

Capital Markets

MAS Consults on Proposed Due Diligence Requirements for Corporate Finance Advisers

Introduction

Corporate finance advisers ("**CF advisers**") play a crucial role in the Singapore capital markets in advising entities intending to raise funds or entities which are involved in takeover and merger transactions.

On 15 December 2021, the Monetary Authority of Singapore ("**MAS**") issued a consultation paper setting out proposed due diligence requirements for CF advisers that will be set out in a new MAS Notice. For the purposes of the Notice, CF advisers are defined as being either (a) holders of a capital markets services ("**CMS**") licence, or (b) banks, merchant banks, and finance companies exempt from holding a CMS licence, that undertake the regulated activity of advising on corporate finance.

While CF advisers are currently subject to some regulatory requirements – for instance, general conduct requirements under the Securities and Futures (Licensing and Conduct of Business) Regulations – the proposed regulatory requirements aim to raise the standards of conduct applicable to them. Examples of the new requirements include the duties to act with due care, skill, and diligence; manage conflicts of interests; and keep records of due diligence work performed.

These new requirements are targeted at improving the quality of disclosures from entities seeking to raise funds, thereby promoting informed decision-making by investors and heightening public confidence in disclosures.

Below, we cover key points of the proposed new Notice:

1. Requirements applying to all CF advisers under Part I of the Notice;
2. Additional requirements under Part II of the Notice applying to CF advisers who are acting as issue managers ("**IMs**") for initial public offerings ("**IPOs**"). MAS also proposes applying Part II to CF advisers who advise on reverse takeovers ("**RTOS**") and very substantial acquisitions ("**VSAs**"); and
3. Materiality considerations that apply to requirements in both Parts of the Notice.

The consultation closes on **15 February 2022**.



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Key Requirements for All CF Advisers

Under the proposed Notice, CF advisers will be required to, among others:

Duty	Details
Act with due care, skill, and diligence	<p>This includes:</p> <ul style="list-style-type: none"> • determining the nature and extent of due diligence work; • assessing and verifying whether information given by its customer or other persons ("Information") is accurate and complete; • monitoring whether new information or developments cast doubt on the reliability of such Information; and • undertaking appropriate verification of such information.
Manage conflicts of interests	<p>CF advisers must identify, mitigate, and disclose material conflicts of interests (whether potential, actual, or perceived) between its customers, the interests of the CF adviser or its related corporations. Where conflicts cannot be satisfactorily mitigated, it should not act as CF adviser.</p> <ul style="list-style-type: none"> • Where a CF adviser is also involved in other activities in relation to the offering process, or the capital markets products offered, it must effectively identify and address potential conflicts arising from such involvement with appropriate controls. • With regard to personnel (e.g. directors, employees, or representatives): <ul style="list-style-type: none"> ○ There must be effective safeguards (including physical segregation) to prevent the disclosure of confidential or price-sensitive information by personnel. ○ The adviser must monitor dealings in capital markets products by its personnel and set up dealing restrictions for personnel with access to confidential information.
Governance and supervision	<p>CF advisers must:</p> <ul style="list-style-type: none"> • implement an adequate framework for senior management to have oversight over matters (e.g. acceptance of engagements to act as a CF adviser, the proposed due diligence plan, etc.); • ensure that the performance of representatives advising on CF is adequately supervised, managed, and reviewed; • ensure reportable matters (e.g. material issues on non-compliance, suspicious circumstances, difficult or sensitive issues) are identified to senior management, have reporting lines for the escalation of such matters, and monitor their resolution; and

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Duty	Details
	<ul style="list-style-type: none"> ensure that the transaction team for each transaction collectively possesses the appropriate knowledge, skills, and experience.
Keep records	<p>CF advisers must prepare, maintain, and retain records of all data, documents, and information ("Records") where necessary to meet requirements under the proposed Notice. These Records must be kept for at least five years from the conclusion of the transaction.</p> <p>The proposed Notice sets out a list of circumstances where such Records are required, including records of conflicts of interest; due diligence plans and procedures, and all reportable matters.</p>

Additional Requirements

Part II of the Notice is intended to apply to CF advisers who are acting as issue managers ("**IMs**") who advise on initial public offerings ("**IPOs**") and other public issuances. As IMs are responsible for conducting due diligence on the issuer and providing guidance to ensure that disclosures are accurate and complete in all key aspects, they serve as gatekeepers of quality in the capital markets.

MAS is also particularly seeking views on the proposed application of Part II to CF advisers who advise on RTOs and VSAs, given that these transactions result in significant changes to the business of publicly listed entities.

Per the additional requirements, the relevant CF advisers must, among others:

1. Advise listing applicants on their duties and responsibilities under the Securities and Futures Act ("**Act**") and other relevant regulatory requirements, including the listing rules.
2. Assess and have reasonable grounds to be satisfied that a listing applicant is suitable for listing, taking into account identified material issues.
3. Meet minimum standards in performing due diligence, such as verifying material representations with persons of appropriate authority and knowledge, conducting background checks and interviews with key persons, undertaking inspections of key physical assets and reviewing relevant underlying records where material issues are involved. This requirement is also intended to apply to CF advisers advising on RTOs and VSAs.
4. Ensure that an independent review of due diligence is carried out by persons with appropriate seniority, knowledge, skills, and experience. The review must cover specific matters such as the outcome of the due diligence performed, the bases of all opinions, assurances and conclusions arrived at by the transaction team and the identification and resolution of reportable matters.

