

Singapore Fund & Family Office Regulatory Update

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Introduction

- In 2017 MAS has released a number of consultation papers or responses to previous consultation papers regarding forthcoming changes to the Securities & Futures Act (SFA) and the Financial Advisers Act (FAA). This update covers some of those that are relevant for the Fund Industry, including:
 - Introduction of the Singapore Variable Capital Company (S-VACC) fund vehicle
 - Regulation of Venture Capital managers
 - Enhanced safeguards for Accredited Investors
 - Marketing of Collective Investment Schemes
- The update also covers a MAS clarification on licensing requirements for Single Family Offices

Singapore Variable Capital Company (“S-VACC”)

A new corporate structure for CIS

- MAS has proposed to set up a new vehicle, S-VACC, to be used for CIS
- S-VACC would be a new addition to the existing forms of CIS - unit trusts, limited partnerships and companies
- The new development is targeted at increasing Singapore’s competitiveness as the location of choice for both fund management and fund domiciliation



Singapore Variable Capital Company ("S-VACC") (Cont'd)

Redemption of Shares and Payment of Dividends Made More Flexible

- Existing rules under the Companies Act ("CA") are operationally cumbersome for CIS. For instance, the solvency requirements before capital redemption and prohibition of dividends from capital can make it challenging to return funds to investors
- Under the SVACC framework, the CIS will be allowed to freely redeem shares at the fund's Net Asset Value (except for listed closed-end funds) and to pay dividends from capital

Singapore Variable Capital Company ("S-VACC") (Cont'd)

Availability of Umbrella Fund Structure for Economies of Scale

- MAS also proposes to allow S-VACCs to use a cellular structure where an S-VACC is a single legal entity, with its sub-funds operating as separate cells. Each sub-fund can have different investment objectives and investors.
- Lower cost and operational efficiency may be achieved as multiple sub-funds may share a board of directors, service providers, general meetings and preparation of prospectuses may be conducted for entire umbrella fund.
- The framework will specify measures for proper segregation of assets and liabilities of sub-funds e.g. unique identification numbers and appropriate disclosure to investors.

Singapore Variable Capital Company ("S-VACC") (Cont'd)

Non-disclosure of Financial Statements and Shareholder Registers to Public Provides Greater Privacy

- While audited financial statements of an S-VACC will be made available to shareholders, MAS does not intend to require that the statements be made public as the statements may contain proprietary information relating to investment strategy.
- Due to privacy needs of investors, MAS proposes that an S-VACC need not disclose the S-VACC's register of shareholders to the public, but must make the register available to authorities for regulatory and law enforcement purposes.
- Under the existing framework of the CA, both the statements and registers may be publicly available.

Appointment of Approved Custodian

- MAS proposes that an S-VACC appoint an Approved Custodian to take custody of the property and be accountable to MAS for safeguarding the rights and interests of shareholders of the S-VACC. The Approved Custodian has to be an Approved Trustee under Section 289 of the SFA.

Singapore Variable Capital Company ("S-VACC") (Cont'd)

A S-VACC must be managed by a Permissible Fund Manager

- MAS also proposes that all S-VACCs must be managed by a fund managers that is either an LFMC, RFMC or Exempted Entity (e.g. banks, finance companies and insurance companies).
- The proposed wording for Exempted Entities does not appear to include fund managers who are currently exempted under the real estate and related party exemptions (e.g. family offices).

Inward Re-domiciliation Possible with Certain Requirements

- Foreign structures similar to S-VACCs will be able to transfer their registration to Singapore provided they satisfy the requirements under the proposed legislation for re-domiciliation of structures into Singapore

Venture Capital (“VC”) Regime

MAS’ Proposal

- MAS has proposed a simplified regime for VC Fund Managers (“VC managers”) as it seeks to ease start-ups’ access to capital.
- VC managers who manage funds that meet the following characteristics will qualify for the Regime:
 - i. Funds that only make investments into businesses not more than 5 years old;
 - ii. Funds that are closed-end; and
 - iii. Funds that are offered only to accredited or institutional investors.
- Managers who qualify would benefit from a faster authorisation process and reduced regulatory requirements

