
Bulgaria	X	X	X	X	X	X	Art 212 to 221 of LPOS
Chile	X	X	X	X	X		
China	X	X	X	X	X		
Colombia	X	X	X	X	X		
Costa Rica	X	X	X	X	X	X	Compensatory damages
Croatia	X		X	X	X		
Czech Republic	X	X	X	X	X	X	forced administration
India	X	X	X	X	X	X	monetary penalty
Kazakhstan	X	X	X	X	X		
Lithuania	X	X	X	X	X	X	
Macedonia			X		X	X	To initiate offences; take a legal
Malaysia	X	X	X	X	X	X	X
Mauritius	X	X	X	X	X		
Montenegro	X		X	X	X		
Oman	X		X	X	X		
Pakistan	X	X	X	X	X		
Peru	X	X	X		X		
Romania	X	X	X	X	X		
South Africa	X	X	X		X	X	Winding-up, curatorship, judicial
Thailand	X		X	X			
Tunisia	X	X	X	X	X		
Turkey	X	X	X	X	X		

Powers of Courts of Law

	Issue warnings	Fine	Suspend temporarily from CIS administration activities	Suspend temporarily from other activities in the financial markets	Revoke license to work as CIS administrator	Imprison	Others
Argentina						X	
Bahamas				X		X	
Brazil		X				X	X Indemnity
Bulgaria							
Chile						X	
China						X	
Colombia						X	
Costa Rica						X	X Compensatory payment
Croatia		X				X	
Czech Republic				X		X	
India						X	
Kazakhstan		X			X	X	
Lithuania		X			X		
Macedonia							
Malaysia		X				X	
Mauritius		X				X	
Montenegro		X				X	
Oman		X				X	
Pakistan						X	
Peru						X	
Romania						X	
South Africa						X	
Thailand		X				X	
Tunisia		X	X	X		X	
Turkey		X				X	

Malaysia

Suspend temporarily from being a registered agent for dealing in unit trusts by FMUTM, the industry association recognised by SC.

South-Africa

Winding-up, curatorship, judicial management, replace trustee.

Thailand

Settlement committee can fine; Ministry of Finance can revoke license to work as CIS administrator.

2.3 In relation to those services necessary for the efficient functioning of the CIS, which may be outsourced, and in which must there be a separation of activities?

Services that may be outsourced

	Trading of assets	Consultancy	Treasury	Custody of assets	Deposit of asset	Registry of unit holders	Risk rating	Independent auditing	Technical analysis	Distribution of the CIS' s units	Other
Argentina	X	X		X	X	X	X	X	X		
Bahamas											
Brazil	X	X	X	X	X	X	X	X	X		
Bulgaria							X		X	X	
Chile	X	X	X	X	X		X	X	X	X	
China		X		X	X	X	X	X	X	X	
Colombia	X	X	X	X					X	X	
Costa Rica	X	X	X	X	X	X	X	X	X	X	
Croatia		X	X				X		X	X	
Czech Republic	X	X	X	X		X	X	X	X	X	
India		X		X	X	X	X	X	X	X	
Kazakhstan											
Lithuania	X	X	X	X		X	X		X	X	
Macedonia		X	X							X	
Malaysia		X					X	X	X	X	X
Mauritius											
Montenegro	X	X		X	X		X		X	X	
Oman	X	X		X	X	X		X	X	X	
Pakistan		X		X	X	X	X	X	X	X	
Peru	X		X	X	X	X	X	X	X	X	
Romania		X	X				X	X	X	X	X
South Africa	X	X		X	X	X		X	X	X	
Thailand	X	X	X			X	X		X	X	
Tunisia	X	X	X	X	X	X	X	X	X	X	
Turkey	X	X	X	X	X	X	X	X	X	X	

Services that must be separated of others

	Trading of assets	Consultancy	Treasury	Custody of assets	Deposit of asset	Registry of unit holders	Risk rating	Independent auditing	Technical analysis	Distribution of the CIS' s units	Other
Argentina	X			X	X	X		X	X		
Bahamas				X							
Brazil	X			X				X			
Bulgaria	X	X		X	X	X		X			
Chile						X					
China	X			X	X			X			
Colombia	X	X	X	X		X			X	X	
Costa Rica	X			X	X		X	X			
Croatia	X		X					X			
Czech Republic	X		X	X	X		X	X			
India											
Kazakhstan	X		X	X	X	X		X			
Lithuania	X		X	X				X			
Macedonia	X		X					X			
Malaysia	X		X	X		X		X			X
Mauritius											
Montenegro			X	X	X	X		X			
Oman				X							
Pakistan	X										
Peru		X		X	X		X	X			
Romania	X			X	X						
South Africa	X		X	X	X			X	X		
Thailand	X	X		X	X			X	X		
Tunisia	X	X	X	X	X	X	X	X	X	X	
Turkey					X			X			

Bahamas

As the issue of outsourcing is not specifically addressed in legislation, there are no prohibitions applied. In the absence of same, the Commission relies on best practices when required to respond on this matter.

