

Oversight

Establishing a Fund Manager in Singapore

August 2020

Introduction

The regulatory regime for fund management companies (FMCs) in Singapore is in many ways similar to the regulatory framework in place in other financial hubs, such as Hong Kong. That said, the Monetary Authority of Singapore (MAS) has from time to time adapted the regulatory regime to accommodate specific sectors. An example is the simplified regulatory regime for Venture Capital Licensed FMCs introduced in 2017.

The key legislation governing the fund management industry in Singapore is the Securities and Futures Act (SFA) which applies to all FMCs based in Singapore. The MAS sets the regulatory requirements with which FMCs of all types have to comply.

This Oversight sets out a brief overview of the requirements for FMCs getting established in Singapore and compares certain areas of the regulatory regime in Singapore with the equivalent requirements of a corporation licensed by the Securities and Futures Commission (SFC) in Hong Kong.

Licensing requirements

Unless exempt, corporations with fund management as their principal business activity in Singapore must be either: (i) registered FMCs (RFMCs) or (ii) licensed FMCs (LFMCs), which hold a capital markets services (CMS) licence for fund management either for retail or for non-retail. FMCs in Singapore are regulated in 4 bands:

- **Registered FMC (RFMC)** – an FMC whose assets under management (AUM) does not exceed S\$250 million (approximately US\$183 million) and which does not serve more than 30 clients that meet the definition of “qualified investors” (of which not more than 15 of such clients are funds or limited partnership structures, and whose underlying investors are all accredited investors and/or institutional investors (each as defined under the SFA)). An RFMC will be subject to, among others, (i) eligibility criteria; (ii) business conduct requirements; and (iii) capital requirements (although, as indicated, an RFMC does not hold a CMS licence). An RFMC should periodically monitor the size of its AUM and should take steps to apply to be an A/I LFMC (as defined below) once it is aware that there is a likelihood of its AUM crossing the S\$250 million threshold in the near future – seen on next page.

- **Venture Capital Licensed FMC (VC LFMC)** – an FMC which manages only “Venture Capital Funds” being funds that (i) invest at least 80% of committed capital in securities that are directly issued by unlisted business ventures that have each been incorporated for no more than 10 years at the time of initial investment; (ii) invest up to 20% of committed capital in other unlisted business ventures that do not meet the requirements in item (i) above (i.e. they have each been incorporated for more than 10 years at the time of the initial investment, and/or the investment is made through acquisitions from other investors in the secondary market); (iii) must not be continuously available for subscription, and must not be redeemable at the discretion of the investor; and (iv) are offered to accredited investors and/or institutional investors (each as defined under the SFA). VC LFMCs generally can utilise a simplified and shorter licensing application process, and are subject to fewer capital requirements and business conduct requirements which A/I LFMCs and RFMCs are subject to.
- **Accredited/Institutional Licensed FMC (A/I LFMC)** – an FMC which serves only clients which meet the definition of “qualified investors”. Generally, the underlying investors of funds managed by an A/I LFMC must be accredited investors and/or institutional investors (each as defined under the SFA). There is no limit on the AUM of the FMC.
- **Retail Licensed FMC (Retail LFMC)** – an FMC which serves all types of clients, including funds authorised or recognised for public offer to retail investors.

Subject to certain safeguards, an A/I LFMC, a VC LFMC and a RFMC can carry on business in fund management with their staff (who are “investment professionals”) employed by the FMC or employed within the same corporate group (for example, entities or trusts that are related to the FMC, which are in the business of fund management – an entity or trust is considered to be related to the FMC if it is (i) a subsidiary of the FMC; (ii) a holding company of the FMC; or (iii) a subsidiary of the holding company or holding entity of the FMC).

“Investment professionals” are persons who perform the functions of portfolio management, research or dealing, and do not include individuals solely involved in activities such as client servicing, business development, marketing or risk management. For the avoidance of doubt, individuals whose roles are limited to middle-office or back-office functions would not be considered as “investment professionals”.

Under Hong Kong’s equivalent to the SFA, the Securities and Futures Ordinance (SFO), if an individual or a corporation carries on a business in any regulated activity in Hong Kong, it must be licensed by the SFC. The type of licence required depends upon the type of regulated activity to be carried out, although most fund managers operating in Hong Kong are required to have a Type 9 (asset management) licence. Unlike Singapore, the Hong Kong regime does not differentiate between different classes of fund managers and there is only one Type 9 (asset management) licence under the SFO. However, unless the Type 9 (asset management) licensed corporation has retail asset management experience, its licence will be subject to a licensing condition limiting the provision of its services to “professional investors” as defined under the SFO.

A professional investor for these purposes includes financial institutions and funds as well as operating companies and individuals with liquid assets of at least HK\$8 million (approximately US\$1 million).

Other requirements

Working capital requirements

Each RFMC is required to maintain a base capital of at least S\$250,000 (approximately US\$182,700) at all times. The base capital requirement of S\$250,000 also applies to an A/I LFMC. However, VC LFMCs are not subject to base capital requirements.