VC Regime (Cont'd)

Proposed lighter regulatory regime for VC managers

	Existing LFMC/RFMC Regime	New VC Manager Regime
Authorisation Process:		
Fit & Proper Requirement	Mandatory	Mandatory
Directors & Representatives -> 5 years experience in fund management	Mandatory	Removed

VC Regime (Cont'd)

	Existing LFMC/RFMC Regime	New VC Manager Regime
Ongoing Requirements:		
Minimum Base Capital	Mandatory	Removed
Business Conduct e.g. Compliance, Internal Audits, Independent Valuation, etc.	Mandatory	Removed
Independent Financial Audit	Mandatory	Removed
Annual / Quarterly MAS Returns	Mandatory	Removed
Notification of Changes in Particulars	Mandatory	Mandatory
AML/CFT requirements	Mandatory	Mandatory
Annual Declaration of Business Activities	Mandatory - RFMCs	Mandatory

Enhanced Safeguards for Accredited Investors (“AI”)

New Opt-in Regime for AI-eligible Investors

- Under existing rules, an investor who meets the prescribed wealth/asset threshold will automatically be classified as an AI.
- Financial Institutions (“FIs”) who serve AIs are able to rely on various regulatory exemptions under the rules (e.g. with respect to disclosure of product information).
- To further safeguard investors’ interests, MAS has proposed to introduce an “opt-in regime”.
- Under the new regime, investors who meet the wealth threshold (“AI-eligible investors”) have to make conscious decision to opt-in to be treated as an AI (a lower level of regulatory protection).
- FIs should review AIs’ eligibility for AI treatment periodically, at least once every two years.

Enhanced Safeguards for Accredited Investors (“AI”) (Cont’d)

Implementation Details of the Regime

For New Clients:

- **Opt-in Notification:** FIs will be required to provide a written notification to AI-eligible investors setting out their right to request for AI status and a clear description and warning of the regulatory safeguards that will not be applied if they opt into AI status (“opt-in notification”)
- **Opt-in Confirmation:** AI-eligible investors have to confirm in writing to the FI that they wish to opt-in to be an AI and acknowledge that they understand and accept the consequent reduction in regulatory safeguards

For Existing Clients:

- MAS will take an opt-out approach for existing AI investors, however specific disclosures will need to be made to such investors

Enhanced Safeguards for Accredited Investors (“AI”) (Cont’d)

Modification to AI-eligibility Criteria for Individuals

- Currently, an individual will qualify as AI if he passes either the net personal assets test exceeding S\$2million or income test of more than S\$300,000 in the preceding 12 months.
- MAS proposes to modify the net personal assets test such that net equity in an individual’s primary residence can only contribute up to S\$1 million of the existing minimum net assets threshold of S\$2 million.
- MAS also plans to introduce an alternative net financial asset test where investors who have S\$1million in financial assets net of related liabilities will be AI-eligible

Enhanced Safeguards for Accredited Investors (“AI”) (Cont’d)

Modification to AI-eligibility Criteria for Corporations

- Currently, unless a corporation has net assets of at least S\$10million, it can only be considered an AI if its sole business is investment holding and it is wholly owned by AIs
- MAS proposes to remove the restriction that the sole business is investment holding

Modification to AI-eligibility Criteria for Trustees of a Trust

- Under existing rules, trustees of a trust are AIs only where property held on trust for beneficiaries of the trust exceeds S\$10 million.
- MAS has proposed that, additionally, trustees of a trust are AIs, where:
 - i. Either all beneficiaries of the trust are AIs; or
 - ii. the settlor is an AI, and has reserved investment powers and revocation powers

Marketing of CIS

Current Situation

- Marketing of Collective Investment Schemes (CIS) potentially falls under the activity of “Dealing in Securities” under the SFA, and under the activity of “Marketing of CIS” under the FAA. This has caused some confusion in the market, and potentially different business conduct requirements for the same activity.
- Currently, Licensed Fund Managers (LFMCs) can market CIS as follows:
 - CIS that they manage (under the Securities & Futures Act (Licensing & Conduct of Business) Regulations) (“SF(LCB)R”) exemption that such marketing is incidental to their fund management activities)
 - Other CIS (under exemption 23(1)(d) of the FAA)
- Registered Fund Managers (RFMCs) can only market CIS that they manage (unless they get an additional licence)

