MAS' CONSULTATION PAPER ON A PROPOSED FRAMEWORK FOR SINGLE FAMILY OFFICES

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The Monetary Authority of Singapore ("**MAS**") published on 31 July 2023 a consultation paper setting out a proposed framework for Single Family Offices ("**SFOs**") operating in Singapore to strengthen MAS' surveillance and defense against potential money laundering risks ("**proposed framework**"). Under the proposed framework, potential SFOs would be subject to qualifying criteria for class exemption from licensing under the Securities and Futures Act ("**SFA**"). SFOs must also comply with the proposed framework's notification and annual reporting requirements.

Proposed class exemption for SFOs

Current framework

Currently, single family offices may be exempt from being licensed or regulated by the MAS as they do not serve any third-party customers or manage third-party monies. In the Frequently Asked Questions on the Licensing and Registration of Fund Management Companies it publishes (the "**FAQs**"), MAS says, "The term 'single family office' is not defined under the SFA. An SFO typically refers to an entity which manages assets for or on behalf of only one family and is wholly owned or controlled by members of the same family. In this context, the term 'family' may refer to individuals who are lineal descendants from a single ancestor, as well as the spouses, ex-spouses, adopted children and stepchildren of these individuals."

Under the current framework, SFOs typically are exempted from the requirement to hold a CMS license for fund management under paragraph 5(1)(b) of the Second Schedule of the Securities and Futures (Licensing and Conduct of Business) Regulations ("**Paragraph 5(1)(b), Exemption**"). The exemption covers a company that provides fund management services only to related corporations. In the FAQs, MAS states that a suitably structured SFO may rely on the Paragraph 5(1)(b) exemption as a class exemption, meaning no application for exemption by MAS is required (although the SFO will need to provide a legal opinion to MAS that it is exempt from licence, if it applies for tax incentive in Singapore). The MAS gives the following illustration of an ownership structure for an SFO which could fall under this exemption.

Diagram: Class exemption where SFO is considered a related corporation of the fund vehicle under a family-owned holding company

The scope of business of the SFO must also not fall within any of the activities found in paragraphs 5(1)(b)(i) – (iii) of the Paragraph 5(1)(b) exemption, which are intended to restrict the exemption to fund companies that do not manage third-party funds. In the context of an SFO, this means that the common holding company of the SFO and the investment fund company must be wholly owned by family members. When the SFO structure does not fall within the Paragraph 5(1)(b) Exemption, it may seek a case-by-case exemption from licensing under the SFA from the MAS.

Although it is not discussed in the consultation paper, it is worth noting that another exemption which has potential application to management of a family's investments is paragraph 5(1)(c) of the Second Schedule of the Securities and Futures (Licensing and Conduct of Business) Regulations, which exempts an individual who carries on business in fund management for or on behalf of (i) his family member(s); or (ii) a firm or corporation in which he or any members(s) of the family has control of 100% of the voting power. We come back to the relevance of this exemption further below.

Proposed new framework

In line with MAS's policy intent to not subject entities that do not manage third-party assets to licensing requirements, MAS proposes introducing a structure-agnostic class exemption for SFOs, removing the need for case-by-case licensing exemptions. Consistent with the current exemption regime for SFOs, this proposed class exemption does not mean that MAS is regulating or endorsing the exempted SFOs.

The proposed framework removes the case-by-case licensing exemption. For an SFO to operate under the proposed class exemption, it must obtain legal advice that it satisfies the revised qualifying criteria to be exempted from licensing:

1. it must be wholly owned (whether directly or indirectly) by members of the same family;
2. the fund management must be conducted for or on behalf of:
    1. family members, including family trusts and corporations wholly owned by and for the sole benefit of the family;
    2. charitable organisation(s) funded exclusively by the family,

save that the SFO may also conduct fund management for or on behalf of key employees.

An SFO must be incorporated in Singapore and have an employee resident in Singapore as the designated point of contact with MAS. Further, the SFO must maintain business relations with at least one of the MAS-regulated financial institutions to be listed in the proposed regulations. All SFOs operating in Singapore will thus be subject to beneficial ownership requirements for Singapore-incorporated companies under the Accounting and Corporate Regulatory Authority ("**ACRA**") and anti-money laundering and countering the financing of terrorism ("**AML/CFT**") checks by MAS-regulated FIs. Collectively, these measures are aimed at ensuring adequate AML/CFT safeguards over SFOs operating in Singapore.

Addressing the growing trend where non-family members invest alongside family

The proposed framework further allows the conduct of fund management for or on behalf of key employees (which refer to the chief executive officer and executive directors of the SFO). MAS recognises that there is a growing trend where non-family members, such as key employees, invest alongside the family for purposes of alignment of economic interest and risk-sharing.

