

Singapore – A simplified regulatory regime for managers of venture capital funds



Summary

On 20 October 2017, the Monetary Authority of Singapore (“**MAS**”) **announced** the introduction, with immediate effect, of a new regulatory regime for managers of venture capital funds (“**VC Managers**”). The features of the regime are outlined in the MAS’ **response** to feedback on its proposals that were originally set out in a **consultation paper** dated 15 February 2017 (the “**CP**”).

The new regime significantly reduces the regulatory requirements which apply to VC Managers, expands the scope of venture capital funding available for start-ups, and increases the attractiveness of Singapore as a place of establishment for VC Managers. It marks the latest step in a series of regulatory initiatives designed to facilitate the entry of new businesses into the Singapore financial sector (please see our previous client alerts on the **MAS’ regulatory sandbox** and the **MAS’ consultation on the regulation of robo-advisory services**).

This paper outlines the key rationale and features of the new Singapore regime for VC Managers. For comparative purposes, it also outlines key developments in the regulation of VC Managers in the European Union (“**EU**”) and United States (“**US**”). There are various differences between the VC Manager regimes across these jurisdictions, such as the qualifying criteria for the different regimes. Nonetheless, it is significant that the MAS’ introduction of a lighter-touch regulatory regime for VC Managers brings Singapore broadly in line with the approach taken by other established markets, including the EU and US.



The introduction of a **light-touch regulatory regime** for VC Managers in Singapore represents an important step in the MAS’ continued efforts to **strengthen the regional and global competitiveness** of Singapore as a place of business.”

Rationale

The CP envisaged simplifying the admission requirements and authorisation process for VC Managers, and significantly reducing the ongoing requirements which VC Managers are subject to, compared with other types of fund manager licensed or registered with the MAS.

The MAS' rationale for its proposals was that VC Managers now make up a more significant group of market participants than was the case when the current Singapore regulatory regime for fund managers was implemented in 2012. The proposals also reflected the MAS' assessment that the activities of VC Managers give rise to lower business and market conduct risks than those of other institutions. The MAS noted that VC Managers do not trade on public markets, typically do not use or are restricted from using leverage, and serve "accredited investors" or "institutional investors" (each as defined in the Securities and Futures Act (Cap. 289 of Singapore) ("**SFA**")) who are typically able to protect their own interests by contractual means.

Key aspects of the simplified regime

The new regime simplifies and shortens the authorisation process for VC Managers. The MAS' key focus when admitting and supervising VC Managers is the existing fit and proper criteria and anti-money laundering and countering-the-financing-of-terrorism ("**AML/CFT**") requirements under the SFA.

Key relaxations introduced by the simplified regime:

- > VC Managers no longer need to have directors and representatives with at least five years of relevant experience in fund management.
- > VC Managers are not subject to competency, capital and ongoing business conduct requirements that currently apply to other fund managers.

In order to qualify for the new VC Manager regime, a VC Manager must manage funds with the following features:

- (a) the funds must invest at least 80% of committed capital in securities that are directly issued by unlisted business ventures that are no more than ten years old (up to 20% of committed capital can be invested in other unlisted business ventures which have been incorporated for more than ten years at the time of initial investment);
- (b) units of the funds are not available for new subscription after the close of fundraising, and can only be redeemed at the end of the life of the fund; and
- (c) units in the funds are offered only to "accredited investors" and/or "institutional investors".

Following careful consideration of the consultation feedback, the MAS decided not to impose a restriction on leverage as a qualifying criterion for the new VC Manager regime. The MAS has not so far experienced any conduct issues associated with the use of leverage by VC Managers. However, a restriction on leverage is a criterion to qualify as a "venture capital fund" in the US. In general, the simplified regulatory regime for VC Managers in Singapore is not as prescriptive as the equivalent regime in the US (as detailed below).

To implement the new VC Manager regime, the MAS has revised the Securities and Futures (Licensing and Conduct of Business) Regulations and the Financial Advisers Regulations. It has also released the following documents:

- > updated [FAQs on the Licensing and Registration of Fund Management Companies](#);
- > new [Form 1V - Application for a capital markets services licence as a venture capital fund manager](#);
- > updated [Guidelines on Licensing, Registration and Conduct of Business for Fund Management Companies \[Guideline No. SFA 04-G05\]](#);
- > updated [Notice on Risk Based Capital Adequacy Requirements for Holders of Capital Markets Services Licences \[Notice No. SFA 04-N13\]](#); and
- > updated [Notice on Minimum Entry and Examination Requirements for Representatives of Holders of Capital Markets Services licence and Exempt Financial Institutions under the SFA \[Notice No. SFA 04-N09\]](#).