In Hong Kong the SFC requires that an investment management business licensed for Type 9 (asset management) regulated activity under the SFO must maintain a minimum liquid capital of HK\$120,000 (approximately US\$15,300) in Hong Kong at all times. Minimum paid-up share capital requirements of HK\$5 million (approximately US\$640,000) also apply where client assets will be held by the licensed corporation. However, most funds managed or advised by Hong Kong based fund managers and investment advisers appoint third party custodians and so this requirement usually does not apply, i.e. there are in effect no paid-up capital requirements for hedge fund managers.

In Singapore, a Retail LFMC is required to hold a base capital of (i) S\$500,000 (approximately US\$365,400) where it carries out fund management (non-collective investment schemes) on behalf of any customer other than an accredited or institutional investor; and (ii) S\$1,000,000 (approximately US\$730,800) where it carries out fund management in respect of any retail collective investment scheme.

By contrast, a retail fund manager in Hong Kong managing SFC authorised funds must have a paid-up share capital of not less than HK\$10 million (approximately US\$1.3 million). If such a fund manager needs to hold client assets as mentioned above the minimum paid-up capital requirement increases to HK\$5 million (approximately US\$640,000).

Minimum staffing and competency requirements

A VC LFMC is required to have at least two directors, at least one of whom should be resident in Singapore. A VC LFMC must employ at least two full-time representatives resident in Singapore, who may be the directors.

A RFMC is required to employ on a full-time basis at least 2 Singapore residents each of whom must have at least 5 years of relevant experience. These individuals may also be the relevant FMC's representatives, but one must be appointed as the chief executive officer (CEO) and also be an executive director of that FMC. By way of example, if the 2 directors of an RFMC are also portfolio managers, they could each act as a representative. Licensed A/I LFMCs are subject to similar director and staffing requirements. This is similar to the requirements in Hong Kong in relation to the appointment under the SFO of Responsible Officers (ROs) by a licensed corporation, although in Hong Kong often the SFC will permit the licensed corporation to have an RO based outside Hong Kong.

A Retail LFMC has a higher burden and will be required to employ 3 full-time Singapore resident representatives and its CEO must have at least ten of years relevant experience. Representatives of Retail LFMCs are also required to meet applicable minimum entry and examination requirements as set out in the relevant notice issued by MAS unless exempted.

In Hong Kong all front office staff of a licensed corporation must usually be licensed as accredited licensed representatives. Each licensed corporation must also appoint as ROs at least 2 licensed representatives with necessary experience approved by the SFC. Of the ROs, at least one must be available in Hong Kong at all times (i.e. be resident) and one must be an executive director of the licensed corporation. All executive directors of an SFC licensed corporation must be ROs. There are exam requirements for an RO, although these may be waived for an RO residing overseas in certain very limited circumstances. Under the SFO each RO is generally required to possess at least 3 years of relevant industry experience over the 6 years immediately prior to the date of the application. (Where an RO is not in possession of a recognised academic or industry qualification that RO must satisfy the SFC that he has 5 years of relevant industry experience over the past 8 years). For a retail fund manager of SFC authorised funds, there is an additional SFC requirement that the licensed corporation has not less than 2 key personnel (who can be the ROs) each of whom must have not less than 5 years of fund management experience in respect of regulated (i.e. public) funds at a reputable financial institution.

Audit requirements

A VC LFMC is not subject to any audit requirements by the MAS. A RFMC has to appoint an independent auditor to audit its financial statements and provide the MAS with an audit report. The auditor has to report on the RFMC's compliance with the following: (i) the restrictions on clientele and assets under management; (ii) the minimum base capital requirement; (iii) the key business conduct rules such as independent custody, valuation of clients' assets and client reporting; and (iv) the implementation of a risk management framework.

An A/I LFMC or a Retail LFMC is also required to appoint an independent auditor to audit its financial statements and provide the MAS with an audit report on its compliance with key licensing and business conduct requirements of a CMS licence holder on an annual basis.

Under the SFO, there is a similar obligation on licensed corporations which are required to appoint an auditor within a month of being granted a licence by the SFC.

Client assets

Unless exempted, a FMC is generally required to ensure that its assets under management are subject to independent custody. In addition, the MAS expects a third-party administrator to be appointed or for conflicts of interest to be dealt with appropriately where the FMC will provide administration services to funds or investment vehicles which it manages.

In Hong Kong, the SFO does not require client money to be held by a third-party custodian. However, as noted above, additional capital requirements apply if a fund manager holds client assets. As a result, hedge funds managed from Hong Kong will nearly always have a custodian or a prime broker and custodian – which in any event is a clear expectation of the SFC. Under the SFC's Fund Manager Code of Conduct (FMCC), the appointment of custodians of fund assets is a responsibility of the Hong Kong FMC.