The consultation paper includes a draft of proposed amendments to the Paragraph 5(1)(b) exemption by including a paragraph 5(1)(bb), which defines an exempt SFO as follows:

"(bb) a company –

(i) which is wholly owned (whether directly or indirectly) by one or more individuals, all of whom are members of a single family;

(ii) which carries on business in fund management for or on behalf of the following persons:

(A) an individual mentioned in paragraph (i) or an individual who is a member of the single family mentioned in paragraph (i);

(B) a corporation wholly owned (whether directly or indirectly) by any individual mentioned in subparagraph (A), where fund management carried on by the company is for the sole benefit of such individuals;

(C) an express trust in which —

(AA) each settlor is an individual mentioned in sub-paragraph (A); and

(AB) each beneficiary is an individual mentioned in sub-paragraph (A);

(D) a charity or foreign charity which is funded exclusively by any individuals, corporations or trusts mentioned in sub-paragraph (A), (B) or (C);

(iii) which does not carry on business in fund management for or on behalf of any person other than persons mentioned in paragraph (ii) and key employees of the company; and

(iv) which establishes and maintains business relations with a specified financial institution;"

One question that arises in relation to the drafting is whether a family-owned investment company managing its investments internally would fall within the above definition. MAS's intention seems to be "structure agnostic", so this structure presumably is supposed to be covered by the exemption. However, the way the criteria are constructed, they still tend to suggest a company which is conducting fund management for a separate person or persons and not a family-owned investment company which is internally managed. Also, the notification requirements discussed below appear to refer to the SFO and the investment vehicle as separate entities.

The exemption in paragraph 5(1)(c) seems designed for a situation where a family member is carrying on investment management in their individual capacity for the family or a family-owned investment company, not where the individual family member is simply, say, a director of the family-owned investment company carrying on internally the management of its own investments. It is unclear if MAS intends to regulate activity carried on under this exemption in the same way as proposed in relation to the Paragraph 5(1)(b)

Exemption or if this exemption is not regarded as raising the same need for regulation as the Paragraph 5(1)(b) Exemption.

Also, while the drafting of the proposed exemption covers an SFO managing investments for a family-owned investment company and for a family trust, it is not clear that is covers an SFO managing investments for an investment company owned by a trustee for a family trust, which is a common structure. Possibly, that structure is intended to fall within paragraph 5(1)(bb)(ii)(B) "a corporation wholly owned (whether directly or indirectly) by any individual mentioned in subparagraph (A), where fund management carried on by the company is for the sole benefit of such individuals", since the beneficiaries of the trust will be family members. However, strictly speaking, it likely will be the trustee that owns the corporation not the beneficiaries under the trust. Beneficiaries under a discretionary trust don't have any legal entitlement to either income or capital. The trustee has the legal ownership and discretion as to whether or not to make payments of income or capital and to which beneficiaries.

Perhaps these points will be clarified in the consultation, and the drafting of the proposed regulation, which is said to be subject to review, may be tweaked according to the clarification.

The family is permitted to define family members by referring to the lineal kinship to a designated common ancestor, which should not be an extremely remote ancestor. The draft regulations in the consultation paper outline the proposed definition of "family member" as follows:

(a) individuals are members of a single family if each of them are, with reference to a common ancestor,

(i) a spouse or ex-spouse of the ancestor;

(ii) a lineal descendant of the ancestor;

(iii) a spouse or ex-spouse of a lineal descendant mentioned in sub-paragraph (ii); or

(iv) a stepchild or adopted child of a lineal descendant mentioned in sub-paragraph (ii).\

Initial notification and annual reporting requirements for SFOs

Initial notification

An SFO must obtain a legal opinion supporting its qualification and notify MAS, confirming its ability to comply with the qualifying criteria, within seven days of the commencement of its operations in Singapore. MAS proposes to provide a transitional period of six months for existing SFOs operating in Singapore to comply with the proposed framework. To continue to operate in Singapore, these SFOs would need to notify MAS of the required information within six months from the effective date of the proposed framework. Where a SFO has applied for tax incentive under Section 13O or Section 13U of the Income Tax Act, and furnished a legal opinion to MAS as part of its application, the SFO will also be required to obtain a new legal opinion that the SFO qualifies under the proposed class exemption criteria.

In its notification, the SFO must furnish:

1. Its key particulars, specifically:
    1. name, UEN and date of incorporation of the SFO;
    2. name, country and date of incorporation of the fund vehicle;
    3. name(s) of MAS-regulated FI(s) that the SFO has established and maintained business relations with;
    4. name of the law firm that provided the legal opinion that the SFO qualifies under the class exemption criteria; and
    5. amount of assets to be managed by the SFO.
2. A signed declaration by all the family members who own the SFO ("Ultimate Owners"), CEO and director(s) to MAS that:
    1. its Ultimate Owners are currently not the subject of any investigation by authorities or the subject of any civil or criminal proceedings, whether in Singapore or elsewhere;
    2. its Ultimate Owners, CEO and director(s) have never been convicted of a serious crime or been involved in money laundering/terrorism financing/proliferation financing; and
    3. it does not and will not engage in any activity with designated persons or entities (i.e. individuals or entities in the United Nations lists or any other list found on the MAS website under "Lists of Designated Individuals and Entities"), whether directly or indirectly.
3. A signed declaration by the Ultimate Owners, CEO and director(s) to MAS that it fulfils all the conditions to be exempted under the class licensing exemption criteria.

Annual reporting requirement

Annually an SFO must submit its annual return within 14 days after the end of each calendar year to report the following:

1. Total assets under its management;
2. Name(s) of MAS-regulated FI(s) with whom the SFO has established and maintained business relations at the end of the calendar year.

Practical Implications

The practical implications of the regulatory changes suggested by this consultation paper include the following:

1. SFOs which currently fail to qualify for licensing exemption under the Paragraph 5(1)(b) Exemption would no longer be able to rely on the "case-by-case" exemption under the SFA. Instead, they would

need to qualify under the new proposed framework.

2. To qualify under the proposed framework, an SFO will need to provide its key particulars and a legal opinion that the SFO qualifies to MAS within seven days of the commencement of its operations. Transitional provisions apply to existing SFOs.
3. SFOs are further required to provide their annual return within 14 days after the end of each calendar year.