Section 3 – CIS governance

3.1 Is it required that the activities of the CIS be segregated from other activities undertaken by the administrator?

	custody of assets		accountancy		personnel		other		
	Yes	No	Yes	No	Yes	No	Yes	No	
Argentina	X		X			X			
Bahamas	X			X		X			
Bulgaria	X		X			X			
Brazil	X		X		X				
Chile		X		X		X		X	
China	X		X			X			
Colombia	X		X		X		X		Operational areas and all the others authorized
Costa Rica	X			X		X			
Croatia	X		X			X			
Czech Republic	X		X		X				
India	X		X		X				
Kazakhstan	X		X		X				
Lithuania	X		X		X		X		
Macedonia		X		X		X			
Malaysia	X		X		X		X		
Mauritius	X		X		X				
Montenegro	X		X			X			
Oman	X		X		X				
Pakistan	X		X		X		X		brokerage
Peru	X		X		X				
Romania	X		X				X		
South Africa	X			X		X			
Thailand	X		X			X	X		
Tunisia	X		X		X				
Turkey		X	X		X				

India

As per Regulation 24 (2) The asset management company shall not undertake any other business activities except activities in the nature of portfolio management services, management and advisory services to offshore funds, pension funds, provident funds, venture capital funds, management of insurance funds, financial consultancy and exchange of research on commercial basis if any of such activities are not in conflict with the activities of the mutual fund. Provided that the asset management company may itself or through its subsidiaries undertake such activities if it satisfies the Board that the key personnel of the asset management company, the systems, back office, bank and securities accounts are segregated activity-wise and there exist systems to prohibit access to inside information of various activities: Provided further that asset management company shall meet capital adequacy requirements, if any, separately for each such activity and obtain separate approval, if necessary under the relevant regulations.

3.2 In your jurisdiction is there any code of conduct besides the normative texts to be followed by CIS administrators?

3.2.1 What is the entity responsible for the issuance and updating of this code?

	Yes	No	Entity
Argentina		X	
Bahamas		X	
Bulgaria		X	
Brazil	X		Self-regulatory entity (association of investment banks)
Chile		X	
China	X		National's Peoples Congress. CSRC
Colombia		X	
Costa Rica		X	
Croatia	X		Croatian Chamber of Economy
Czech Republic	X		The Association of Funds and Asset Management of the Czech Republic
India	X		SEBI
Kazakhstan	X		The Agency of Republic of Kazakhstan
Lithuania	X		Board of Directors of the management company is responsible for issuance this code
Macedonia	X		Securities and Exchange Commission of Macedonia
Malaysia	X		
Mauritius	X		regulatory authority
Montenegro	X		Securities and EXchange Commission of the Republic of Montenegro
Oman		X	Capital Market Authority
Pakistan		X	
Peru		X	CONASEV
Romania		X	
South Africa	X		Self-regulatory body
Thailand	X		The Association of Investment Management Companies
Tunisia	X		The CMF (The Regulator)
Turkey		X	

3.3 Is it prescribed by the applicable regulation that the CIS administrator's activities must be supervised/review/approved by an independent entity?

3.3.1 What entity is (are) this (these)?

	Yes	No	Entity				
			Board of Directors	Depository	Trustee	Other	
Argentina	X					X	custodian
Bahamas		X					
Brazil	X					X	External auditor and custodian
Bulgaria	X		X	X		X	Internal compliance department
Chile		X					
China	X					X	Custodian and CSRC
Colombia	X		X			X	
Costa Rica	X					X	Investment committee
Croatia		X					Croatian Financial Services Supervisory Agency
Czech Republic	X			X			
India	X				X		
Kazakhstan		X					
Lithuania	X			X			
Macedonia	X					X	Securities and EXchange Commission of Macedonia
Malaysia	X				X		
Mauritius	X					X	The Regulator Authority – The FSC
Montenegro	X		X				
Oman	X		X				
Pakistan	X		X				
Peru	X					X	
Romania	X					X	Auditors. Custodians
South Africa	X		X		X		
Thailand	X					X	Mutual fund supervisor (performing a role equivalent to that of a trustee)
Tunisia	X		X	X		X	Independent auditor or accountant
Turkey		X					

China

In China, it is stipulated by law that CIS can only take the contractual form, and thereby no board of directors in corporate CIS model which is assumed independent from CIS administrator exists. Board of directors in a fund management company is regarded as a part of corporate governance and is not considered independent from company itself.