Marketing of CIS (Cont'd)

Proposed Changes

- MAS will remove the activity of “Marketing of CIS” from the FAA. It will only be regulated under the activity of “Dealing in securities” under the SFA.
- Therefore all LFMCs and RFMCs who market CIS will be deemed to be Dealing in Securities.
- MAS proposes to exempt both LFMCs and RFMCs from a holding a licence from Dealing in Securities when marketing CIS which are either managed by the FMCs themselves or by their related corporations

Marketing of CIS (Cont'd)

Potential Impact on Licensed & Registered Fund Managers

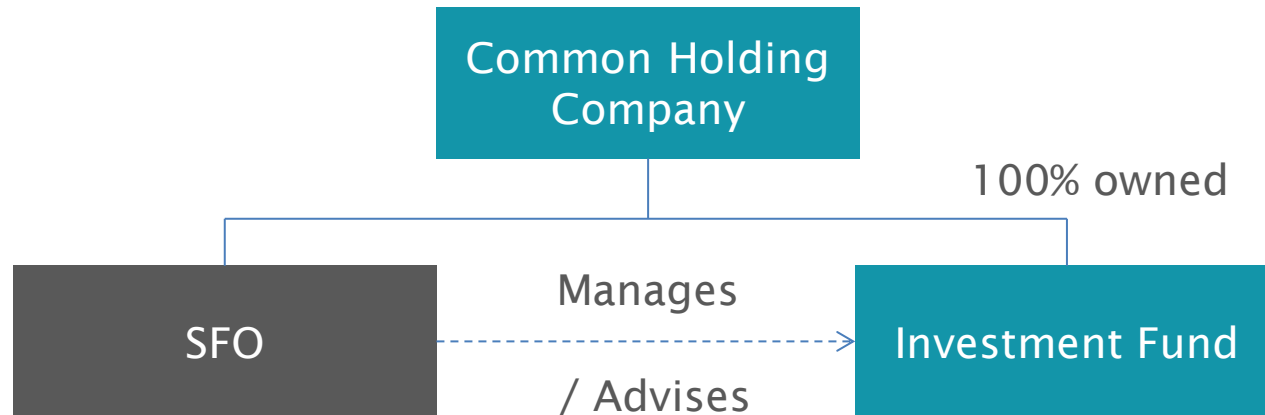
Marketing of CIS	LFMCs		RFMCs	
	Existing rules	Proposed rules	Existing rules	Proposed rules
Managed by itself	SF(LCB)R Exemption as incidental to fund management activities			
Managed by related corporations	Exemption under FAA	Exemption under SF(LCB)R	No Exemption Available	Exemption under SF(LCB)R
Managed by other corporations	Exemption under FAA	No Exemption Available	No Exemption Available	No Exemption Available

* MAS has indicated that the existing licensing exemption under Section 27(1)(e) of the Financial Advisers Regulations (“FAR”) to entities that market CIS to only institutional investors, will be replicated in the SFA.

Single Family Offices (“SFO”)

Exemption from Licensing

- MAS has provided clarification that an SFO that manages funds for or provides financial advisory services to its related corporations is exempted from licensing (under the Second Schedule to the SF(LCB)R)
- An illustration of an ownership structure that may qualify for such an exemption is as follows



Single Family Offices (“SFO”) (Cont’d)

Case-by-case Exemption

- A SFO which does not fall neatly under the illustrated structure, but in substance manages funds on behalf of single family only, may seek a case-by-case exemption from MAS under section 99(1)(h) of the SFA
- The arrangements that are considered typical of an SFO include factors to the effect that assets or funds managed are exclusively funded by a single family.
- MAS may take between 2 to 4 months to review an application for a licensing exemption.





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