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5. Adhere to requirements when engaging third party service providers or experts, such as (i) ensuring they have the necessary knowledge, skills, and experience, (ii) setting out clearly the parameters for the scope and extent of work to be performed, (iii) assessing independently whether sufficient due diligence has been conducted, and (iv) assessing whether any results of the process warrant disclosure in the listing application. The CF adviser also ultimately remains responsible for the work done.
6. Independently investigate any allegations and complaints made against the listing applicant and key persons.
7. Have reasonable grounds to be satisfied with the knowledge, skills and experience, as well as the qualifications and independence of any expert appointed by the listing applicant. It will also have to advise the listing applicant on the necessary scope of services to be performed and review any work product critically and compare it to information known to the CF adviser and require follow-up investigations where necessary.
8. Be satisfied of certain criteria prior to the submission of the listing application and the listing applicant's admission to the specified approved change, such as the:
 - a. outcome of the due diligence performed;
 - b. completeness of information in the listing application; and
 - c. applicant's compliance with all relevant listing requirements.

Materiality Requirements

MAS further proposes to introduce materiality considerations for certain requirements. The full list is set out in the consultation paper, and includes matters such as:

1. material conflicts of interest;
2. material departures from the proposed due diligence plan; and
3. material issues relating to non-compliance with the Act or other legal and regulatory issues.

Concluding Remarks

The proposed Notice would apply to CF advisory engagements that are entered into on or after the date of commencement of the Notice.

For more details on the MAS consultation as well as submission requirements, please click [here](#) for the MAS consultation paper titled "Introduction of Due Diligence Requirements for Corporate Finance Advisers".

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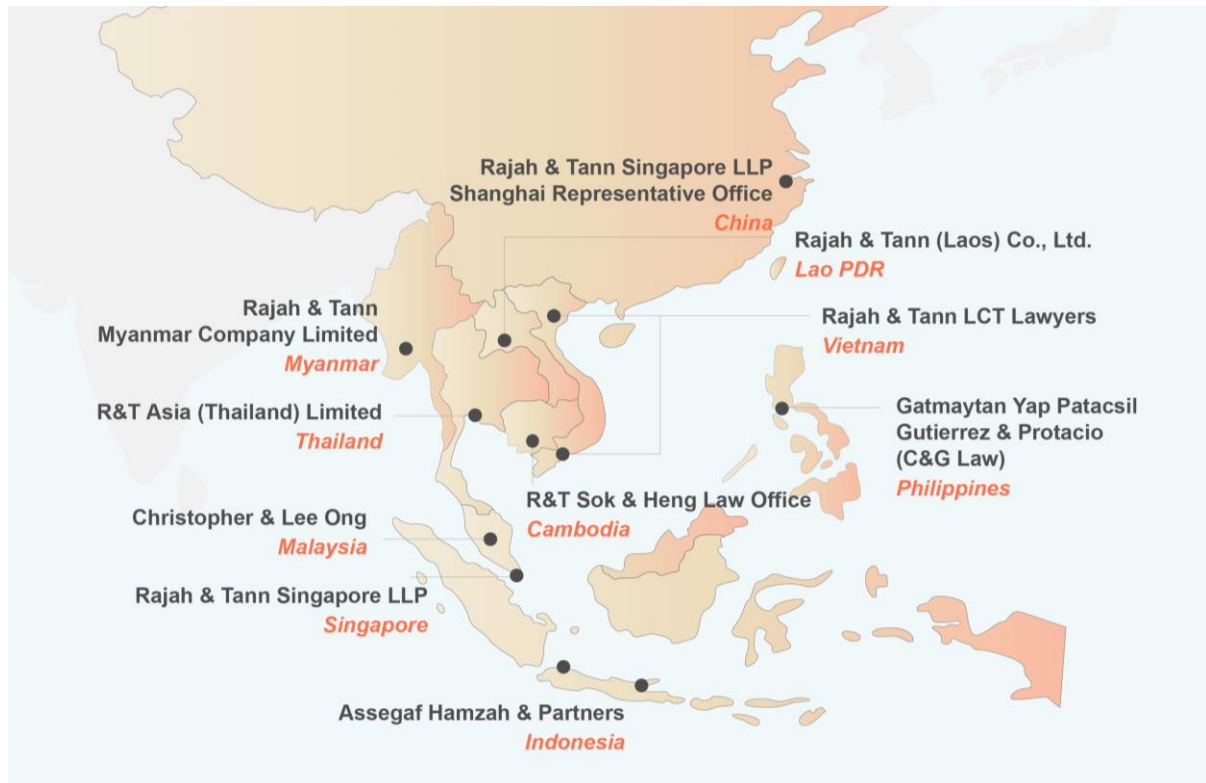
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