

NOTE ON CONSULTATION PAPER ON THE REPEAL OF REGULATORY REGIME FOR REGISTERED FUND MANAGEMENT COMPANIES

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Note on Consultation Paper on the Repeal of Regulatory Regime for Registered Fund Management Companies

This note summarises the Monetary Authority of Singapore's ("**MAS**") consultation paper seeking feedback on the repeal of the regulatory regime for Registered Fund Management Companies ("**RFMCs**"). MAS will implement the repeal of the RFMC regime after it has considered industry feedback to this consultation paper and finalised the legislative amendments.

Background

MAS wishes to simplify the regulatory regime for fund managers because of the following reasons:

- The RFMC regime was introduced to facilitate transition into a fully regulated regime of fund managers.
- Currently, the fund management industry has matured, with many former exempt fund managers becoming Accredited /Institutional Investors Licensed Fund Management Companies ("**A/I LFMCS**"); most new players tend to apply to be A/I LFMCS as opposed to RFMCs. The population of RFMCs has therefore remained relatively stable in recent years.

Transitional Arrangements

(1) Application to be A/I LFMCS

Existing RFMCs would have to apply for and be granted a CMS license for fund management by submitting the prescribed application form in Annex 1 of the Consultation Paper to MAS ("**Form 1AR**") before 1 January 2024. If existing RFMCs did not apply, they would be considered to have opted to cease fund management activities.

MAS will grant a CMS license to RFMCs that: (a) have carried on business in fund management activities in the six months immediately preceding the submission of the Form 1AR; and (b) have submitted an application via the Form 1AR within the stipulated timeline.

Timeline: MAS intends to respond to all application within 1 month of submission. Successful applicants will be issued a CMS license upon repeal of the RFMC regime at which point exempt representatives will transition to appointed representatives.

Fees: No fees are payable for the prescribed application window for: (a) RFMCs applying to become A/I LFMCS; and (b) the notification of existing representatives. License fees for the aforementioned apply only post-grant of license.

More details will be given by MAS in due course.

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(2) Specific Restrictions and Requirements on A/I LFMCs Transitioned from RFMCs

As RFMCs' internal controls and staffing arrangements tend toward managing smaller pools of assets, MAS will continue to impose licence conditions on RFMCs that transition to A/I LFMCs to restrict their managed assets to S\$250 million. These A/I LFMCs may engage MAS to review the licence conditions, should they plan to manage more than this amount of assets. There will be no cap on the number of investors or funds managed.

These A/I LFMCs will have to comply with the reporting requirements applicable to typical A/I LFMCs. They will have to seek MAS' prior approval for certain changes, such as shareholders and key appointment holders. These A/I LFMCs will be subject to the following reporting requirements that span the repeal date:

(a) Changes in particulars that occur before the repeal date: The fund management company ("FMC") must comply with existing RFMC requirements by submitting Form 23A within 14 days of the change, even if the 14-day period crosses the repeal date. For changes in particulars occurring after the repeal date, requirements applicable to A/I LFMCs will apply, which include seeking prior approval for director appointments. MAS will review these changes occurring before the repeal date.

(b) Submission of annual regulatory returns for financial year ending before repeal date: The FMC must comply with existing RFMC requirements by submitting (i) an annual declaration via Form 25A within one month from financial year end ("FYE"), and (ii) an auditor's report via Form 25B no later than 5 months from financial year end, even if the respective submission periods cross the repeal date. Having submitted Forms 25A and 25B, the FMC does not have to additionally submit regulatory returns required of an A/I LFMC for the same financial year already covered by the two forms.

Some RFMCs have been issued specific directions due to specific circumstances which will continue to apply even after these RFMCs become A/I LFMCs.

(3) Ongoing Requirements as a CMS Licence Holder

MAS will impose licensing conditions as listed in section 5 of Form 1AR. A summary of the conditions is provided below:

1. MAS' prior approval must be obtained for any change of licensee's members or shareholding of its members which will result in any person, alone or acting together with any connected person, being in a position to control not less than 20% of the voting power in the licensee or not less than 20% of the issued shares of the licensee.