Colombia

Financial Superintendence of Colombia Investment Analysis Committee Oversight Committee External Auditor Manager

Costa Rica

The Investment Committee is responsible for supervising the actions of the Fund Manager and for overseeing the implementation of the recommendations issued by the Financial Risk Unit. The Investment Committee is designated by the Board of Directors of the CIS Administrator. The Committee has three members; at least one of them should be independent of the CIS Administrator and its financial group.

3.3.2 What are the criteria used to define the independence between the CIS administrator and the supervisory entity?

	Must be a totally different legal entity whose owner is distinct of the CIS administrator ones	Chinese wall	minimum number of independent/unaffiliated directors in the board	Other	
Argentina	X				
Bahamas					
Brazil	X	X			
Bulgaria	X	X			
Chile					
China	X		X	X	
Colombia	X	X	X		
Costa Rica			X		
Croatia	X				
Czech Republic		X			
India	X	X	X		
Kazakhstan					
Lithuania	X			X	
Macedonia	X				
Malaysia	X				
Mauritius				X	
Montenegro	X				
Oman		X	X		
Pakistan	X	X	X		
Peru					
Romania	X				
South Africa	X				
Thailand	X				
Tunisia	X				
Turkey					

Brazil

The external auditors and the CIS administrator must be total different legal entities. In the case of the custodian there must be a separation of activities (Chinese wall).

China

Must be the governmental body authorized by State Council in regulating securities market and relevant issues.

Costa Rica

There must be at least one independent/unaffiliated member in the Investment Committee.

India

However, the sponsor who is the settlor of the trust (supervisory entity) is also required to hold at least 40% shareholding in the Asset Management Co. (CIS Administrator)

Thailand

(i) Fund supervisor may not hold more than 5% of outstanding share of the CIS operator;(ii) no same shareholder holding more than 10% of total outstanding shares of both entities; and (iii) no conflict relationship which may cause any lack of freedom in undertaking supervisor's duties and responsibilities.

3.3.3 Can the entities referred in item 3.3.1 be held responsible if a failure in their work or a non-communication of irregularities is detected? What consequences may that have?

	Yes	No	Consequences
Argentina	X		
Bahamas	X		
Brazil	X		
Bulgaria	X		
Chile			
China	X		
Colombia	X		
Costa Rica	X		
Croatia	X		Suspension and revocation of their license
Czech Republic	X		
India	X		
Kazakhstan			
Lithuania	X		
Macedonia	X		
Malaysia	X		
Mauritius	X		
Montenegro	X		
Oman			
Pakistan	X		
Peru			
Romania			
South Africa	X		Director may be suspended/disposed of. Trustee may be guilty of an offence
Thailand	X		
Tunisia			
Turkey			

Argentina

Yes. According to legal framework, *FUND MANAGEMENT CORPORATIONS* and *CUSTODIANS COMPANIES* are unlimited and jointly responsible for any violation of mutual fund regulation. This structure applies both for open-end and closed-end funds. Please always remember that Mutual Funds are not legal entities by themselves.

Bahamas

The Board of Directors has responsibility and may be sanctioned pursuant to the relevant section of parts VII, IX and X of the Act.

Brazil

Yes. According to the applicable legislation the referred entities may have their license suspended or revoked. Also, they can be criminally charged if their actions constitute a crime.

Bulgaria

Any person that has violated the regulations of the Ordinance on the Requirements for the Activities of Management Companies (including the obligations of the entities referred in item 3.3.1) or any person that has tolerated such violations, shall be penalized pursuant to Art. 221, para. 1 item 1 of the LPOS Art. 221. (1) Any person who commits or admits the committing of an offense under:1. ... of this law and the implementing ordinances shall be liable to a fine from BGN 200 to BGN 1000;(2) In case of a repeated offense under para. 1, the guilty person shall be liable to a fine as follows:1. for offenses under para. 1, item 1 - from BGN 500 to BGN 2000;...(8) For offenses under para. 1 – 6 a property sanction shall be imposed on legal entities and sole traders as follows:1. for offenses under para. 1, item 1 - from BGN 500 to BGN 2000 and in case of a repeated offense - from BGN 1000 to BGN 5000;

China

Yes. CSRC or CBRC(The banking regulator in China) will impose sanctions such as issuing warnings, fine, temporarily suspending from asset custody activities or permanently revoking asset custody license on the custodians for their failure in work or non-communication of irregularities. To CSRC, its jurisdiction is supervised by State Council and subject to Administrative Law and relevant regulations.

Colombia

While the Board of Directors and the Manager can be held responsible if failures in the work of CIS, the rest of the entities in the previous chart are responsible for the communication of irregularities when detected. In case of non compliance of such responsibilities, the Superintendence of Finance may start a punitive process which goes from the issuance of warnings to the suspension of the registration.

Costa Rica

The Investment Committee is designated by the CIS Administrator, then both shall be held corporately responsible to their unit holders for damages and losses caused

Czech Republic

Compensation for damage to investors, fine, change of depository ordered by regulator, criminal proceedings if failure caused by crime of an individual employee/manager of depository, etc.

India

Ans. Yes, in case of default by Mutual Fund the trustee or the asset management Co. or both may be liable for action including monetary penalty. The Board may initiate action for suspension or cancellation of registration of an intermediary holding a certificate of registration under section 12 of the Act who fails to exercise due diligence or to comply with the obligations under

these regulations. Provided that no such certificate of registration shall be suspended or cancelled unless the procedure specified in regulations applicable to such intermediary is complied with. Details of the procedure for action in case of default are given in the Annexure.

Lithuania

A depositary must inform the LSC and the supervisory board or the board of the management company about all the violations of the law and the instruments of incorporation which it has noted. A depositary shall be liable to the participants of a collective investment undertaking or the management company for any loss suffered by them as a result of the depositary's failure to perform its obligations or improper performance of them.

Thailand

Yes, a criminal sanction shall be imposed upon a mutual fund supervisor should it neglect or fail to perform its duties. It shall be liable to a fine not exceeding five hundred thousand baht and a further fine not exceeding ten thousand baht for every day during which the contravention continues.

3.4 Who is responsible for the evaluation of CIS's units/shares?

3.4.1 Is this process supervised/review by any other entity?

	Evaluation	Supervision		
		Yes	No	Entity
Argentina	Fund management corporations		X	
Bahamas	The administrator or its delegated parties		X	administrator
Brazil	The CIS administrator	X		Custodian and manager.
Bulgaria	Depository or management company		X	
Chile	The administrator	X		Yes, the regulator
China	CIS administrator	X		custodian
Colombia	CIS administrator	X		Yes, by the Financial Superintendence and by the External Auditor
Costa Rica	CIS administrator			
Croatia	Board of Directors. Depository Bank	X		Regulator
Czech Republic	CIS and depository	X		Both CIS and the depository.
India	Asset Management Co.	X		Trustee
Kazakhstan			X	
Lithuania	Management company	X		Depository
Macedonia	Custodian (depository) Bank	X		Regulator
Malaysia	Manager	X		trustee
Mauritius	CIS Manager	X		Regulator
Montenegro	CIS is responsible for the evaluation of CIS's units	X		Securities and EXchange Commission
Oman	Custodian	X		Internal and External Auditors
Pakistan	CIS	X		Trustee; Securities and Exchange Commission of Pakistan
Peru			X	
Romania	asset management company	X		custodian
South Africa	Manger but on a prescribed basis	X		trustee
Thailand	CIS administrator	X		
Tunisia	administrator	X		custodian
Turkey	Capital Markets Board.		X	

Brazil

The CIS administrator is responsible for evaluating the quotas daily, based on the Net Asset Value of the fund. The custodian is responsible of supervising this job. Also, as mentioned in the answer to question 1.2, there is usually a manager who must also supervise the administrator's work on the evaluation of the quotas.

Bulgaria

The depository bank must monitor for compliance with the law and the contractual fund's rules in the execution of the sale and redemption of units by the management company, as well as in the calculation of the units value. Any agreement between a depository bank and an investment company or, respectively, the management company, where acting for the account of a contractual fund, must contain the following minimum information: the obligation to calculate the issue price and the redemption price of shares in an open-end investment company and the units of the contractual fund, respectively to monitor whether their calculation on the part of the management company is done in compliance with the LPOS, the instruments on the application thereof, the investment company's Articles of Association or, respectively, the contractual fund rules, the prospectus and the asset valuation rules;

China

Yes. Custodian is obliged to check the result of evaluation calculated by CIS administrator on daily basis.

Czech Republic

The process of the evaluation is reviewed by depository. The depository is obliged to conduct an independent evaluation and then these evaluations are compared

Lithuania

A depositary must ensure that the value of investment units is calculated in accordance with the requirements stipulated in the law and the instruments of incorporation.

Malaysia

In the context of the valuation of CIS units or shares, it is the duty of the manager to take all reasonable steps including exercising due diligence to ensure that the fund or the units of the fund are correctly valued and /r priced in line with the provisions of Valuation in the Guidelines and the Valuation Basis provided for in the GUTF. In clause 5.03(9) it is provided that the trustee should ensure that the systems, procedures and processes employed by the manager to value or price the fund or the units of the fund are adequate and that such valuation/pricing is carried out in accordance with the deed, guidelines and securities laws.

Thailand

CIS administrator is responsible for the evaluation of CIS's units. It is required to calculate net asset value (NAV) of CIS in accordance with standards and procedures prescribed by the Association of Investment Management Companies (AIMC) and approved by the SEC. In principle, such calculation must reflect fair market value of investment portfolio. The calculation of NAV is also standardized, comparable, and consistent with the accounting standards.