Senior managers

In Singapore, there are existing pieces of legislation and guidelines that address many elements of the accountability and conduct regimes of other jurisdictions such as Hong Kong. More recently, the MAS has also proposed the introduction of a new regime that supplements the existing legal and regulatory framework concerning senior managers. This focuses particularly on the measures that financial institutions (which includes FMCs) should put in place to promote ethical behaviour and responsible risk-taking, and to strengthen the accountability of senior managers for the actions of their staff and the conduct of the business under their purview.

Specifically, the guidelines seek to reinforce the individual accountability of senior managers (i.e. individuals who are employed in an executive capacity by, and are principally responsible for day-to-day management of, the financial institution), strengthening oversight of material risk personnel (i.e. an employee whose decisions or activities could materially impact a financial institution's risk profile) and reinforcing standards of proper conduct among all employees.

The guidelines set out 5 accountability and conduct outcomes that financial institutions are expected to work towards:

- **Outcome 1:** Senior managers who have responsibility for the management and conduct of functions that are core to the financial institution's operations are clearly identified.
- **Outcome 2:** Senior managers are "fit and proper" for their roles, and held responsible for the actions of their staff and the conduct of the business under their purview.
- **Outcome 3:** The financial institution's governance framework is supportive of and conducive to senior managers' performance of their roles and responsibilities. The financial institution's overall management structure and reporting relationships are clear and transparent.
- **Outcome 4:** Material risk personnel are "fit and proper" for their roles, and subject to effective risk governance as well as the appropriate standards of conduct and incentive structure.
- **Outcome 5:** The financial institution has a framework that promotes and sustains the desired conduct among all employees.

By contrast Hong Kong each licensed corporation is now required to nominate a manager in charge (MIC) for each of 8 core functions. This is Hong Kong's senior management regime (although introduced and imposed on licensed corporations engaging in fund management before the similar regime in the United Kingdom). An MIC is an individual appointed by the licensed corporation to be principally responsible, either alone or with others, for managing the relevant core function(s) of the licensed corporation.

An individual may be an MIC for more than one core function. It is possible for MICs to be based outside Hong Kong and this is often the case. The purpose of the MIC regime is to have clearly identified individuals held accountable for regulatory lapses that belong to their area of responsibility.

Risk management framework

All FMCs, other than VC LFMCs, are required under applicable regulations to put in place a risk management framework to identify, address and monitor the risks associated with customer assets managed, appropriate to the nature, scale and complexity of its business. All policies, procedures and reports relating to the risk management function must be properly documented and maintained.

In Hong Kong each licensed corporation is required to prepare a compliance manual and a business plan (including a risk management framework) which is often submitted to the SFC together with the application for its licence. The FMCC also requires, amongst other things, the adoption of a risk management policy as well as liquidity management policy.

Registration/notification process

In Singapore FMC applicants are required to submit an application for a CMS licence or an application for registration as an RFMC (as applicable) via an online submission system "Corporate Electronic Lodgment" administered by the MAS. This online system also allows FMCs to make other ongoing regulatory submissions, such as notifying the MAS of the appointment of directors and making annual declarations. The MAS officially does not expect an application to take more than 4 months to review and process if the applicant's business model is straightforward, the applicant meets the relevant admission criteria in full and the application is complete and clear. We have in various cases obtained approvals more quickly.

In Hong Kong, for applications lodged by a new fund manager to become a licensed corporation, the SFC still accepts paper. The SFC's estimated processing time is also approximately 4 months once the relevant forms have been received in good order. However, this period refers only to the time taken by the SFC to process the application on their part and does not include the time lapse between the issue of the SFC's requisitions and the applicant's responses. In addition, the SFC may reject an application and request additional information and clarifications. Accordingly, assuming there will be no significant issues, a more realistic time estimate would be 5 months from acceptance by the SFC of the application, although in some cases applications can be processed in less time.

Annual fees

An annual fee of S\$1,000 (approximately US\$731) is payable to the MAS by an RFMC. The application fee for an A/I LFMC, VC LFMC and a Retail LFMC is S\$1,000 (approximately US\$731) and the annual licence fees for the regulated activity of fund management is S\$4,000 (approximately US\$2,925). In Hong Kong, by comparison, the SFC's annual fees for licensed corporations are based on a per regulated activity, per licensed representative basis. For a small hedge fund manager with a Type 9 (asset management) licence, 2 ROs and 1 licensed representative, the application fee would total HK\$16,010 (approximately US\$2,050) and the annual fee would total HK\$16,010 (approximately US\$2,050).

Conclusion

The Singapore authorities have worked hard over the years to make Singapore a more attractive and competitive destination for asset management, most recently with the successful launch of the Singapore variable capital company (VCC) - thus adding to the onshore fund vehicle options available. The fund management regime in Singapore has evolved and the MAS seeks to make it progressive and conducive for FMCs to operate within - hence it is not surprising that many FMCs choose to have a presence in both Singapore and Hong Kong. As described above, there is much commonality as between both of these jurisdictions.

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