

PROPOSED AMENDMENTS TO THE REGULATORY REGIME FOR VENTURE CAPITAL MANAGERS

Posted on March 1, 2017

Category: [CNPupdates](#)

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.



Date Published: 1 March 2017

Authors and Contributors: Bill Jamieson and Amit Dhume.

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**") is proposing to simplify and shorten the authorisation process for VC managers. This article explores the proposed changes to the regulatory framework for VC Managers in more detail.

Venture Capital Funds ("**VC Fund(s)**") have their investments in businesses that are in the early growth phase, in addition to investment in startups. Additionally, 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 the investment is made. It is this unique trait of venture capitalists being able to provide 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

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

funds are not required to be licensed or be registered with MAS.

If, however, the money for the VC Fund is raised from third-party investors, the manager managing such funds may be regarded as conducting the regulated activities of fund management under the Securities and Future Act (Cap. 289) and they 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 existing regulations where there is no distinction in regulatory treatment between a VC Manager and other fund managers, a VC Manager (as with other fund managers) has to meet the fit and proper criteria and have at least 2 experienced directors and representatives with a minimum of 5 years' experience. A VC Manager is also required to comply with the base capital and risk-capital requirements. The current prescribed base capital requirement is S\$250,000 if it carries out fund management on behalf of customers who are accredited investors and/or institutional investors. The risk-based capital requirements would apply if the VC Manager is a Licensed FMC. A VC Manager which is either an 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.

Proposed 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 is proposing certain key changes to the regulatory scheme for VC Managers with the intention of simplifying the admission requirements and authorisation process and reducing the compliance obligations in cases where the VC Managers meet certain criteria (set out below).

Proposed Criteria for VC Managers

VC Managers will be required to comply with the following:

- The investment by the VC Managers should be in unlisted business ventures which have been established or incorporated for no more than five years;

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.

- The funds managed by VC Managers should be close-ended funds that do not allow frequent subscriptions and redemptions; and
- The VC Funds should be offered only to the end-investors who are either accredited investors and/or institutional investors.

Simplified Authorisation Requirements and Reduced Compliance Obligations

MAS shall require all VC Managers to meet MAS' fit and proper criteria on financial soundness, honesty, integrity and reputation but will dispense with the requirement for VC Managers to have directors and representatives with at least five years of fund management experience.

VC Managers will also no longer be subject to the capital requirements and business conduct rules that currently apply to fund managers in general, and will not have to fulfil base capital thresholds and risk-based capital requirements. VC Manager will also not be required to undergo independent valuations and internal audits or submit audited financial statements to MAS.

Notwithstanding the simplified authorisation scheme and reduced compliance obligations on VC Managers, MAS will still retain regulatory oversight of VC Managers and they are required to comply with the reporting obligations to MAS on changes to key management personnel, substantial shareholding in the VC Manager and information regarding the funds managed and investors as well as comply with anti-money laundering obligations. MAS will also retain existing powers to inspect and issue directions.

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 once the amendments are introduced.

General disclaimer

This article is provided to you for general information and should not be relied upon as legal advice. The editor and the contributing authors do not guarantee the accuracy of the contents and expressly disclaim any and all liability to any person in respect of the consequences of anything done or permitted to be done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents.