

IS START UP "ACCELERATION" A REGULATED BUSINESS?

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As Singapore's start-up ecosystem continues to grow, Start-up Accelerators ("**Accelerators**"), ubiquitous in Silicon Valley, are sprouting up in strength. Often, these entities may overlook the need to consider whether their activities fall under the definition of "Fund Management" as prescribed under the Securities and Futures Act ("**SFA**") and whether such entities are regulated as "Collective Investment Schemes", also defined under the SFA. Even if these entities neither fall under Collective Investment Schemes nor operate Fund Management activities, they may unknowingly be conducting financial advisory activities without the relevant licence.

Typical Business Model of an Accelerator

Before we can examine whether an Accelerator requires a licence from and/or registration with the Monetary Authority of Singapore ("**MAS**"), we have to understand the typical business model of an Accelerator.

An Accelerator typically is a corporation that usually charges a fee and takes a single-digit percentage of equity in externally developed start-ups and in return provides small amounts of capital and mentorship. The start-ups are usually passed through 3-4 month programs at the end of which the start-ups are "graduates" of the Accelerator. The best-known Accelerators in the world include Y Combinator, Techstars, and The Branded. Singapore-based Accelerators, including Joyful Frog Digital Incubator, better known as JFDI, Accelerasia, Clearbridge Accelerator, Expara, Get2Volume, and Startupbootcamp Fintech are gaining traction as South-east Asia gains prominence as a start-up investment hotspot.

Factors to consider if an Accelerator requires Capital Markets Services licence and/or registration with MAS as a RFMC

Collective Investment Scheme

The definition of the Collective Investment Scheme ("**CIS**") is provided under Section 2 of the SFA. In brief, it encompasses an arrangement in respect of any property, under which the contributions of the participants are pooled, the purpose or effect of which is to enable the participants (whether by acquiring any right, interest, title or benefit of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income. without having day-to-day control over the management of the property and the property is managed as a whole by or on behalf of a manager.

An Accelerator raises capital to invest in start-ups under its program by means of attracting potential investors to pool together a sum of money, without ceding any day-to-day management rights and control

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to such investors. The profits made from acquiring and subsequently divesting the equity stakes in start-ups would be shared by the investors. Such an arrangement may be considered as a CIS. There are some types of arrangement that the legislation provides are not included as CISs, notably a “closed-end fund”, although the ambit of this exclusion was significantly narrowed on 2013 when the MAS published a notice to the effect that a closed-ended fund with an investment policy under which investments are made for the purpose of giving participants in the arrangement the benefit of the results of the investments, and not for the purpose of operating a business, would be deemed to be a CIS. Depending on the exact business structure, an Accelerator may fall within an exclusion from being considered a CIS.

As a general rule, any CIS offered in Singapore is required to be authorized or recognized in Singapore by the MAS. The CIS would have to comply with the requirements under the SFA and the regulations made thereunder.

Fund Management activities

Under Part 2, Second Schedule of the SFA, “Fund Management” means undertaking on behalf of a customer (whether on a discretionary authority granted by the customer or otherwise) (a) the management of a portfolio of securities or futures contracts; or (b) foreign exchange trading or leveraged foreign exchange trading, for the purpose of managing the customer’s funds, but does not include real estate investment trust management.

As stated earlier, an Accelerator will typically invest in the start-ups as part of the agreement to admit these start-ups under its program. Over time, the Accelerator will build up a portfolio of securities in start-ups which it would actively manage and this may be considered as Fund Management activity.

Any person conducting Fund Management activity in Singapore must hold a Capital Markets Services (“CMS”) licence for Fund Management, be a Registered Fund Management Company (“RFMC”) or be otherwise exempted from the requirements to hold a CMS licence as provided under the Second Schedule of the Securities and Futures (Licensing and Conduct of Business) Regulations.

It should be noted that, for reasons of good corporate governance, the Fund Management entity and the CIS typically would be two separate entities. Hence if an Accelerator is found to be a CIS and at the same time involved in Fund Management activities, it could consider restructuring its business such that their Fund Management activity and the investment pooling function are carried out in separate entities.

Advising on Corporate Finance

Under Part 2, Second Schedule of the SFA, “advising on corporate finance” includes giving advice to any person (whether as principal or agent or as trustee of a trust) concerning compliance with or in respect of laws or regulatory requirements (including the listing rules of a securities exchange) relating to the raising of funds by any entity.

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An Accelerator may provide fund-raising advice to start-ups under their program to raise further funding from investors. Providing such advice may constitute “advising on corporate finance” as defined under the SFA. This requires the entity to hold a CMS licence in order to advise on corporate finance. There may be applicable exemptions that an Accelerator can avail itself of under the Second Schedule of the Securities and Futures (Licensing and Conduct of Business) Regulations, depending on the exact business model of the Accelerator.

What CNPLaw can do for Accelerators

The Funds Practice Group at CNPLaw can provide a timely review of your Accelerator’s business model to check for compliance with the relevant laws and regulations. Should there be a need to apply for a CMS licence, register a RFMC or file as an exempt corporate finance adviser, we can provide commercially focused as well as technical legal input to assist you to meet your business objectives while complying with the regulatory framework.

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