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2. In relation to the licensee's CEO and directors, to inform MAS of: (i) any resignation; (ii) any change in the nature of appointment or country of residence; and (iii) any change in business interests or shareholders provided to MAS in Form 11.
3. Licensee cannot acquire 20% or more of the share capital in any corporation or establish any branch (in Singapore or elsewhere) unless MAS approval has been obtained.
4. Licensee shall immediately inform MAS of any matter which may adversely affect its financial position to a material extent.
5. Total managed assets of licensee must not exceed \$250 million at any time. If it this value is exceeded, the licensee should inform MAS immediately.
6. Licensee shall conduct its business in such a manner as to avoid conflicts of interests; if such conflicts arise, to ensure that they are resolved fairly and equitably.
7. Licensees would need to inform MAS should any of its officers or representatives be subject to any civil or criminal investigation, whether any offence or disciplinary action is taken against it or its officers or representatives locally or abroad, of any breach in laws in Singapore or elsewhere or any other matter than affects the ability of officers/representatives to meet the Fit and Proper criteria.
8. Licensee shall produce its books to independent auditors to be selected by the MAS to conduct any audit on the licensee. Audit expenses shall be borne by the licensee.
9. If the licensee undertakes a purchase, sale, merger or any other combination of all or part of the business where such part can operate as a stand-alone entity, 7 days' notice to MAS must be given before the agreement is executed. If there is no documentation, the same deadline for notification applies before execution of the transaction.

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10. The licensee shall ensure that any person it employs or appoints to act as its representative in respect of any regulated activity it is licensed to provide is an appointed, temporary or provisional representative in respect of that regulated activity.
11. Licensee cannot lend money without MAS' approval.
12. Licensee to inform MAS promptly if it has fewer than 2 full-time appointed representatives in respect of each relevant regulated activity under the Securities and Futures Act 2001 ("**SFA**").
13. Licensee shall only carry on business for one or more of the following customers: (a) accredited investors as defined in the SFA; (b) institutional investors as defined in the SFA; (c) a collective investment scheme or closed-end fund, which units can only be purchased by accredited or institutional investors or both, or the equivalent in another jurisdiction; (d) limited partnership where the limited partners comprise accredited or institutional investors or both, or the equivalent in another jurisdiction; (e) an investment professional employed by the licensee or an entity that is related to the licensee and is in the business of fund management.
14. Licensee to provide MAS with a Letter of Responsibility, Letter of Undertaking, Banker's Guarantee and/or Professional Indemnity Insurance, as may be required by MAS and in such form as MAS may require, and to ensure these remain in force as long as the license is valid.
15. Licensee to ensure all liabilities and obligations to customers have been fully discharged and provided for prior to cessation of business for regulated activities which it is licensed.

Final Comments

One final comment we have is whether there should be arrangements for RFMCs who qualify as venture capital fund managers ("**VCFMs**") to be able to convert to become VCFMs, as this consultation only contemplates the conversion of RFMCs into A/I LFCMs.

Please also find a link to the Consultation Paper here:

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<https://www.mas.gov.sg/-/media/mas-media-library/publications/consultations/cmi/2023/consultation-paper---repeal-of-rfmc-regime.pdf>

“managed assets” include:

- (a) moneys and assets contracted to or drawn down by the licensee, which are under the discretionary authority granted by the customer to the licensee, and in respect of which the licensee is carrying out fund management;
- (b) moneys and assets contracted to the licensee, which are under the non-discretionary authority granted by the customer to the licensee, and in respect of which the licensee is carrying out fund management;
- (c) moneys and assets contracted to the licensee, but which have been sub-contracted to another party and for which the other party is carrying out fund management, whether on a discretionary authority granted by the customer or otherwise.

For the avoidance of doubt, moneys and assets are contracted to a licensee if they are the subject matter of a contract for fund management between the licensee and its customer. If the licensee becomes aware that the total value of the managed asset is likely to exceed \$250 million, it shall immediately notify the MAS and cease any increase in positions, and not accept assets for fund management, until such time as advised by the MAS.

This refers to forms specified under the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations (“**SF(FMR)R**”).

“investment professional” means a person who is in the management of, research on, or the trading of investment products.

Related means:

- (a) in the case of an entity that is a corporation, the licensee is related to the entity in accordance with section 6 of the Companies Act;
- (b) in the case of an entity other than a corporation, the licensee is: (i) a subsidiary of the entity; (ii) a holding corporation of the entity; or (iii) a subsidiary of a holding corporation, holding entity or holding trust, of the

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entity;

(c) in the case of a trust, the licensee is: (i) a subsidiary of the trust; (ii) a holding corporation of the trust; or (iii) a subsidiary of a holding corporation, holding entity or holding trust, of the trust.

Further definitions relating to paragraph (b) and (c) above can be found in the Consultation Paper.

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