THIRD EDITION

INVESTMENT FUNDS

INTERNATIONAL SERIES

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1. MARKET OVERVIEW

The Singapore fund management market is considered to be one of the leading asset management locations in Asia, with total assets under management of around S$2.36 trillion at the end of 2014. The Singapore funds market is constantly maturing in response to the growing demand for investments throughout the Asia-Pacific region.

There are currently over 600 participants in the asset management industry in Singapore operating under various licences/registration regimes.

Following the recent steps taken by Europe and the United States against tax evasion, Singapore has implemented international standards on fighting tax crimes. Singapore has criminalised the laundering of proceeds from serious tax offences. Singapore is also extending its exchange of information framework, in accordance with internationally agreed standards, to all of its existing tax agreement partners; signing the Convention on Mutual Administrative Assistance in Tax Matters and allowing the Inland Revenue Authority of Singapore (IRAS) to obtain bank and trust information from financial institutions without the need for a court order.

In Singapore, the primary legislation regulating the investment funds industry is the Securities and Futures Act (Chapter 289) (Securities Act). The Monetary Authority of Singapore (MAS), which is Singapore's central bank, regulates all financial institutions in Singapore, including asset managers.

2. ALTERNATIVE INVESTMENT FUNDS

There is no separate regime for alternative investment funds in Singapore similar to the Alternative Investment Fund Managers Directive, however certain funds, for example money market funds, hedge funds, capital guaranteed funds and index funds are subject to additional requirements under the Code on Collective Investment Schemes issued by the MAS (CIS Code).

2.1 Common structures

While the structure of the fund depends on the type of underlying investments and the nature of investors, some common fund structures are mentioned below.

Private limited companies

There are no specific corporate structures available in Singapore that are geared towards investment funds. A normal private limited company incorporated in Singapore can be used to establish a fund. Being a separate legal entity, liability for its debts and obligations lies with the company and the members are liable only to the extent of any amount unpaid on their shares. Members are entitled to a share of any dividends, when declared. Dividends can only be paid out of profits. A private limited company is generally subject to strict accounting and auditing requirements.

Private limited companies are subject to restrictions on the modes and methods of returning capital to an investor. Buybacks of ordinary shares are limited to 20% of the issued ordinary capital of the company. These can be repurchased out of distributable profits or, if the company will still be solvent afterwards and looking forward 12

months, out of capital. Companies can otherwise only return capital to their shareholders if they follow one of the procedures in the Companies Act for companies to carry out a reduction of capital, either with approval from the court or alternatively under a process that requires the directors to make a statutory solvency statement which looks forward 12 months and to file the statement and publicise the capital reduction by making a filing with the Accounting and Corporate Regulatory Authority (ACRA). Private equity funds typically issue redeemable preference shares to investors. Provided that the shares are fully paid they can be redeemed out of the capital of a company if all the directors have made a solvency statement in relation to the redemption and the company has lodged a copy of the statement with ACRA.

A separate private limited company is typically incorporated as a fund manager. This company enters into an investment management agreement with the fund and is paid management fees/receives carried interest.

Limited partnerships

A limited partnership (LP) consists of at least one general partner and one limited partner. An individual or a corporation can be a general partner or a limited partner. A limited partner has limited liability for the debts and obligations of the limited partnership, unless the limited partner takes part in the management of the limited partnership. The general partner is liable for all debts and obligations of the limited partnership incurred while it is a general partner. Usually in a fund structure, the general partner will be a limited liability entity formed by the fund's principals. A limited partnership is registered by the general partner with the ACRA. The name of the limited partnership must contain the term "Limited Partnership" or the acronym LP. The full name and details of the general partner and the limited partners must be registered at ACRA although it is possible to maintain the particulars of the limited partners of the LP confidential from the general public if the manager of the fund is a person licensed to carry on fund management under the Securities Act, or exempt from licensing and other requirements under the Limited Partnership Regulations are satisfied. An individual local manager must be appointed if the general partner is not ordinarily resident in Singapore. The local manager is responsible for statutory compliance and for filing relevant tax returns. LP interests are included in the definition of "securities" in section 239 (1) Securities Act, for the purposes of the prospectus provisions. The definition of "securities" in section 2 of the Securities Act, for the purposes of the licensing provisions, includes shares in a body unincorporated, which would include an interest in an LP.

The advantages of structuring a fund as an LP include:

- The structure suits the different roles of the fund manager (the general partner) and investors (the limited partners) in a fund. In practice the general partner may delegate the investment management to a separate fund management company to help ringfence the fund manager from the liabilities of a general partner. Similarly the fund manager may use a limited partner vehicle to receive carried interest.
- A partnership agreement governs the relationship between the partners, the content of which is only lightly regulated and which means the structure is free from many of the legal constraints and formalities usually applicable to corporate entities, in particular regarding contribution and return of capital and distribution of profits.
- No solvency statement is required when returning capital.

- Distribution of profit or capital can be made at any time as long as the general partner is solvent and would not become insolvent as a result of the distribution.
- LPs can take advantage of some of the financial incentives offered to funds under Singapore law.

A disadvantage of structuring a fund as an LP is that it will not be treated by the IRAS as a legal person qualifying for tax treaty relief.

Unit trust

In Singapore, the most common collective investment scheme (CIS) structure is a unit trust. The unit trust structure is also common in jurisdictions such as Australia, Ireland, New Zealand, South Africa and the United Kingdom. The unit trust industry in Singapore follows the English unit trust model, which can be distinguished from a company, an association or a partnership.

A unit trust is a special form of trust constituted by a trust deed in which the trust property is vested in a trustee. In dealing with the trust property, the trustee agrees to abide by the directions of a manager for the benefit of the unitholders who collectively own the beneficial interests in the trust property.

The unit trust as an investment scheme provides investors with several benefits and is the preferred structure for retail funds. See *section 3* below on retail funds in Singapore.

Managers

The fund manager is usually structured as a private limited company and may be a subsidiary of a well-established asset management group or an associate formed by the principals of the fund. The fund manager is subject to licensing requirements unless it qualifies for an exemption. See *section 2.2* for details.

2.2 Regulatory framework

Legislative framework

The establishment and operation of investment funds in Singapore are regulated under the Securities Act and rules and regulations made thereunder, including the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations (CIS Regulations). If the fund falls under the category of a CIS, it will need to comply with the requirements under the CIS Code. The MAS has general and specific powers to supplement the statutory provisions and/or issue written directions to asset managers.

Collective investment scheme regime

As a general rule any collective investment scheme that is offered in Singapore is required to be authorised or recognised in Singapore by the MAS. CISs that are constituted in Singapore are referred to as authorised schemes and CISs that are constituted outside Singapore are referred to as recognised schemes. The CISs would need to comply with the requirements under the Securities Act and regulations made thereunder and make the necessary filings with the MAS. CISs that are offered to high net worth individuals and corporations are referred to as Restricted Singapore Schemes (if constituted in Singapore) and Restricted Foreign Schemes (if constituted outside Singapore) and are subject to fewer regulatory requirements than retail CISs. Where the offer in Singapore will be made to only

a few investors, certain private placement exemptions may allow for a limited offer without the need for filing with the MAS.

Investment manager

The investment manager/adviser must comply with:

- The Securities Act.
- The Securities and Futures (Licensing and Conduct of Business) Regulations (Conduct of Business Regulations).
- The Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations (Financial and Margin Regulations).
- Other guidelines and notices dealing with know your customer requirements, anti-money laundering and related matters.

Any person conducting fund management activity in Singapore must hold a Capital Markets Services Licence (CMS licence) for fund management, be a Registered Fund Management Company (RFMC) or be otherwise exempted from the requirements to hold a CMS licence under the Securities Act. The MAS regulates fund managers in Singapore.

There are requirements for a minimum number of representatives, directors and so on of a Singapore fund manager to be based in Singapore, depending whether the fund manager is an RFMC, limited to managing up to S$250 million for up to 30 qualified investors (essentially high net worth individuals and corporations) including up to 15 funds limited to qualified investors, or holder of a CMS licence (either full or limited to managing for accredited/institutional investors or funds limited to them). At the minimum, there will need to be two professionals with five years' relevant experience based in Singapore to conduct fund management. Requirements for compliance and back office support will depend on the scale and nature of operations of the fund manager, as will capital requirements. At a minimum, an RFMC must have base capital of S$250,000.

There are exemptions from these licensing requirements available for certain financial institutions like banks and finance companies and for provision of fund management services to related corporations, but these cannot be used by independent fund managers who want to manage third party monies.

A person who wishes to apply for a CMS licence for fund management or to register itself as an RFMC is required to submit to MAS via its Corporate Electronic Lodgment (CEL) system the relevant form duly completed along with all supporting documents. The Guidelines on Licensing, Registration and Conduct of Business for Fund Management Companies issued by the MAS, which are to be read along with the Securities Act and related regulations, provide key details of the application process and requirements.

2.3 Operational requirements

Please see *section 2.2* above. A fund management company must comply with all applicable business conduct requirements set out in the Securities Act, Conduct of Business Regulations, Financial and Margin Regulations and related guidelines and notices issued by MAS relating to know your customer and anti-money laundering requirements.

Physical office and fit and proper guidelines

All CMS licence holders and RFMCs must operate out of a physical office in Singapore. Directors, representatives and shareholders of the fund manager must satisfy the Guidelines on Fit and Proper Criteria issued by MAS, designed to help ensure the fund manager has the integrity and competence to discharge its duties.

Audit

Fund managers are expected to put in place adequate internal audit procedures and comply with annual external audit requirements.

Compliance and risk management

Fund management companies (FMCs) must implement a compliance and risk management framework over their fund management operations, suited to the size and scale of their operations, to identify, address and monitor the risks associated with the assets that they manage. The risk management framework should take into account the key principles set out in the MAS Guidelines on Risk Management Practices and other relevant industry best practices. The Guidelines on Risk Management Practices cover responsibilities of directors and senior management, internal controls, credit risk, market risk, technology risk, operational risk (which includes business continuity management) and controls on outsourced activities. In addition, the FMC must implement measures to mitigate conflicts of interest. The fund manager may be required to procure a professional indemnity insurance policy and MAS may also require a letter of responsibility from the parent company.

Custody of assets under management and valuation

In general, MAS requires that assets under management be held by an independent custodian, that is, a prime broker, depositories or banks that are properly registered or authorised in their home jurisdiction, although it recognises that private equity and wholesale real estate funds can adopt other methods, subject to appropriate disclosures and other safeguards. The assets under management must be subject to an independent valuation carried out by a third party service provider or by an in-house fund valuation function under certain conditions.

Disclosure and AML/CFT

The FMC is also required by the MAS to disclose key information to its customers on both the assets under management and the operations of the fund. Fund managers must keep in mind Singapore's anti-money laundering and combating the financing of terrorism controls, which regard tax crimes as money laundering predicate offences. FMCs holding the proceeds of tax crime (as long as they are regarded as such in Singapore and in the foreign jurisdiction, if any) can face criminal prosecution for laundering the proceeds of criminal activities under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act.

2.4 Marketing the fund

General

Please see *section 2.2*. The Securities Act, the CIS Regulations, the 2013 Regulations mentioned below and guidelines issued by MAS regulate the marketing of funds. The fund manager who holds a CMS licence and a RFMC (or a person otherwise exempted from holding a licence) can market its own funds. A person licensed under the Financial Advisers Act (Chapter 110) (FAA) (or exempted from holding such a licence) is also allowed to market a CIS.

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There are no restrictions on the use of intermediaries for marketing of funds provided the intermediaries are properly licensed (or exempted from holding a licence).

The key requirements for Restricted Singapore Schemes and Restricted Foreign Schemes are below. For key requirements of retail CIS schemes, please see *section 3.4*.