Transition to the simplified regime

Existing licensed fund managers and registered fund managers wishing to move to the new VC Manager regime do not need to undergo a new licensing process or to inform the MAS of any capital reductions. They need to notify the MAS of their intention to be a VC Manager using the new Form 1V, and should continue to comply with all existing business conduct and other regulatory requirements until they are informed by the MAS that they can operate under the VC Manager regime.

For further guidance on the transition or application process, please refer to the updated FAQs on the Licensing and Registration of Fund Management Companies and the updated Guidelines on Licensing, Registration and Conduct of Business for Fund Management Companies.

Position in other jurisdictions

EU

In the EU, there has been a regulatory regime for VC Managers since 2013, when the European Venture Capital Funds Regulation ("**EuVECA Regulation**") was implemented at the same time as the complementary Alternative Investment Fund Managers Directive ("**AIFMD**"). The purpose of the EuVECA Regulation was to make it easier for venture capital firms whose total assets under management fall below the AIFMD minimum threshold of EUR 500 million to raise funds across the EU through the availability of a marketing passport. This passport would allow European venture capital funds ("**EuVECA**s") (which fall within the definition in the EuVECA Regulation) to be sold across the EU without having to comply with the complex web of national private placement rules.

The regime has not been considered a success and has been used very little, perhaps due to the maximum EUR 500 million threshold being too low to allow it to be often used. In 2015 the European Commission identified that only a small number of funds set up as EuVECA's had been launched, which prompted it to launch an early review into its functioning. Following the review and after further consultation, in September 2017 the European Parliament announced that it had adopted a new regulation which amends the EuVECA Regulation. This amended regulation was published in the Official Journal on 10 November 2017 and will apply from 1 March 2018.

Without impacting upon investor protection, the amended regulations widen the range of managers eligible to set up and manage EuVECAs to include those whose assets under management exceed the EUR 500 million threshold, increase the range of firms the EuVECAs can invest in, and enable EuVECA registered managers to market their funds across the EU.

US

Since 2011, the US Investment Advisers Act of 1940 (the “**Advisers Act**”) has provided an exemption from registration with the US Securities and Exchange Commission (“**SEC**”) for an investment adviser that acts in an advisory capacity solely to one or more “venture capital funds.”

To qualify as a “venture capital fund,” a fund must be a “private fund” that:

- (a) represents to investors that it pursues a venture capital strategy;
- (b) does not provide an investor with redemption rights other than in extraordinary circumstances;

- (c) holds at least 80% of the amount of the fund’s aggregate capital contributions and uncalled capital commitments in “qualifying investments” (broadly, primary issuances of securities acquired directly from non-listed companies);
- (d) does not borrow or otherwise incur leverage in excess of 15% of the fund’s aggregate capital contributions and uncalled capital commitments, and then only on a short-term basis; and
- (e) is not a US registered investment company (mutual fund) or business development company.

An investment adviser relying on the exemption described above must still make certain filings with the SEC and comply with fiduciary obligations under the Advisers Act, but is exempt from the more onerous ongoing compliance and reporting requirements of the Advisers Act that apply to registered investment advisers. Given the specificity of its requirements, the exemption generally has been used narrowly within the US funds industry and by its intended beneficiaries.

Implications for your business

The introduction of a light-touch regulatory regime for VC Managers in Singapore represents an important step in the MAS’ continued efforts to strengthen the regional and global competitiveness of Singapore as a place of business. The new regime positions Singapore as an alternative to other jurisdictions, such as the EU and US, that have introduced lightened regimes for VC Managers. Existing and prospective VC Managers should consider whether they are eligible to benefit from the relaxed regime, and if so, whether they would nonetheless prefer to opt for the full licensing or registration regime for fund managers (e.g. with a view to conducting a wider range of fund management activities). Even private equity managers can look to operate under the new regime if they can meet the specified qualifying criteria. However, private equity managers need to carefully consider if the regime impacts their use of a wider range of strategies, as certain strategies may not meet the criteria for a simplified set of safeguards and requirements.

Further information

If you would like to discuss the above, feel free to contact [Peiyong Chua](#) or any of your other Linklaters contacts.

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