AMENDMENTS TO THE REGULATORY REGIME FOR VENTURE CAPITAL MANAGERS

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Introduction

As part of the government's drive to attract more Venture Capital Managers ("**VC Manager(s)**") and venture capital funding into Singapore and to stimulate the growth of entrepreneurship and innovation, and more specifically the startup scene in Singapore, the Monetary Authority of Singapore ("**MAS**") has simplified and shortened the authorisation process for VC managers. This article explores the changes to the regulatory framework for VC Managers in more detail.

Venture Capital Funds ("**VC Fund(s)**") invest in businesses that are in the early growth phase, and in startups. They also offer help to monitor and mentor the business of the investee companies and provide advice on the operations of the business. Venture capitalists are generally required to have a diverse range of industry experience and professional expertise and deep understanding of the sectors in which they invest. It is this unique trait of venture capitalists providing both capital as well as valuable input on the business operations which makes it such an attractive proposition for entrepreneurs and startups to turn to venture capitalists for funding.

The growth of the venture capital scene has been picking up the pace and as a result, the Singapore fund management industry has seen a small but fast-growing segment of VC Managers. Many of the VC Funds are set up and managed by conglomerates or family offices that are internally funded and these VC Funds are typically not funded by third-party investors. If the funds are of this nature, then the managers of such funds are not required to be licensed or be registered with MAS.

If, however, the VC Fund is raised from third-party investors, the manager managing such funds in Singapore will be regarded as conducting the regulated activity of fund management under the Securities and Future Act (Cap. 289) and would be required to register with the MAS as a Registered Fund Management Company ("**RFMC**"), or be a Licensed Fund Management Company holding a capital markets services license ("**Licensed FMC**") (if their aggregate assets under management exceed S$250 million or if they manage assets for more than 30 qualified investors).

Under the pre-existing regulations where there was no distinction in regulatory treatment between a VC Manager and other fund managers, a VC Manager would have had to meet the fit and proper criteria and have had at least 2 experienced directors and representatives each with a minimum of 5 years' relevant experience. A VC Manager was also required to comply with the base capital and risk-capital requirements. The prescribed base capital requirement was S$250,000 if it carried out fund management on behalf of customers who are accredited investors and/or institutional investors. The risk-based capital requirements would also apply if the VC Manager is a Licensed FMC. A VC Manager which is either a RFMC or a Licensed FMC is also required to comply with the following requirements:

- Suitable compliance arrangements in place
- Internal audit
- Independent valuation and reporting of the VC Funds
- Business conduct rules on custody of the assets under management, mitigating measures to mitigate any conflict of interest, relevant disclosures to the customers etc.
- Submission of annual audited financial statements and auditors' reports to MAS.

VC Manager Regime ("VC Manager Regime")

In recognition of the unique environment that VC Managers operate in (e.g. VC Managers not trading on public markets, VC Managers serving accredited investors and/or institutional investor who are savvy in assessing the VC Manager's track record and negotiating contractual safeguards protecting their own interests), MAS has made certain key changes to the regulatory scheme for VC Managers with the intention of simplifying the admission requirements and authorization process and reducing the compliance obligations in cases where the VC Managers meet certain criteria (set out below).

Criteria for VC Fund Eligibility

Under the regime, a VC Manager may only manage funds that meet the following criteria:

1. invest at least 80% of committed capital (excluding fees and expenses) in securities that are directly issued by an unlisted business venture that has been incorporated for no more than ten years at the time of initial investment;
2. invest up to 20% of committed capital (excluding fees and expenses) in other unlisted business ventures that do not meet sub-criterion (i), i.e.they have been incorporated for more than ten years at the time of the initial investment, and/or the investment is made through acquisitions from other investors in the secondary market;
3. must not be continuously available for subscription, and must not be redeemable at the discretion of the investor; and
4. are offered only to accredited investors as defined under the SFA or investors in an equivalent class under the laws of the country where the offer is made, and/or institutional investors. Employees of VC managers, who have not accredited investors, will not be permitted to invest in VC funds.

Simplified Authorisation Requirements and Reduced Compliance Obligations

A VC Manager needs to hold a CMS licence for fund management. All VC Managers should meet the following requirements at all times:

1. Fit and Proper – Satisfy MAS that its shareholders, directors, representatives and employees, as well as the VCFM itself, are fit and proper, in accordance with the Guidelines on Fit and Proper Criteria issued by MAS .
2. Place of Incorporation – Be a Singapore incorporated company that has a permanent physical office in Singapore.
3. Key personnel – Have at least two directors, at least one of whom should be full-time and resident in Singapore; and at least two full-time resident professionals and representatives, who may include the directors.
4. Disclosure – Disclose to investors that they are not subject to all of the regulatory requirements that are imposed on other fund management companies.
5. Conflicts of interests – Avoid any conflicts of interest and, where such conflicts arise, ensure that they are resolved fairly and equitably.
6. AML/CFT Requirements – Comply with the requirements on anti-money laundering and countering the financing of terrorism requirements, as set out in the Notice to Capital Markets Service Licensees and Exempt Persons on Prevention of Money Laundering and Countering the Financing of Terrorism .
7. Periodic Returns – Submit periodic regulatory returns on changes to key appointments, AUM, investor types and numbers, fund types, and deals by geography and sector.

Existing LFMCs or RFMCs which seek to transit to the VC Manager Regime need not undergo a new licensing process, or inform MAS of any capital reductions. They will only need to notify MAS of their intention to be a VC manager by indicating so in the “Application for a CMS licence to operate as a VCFM” Form (Form 1V). Further guidance on the transition and application process is set out in the Guidelines on Licensing, Registration & Conduct of Business for FMCs, and the FAQs on the Licensing and Registration of Fund Management Companies.

Potential Application for Startup Accelerators

An Accelerator typically is a corporation that usually charges a fee and takes a single-digit percentage of equity in externally developed startups and in return provides small amounts of capital and mentorship. The startups are usually passed through 3-4 month programs at the end of which the startups are “graduates” of the Accelerator. It is conceivable that over time, the Accelerator will build up a portfolio of securities in startups which it would actively manage and this may be considered as fund management activity. To the extent that such Accelerators fulfil the proposed criteria for VC Managers (explained above), they could be able to avail themselves of the simplified VC Manager Regime.