MAS Implements Changes to the Regulatory Regime for Fund Management Companies

Introduction

The Monetary Authority of Singapore (the “MAS”) announced on 6 August 2012 that the new enhanced regulatory regime for fund managers would come into operation on 7 August 2012. The new requirements have been known generally to the market for some time now, as the MAS had released draft legislation together with a consultation paper released in September 2011.

In this regard, based on our preliminary review of the amending legislation, we have not noted any new requirements beyond what has been highlighted by the MAS in their consultation papers and responses to public feedback on the matter.

Timings For Implementation

Existing exempt fund managers have up to six months to either apply for a CMS Licence, or if their AUM is below S$250 million, to file a Form 22A to be a registered fund manager.

This six month transition period will enable managers be put in place the necessary infrastructure so as to be compliant with the new regime. In other words, none of the new requirements apply immediately to existing exempt fund managers. (Note: This is not the case for existing CMS Licence holders.)

We understand that MAS’ expectations on the timelines by which existing managers will have to put in place the necessary infrastructure and satisfy the new requirements are as follows:-

(a) if an exempt fund manager is transitioning into the registered fund manager regime (“RFMCs”), by the date the fund manager files its new form (Form 22A) with MAS (which should be filed no later than 6 months from 7 August 2012 i.e. 6 February 2013);
(b) if an exempt fund manager is applying for a CMS Licence to manage assets of accredited investors only ("AIFMCs"), technically speaking, only by the date it receives its CMS Licence, although as part of their evaluation of a manager for a CMS Licence, there are a significant number of matters that MAS would expect to see in place at the time of the submission of the application, and managers are advised to satisfy qualitative requirements such as establishing a risk management and compliance framework by the time they submit the application for a CMS Licence; or

(c) for an existing CMS Licence holder, the requirements technically apply immediately, although we believe MAS may exercise some flexibility in this. Having said that, the additional requirements under the new regime imposed on an existing CMS Licence holder are not extensive.

Fund managers should note that the obligation is to file Form 22A (for RFMCs) and to apply for a CMS Licence no later than 6 February 2013.

Managers need not necessarily receive the MAS acknowledgement or the CMS licences (as the case may be) by 6 February 2013 to be compliant.

The MAS has released a response to industry feedback, which we attach for your reference. Please click on this link.

This provides some useful insight on two key areas, namely the risk management framework and the requirement for an enhanced audit for RFMCs.

Most of the changes are contained in the following two documents:-

(a) Securities and Futures (Licensing and Conduct of Business)(Amendment No. 2) Regulations 2012; and

(b) Guidelines on Licensing, Registration and Conduct of Business For Fund Management Companies.

We understand that MAS may provide further guidance in subsequent FAQs.

**MAS Briefing**

We understand that MAS plans to conduct a presentation to brief fund managers on the proposed transition later this month. It is important that managers attend this briefing.
Key Areas To Note Under New Regime

We set out below some of the key areas under the new regime for RFMCs and AIFMCs. (AIFMCs should note that they will also have to acquaint themselves with additional requirements already imposed on CMS Licence holders under existing rules e.g. quarterly filings, risk based capital requirements.)

(1) Professional Staffing

The fund manager should have at least two directors to sit on the board of the fund manager (one of which should be the Chief Executive Officer (CEO)), two persons with at least 5 years of relevant experience and two representatives. (The same two persons can satisfy all 3 requirements.)

(2) Base Capital

Requirement of at least S$250,000 base capital. The components of base capital are set out in the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations (as amended) and include paid up share capital and retained earnings.

This requirement is to be met at all times. It would be advisable for a fund manager to maintain a buffer amount, as the amount of base capital of the company may fluctuate from time to time.

(3) Compliance Officer

RFMC

CEO and directors responsible for compliance. No specific requirement for dedicated person, nor does the responsible person have to be independent from front office

AIFMC (less than S$1 billion AUM)

A senior staff member independent from front office to be responsible for compliance. This need not be a full time role, and the compliance officer can also have a COO or CFO profile.
AIFMC (more than S$16 million AUM)

An independent, dedicated compliance officer with suitable qualifications required. This compliance officer can perform another complementary role, e.g. an in-house legal counsel role.

For group entities, utilising overseas or external support is possible provided conditions are met.

Notwithstanding the above, the CEO and directors are always ultimately responsible for compliance.

(4) Custodian

Fund managers are to place customer assets with licensed or authorised custodian. The MAS has clarified that service providers such as banks and prime brokers satisfy this requirement. An exemption is available for unquoted assets, e.g. contractual rights such as loans and derivatives instruments, and for private equity fund managers, provided disclosure is made to clients, and acknowledgement received from client.

(5) Establishment of a Risk Management Framework

In view of the diversity of business models and risk profiles of managers, MAS does not intend to be prescriptive of risk management processes or models.

Risk management processes to be appropriate to size and scale of manager and must be documented.

(6) Enhanced audit for RFMCs

All managers must appoint auditors to audit their financial statements, which must be filed with MAS. In addition, the auditors must report on size of AUM, client profiles and risk management framework.

The MAS does not intend to restrict fund managers to appointing any particular audit firm. However the MAS expects a RFMC to appoint auditors with experience commensurate with the complexity of the RFMC’s operations. The MAS can direct a change of auditor.

(7) Establishment of an Appropriate Compliance Framework

(8) Establishment of Internal Audit Processes
(9) Ensure proper conflict of interest mitigation policies, including ensuring proper segregation of duties internally

(10) Independent Valuation of Customer Assets

Customer assets are to be subject to independent valuation. This requirement can be satisfied if the fund administrator or custodian provides valuations.

For large institutions, this requirement can be satisfied if there is an independent in-house valuation team separate from the investment management function.

An annual audit by auditors does not fulfil requirement.

Further clarification on this is likely to be required, particularly for illiquid or hard to value assets.

Please do not hesitate to contact our Arnold Tan at +65 62320701, Anne Yeo at +65 62320628, Leong Lu Yueh at +65 62320736 or Jasmine Chew at +65 62320454 if there are any queries on the above.
Contacts

Arnold Tan  
Partner  
D (65) 6232 0701  
F (65) 6428 2194  
arnold.tan@rajahtann.com

Anne Yeo  
Partner  
D (65) 6232 0628  
F (65) 6428 2207  
anne.yeo@rajahtann.com

Leong Lu Yueh  
Partner  
D (65) 6232 0736  
F (65) 6428 2215  
lu.yueh.leong@rajahtann.com

Jasmine Chew  
Partner  
D (65) 6232 0454  
F (65) 6428 2225  
jasmine.chew@rajahtann.com

Please feel free to also contact the Knowledge and Risk Management Group at eOASIS@rajahtann.com.

Rajah & Tann LLP is the largest law firm in Singapore and Southeast Asia, with regional offices in China, Lao PDR, Vietnam and Thailand, as well as associate and affiliate offices in Malaysia, Indonesia, Cambodia and the Middle East. Our Asian network also includes regional desks focused on Japan and South Asia. As the Singapore member firm of the Lex Mundi Network, we are able to offer access to excellent legal expertise in more than 100 countries.

Rajah & Tann LLP is firmly committed to the provision of high quality legal services. It places strong emphasis on promptness, accessibility and reliability in dealing with clients. At the same time, the firm strives towards a practical yet creative approach in dealing with business and commercial problems.

The contents of this Update are owned by Rajah & Tann LLP and subject to copyright protection under the laws of Singapore and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Rajah & Tann LLP.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business and operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Rajah & Tann LLP or e-mail the Knowledge & Risk Management Group at eOASIS@rajahtann.com.