Restricted Singapore schemes

- The fund manager must be licensed or regulated for fund management in the jurisdiction of its principal place of business (or be a public company that is exempted from the requirement to hold a CMS licence for fund management) and be fit and proper.
- In the case of a scheme constituted as a unit trust, the trustee must be approved to act as trustee for a CIS.
- Such schemes are not required to comply with any investment guidelines.
- Unlike offers to retail investors, a prospectus is not required, but an information memorandum will be required. The Securities and Futures (Offers of Investments) (Collective Investment Schemes) (Amendment) Regulations 2013 (2013 Regulations) came into force on 1 July 2013. The 2013 Regulations stipulate that a CIS that is offered to high net worth investors (restricted Singapore and restricted foreign schemes) should be accompanied by an information memorandum that contains the information specified in the 2013 Regulations. This relates to disclosure with respect to investment risks, conditions and restrictions on redemption of units, preferential treatment to certain investors and track record of the CIS.

Restricted foreign schemes

- The fund manager must be licensed or regulated for fund management in the jurisdiction of its principal place of business and be fit and proper.
- Such schemes are not required to comply with any investment guidelines.
- Unlike offers to retail investors, a prospectus is not required, but an information memorandum will be required under the 2013 Regulations mentioned above.

Closed-ended funds

Previously, closed-ended funds were specifically excluded from the definition of collective investment schemes under the Securities Act. Closed-ended funds are funds that have the features of a collective investment scheme but under which units issued are exclusively or primarily non-redeemable at the election of the investors. Closed-ended funds were therefore not required to comply with the regulatory regime under the Securities Act that relates to CISs.

On 28 March 2013, the Securities and Futures (Closed-ended Funds) (Excluded Arrangements) Notification 2013 (2013 Notification) was promulgated. The 2013 Notification is issued under paragraph (b) of the definition of "closed-ended fund" of the Securities Act, which gives MAS the power to issue a notification and deem certain arrangements not to be closed-ended funds. The 2013 Notification states that certain closed-ended funds, having the following characteristics, will be considered to be CISs and will be subject to the same regulatory regime as a CIS:

- The arrangement is constituted on or after 1 July 2013.

- All or most of the units issued under the arrangement cannot be redeemed at the election of the holders of the units.
- Under the investment policy of the arrangement, 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.
- The arrangement has one or more of the following characteristics:
    - the investment policy of the arrangement is clearly set out in a document that is provided to each participant in the arrangement before, or at the time, the participant invests in the arrangement;
    - there is a contractual relationship between the entity in which the investments are made and every participant in the arrangement, which requires the entity to comply with the investment policy, as amended from time to time, of the arrangement;
    - the investment policy of the arrangement sets out the types of authorised investments, and the investment guidelines or restrictions that apply to the arrangement.

The key practical impact of this for a fund manager is that it can no longer consider closed-ended funds to be outside the regulatory regime for CISs. Previously closed-ended funds could be marketed under the prospectus safe harbours for offers of securities to high net worth individuals and corporations without filing with the MAS as a CIS. Now, the exemption from the requirement to file with the MAS and comply with the Restricted Scheme regime applies only if the fund is marketed within the confines of the private placement or small offers safe harbours in the Securities Act.

There are no additional requirements for marketing to public bodies such as government pension funds. In fact there may be certain exemptions available from the prospectus requirements as such public bodies may be "institutional investors" (as defined under the Securities Act).

2.5 Taxation

Singapore has developed over the years several tax incentive schemes in order to attract fund managers and funds to the city state.

Offshore fund

A foreign fund managed by a Singapore-based fund manager who holds a CMS licence in Singapore or is exempted will be exempt from tax on specified income from designated investments if the fund is a "prescribed person". A fund will generally qualify as a prescribed person if it is not resident in Singapore and not 100% owned by Singapore investors. In addition, Singapore resident non-individual investors are limited to holding 30% or 50% (depending on whether the fund has less than ten investors) of the fund or they face a penalty by the IRAS and will not enjoy tax exemption.

Singapore resident fund scheme

The Singapore Resident Fund Scheme essentially encourages the fund manager to base the fund in Singapore. The Scheme grants tax exemption for "specified income" from "designated investments". However, to use this scheme,

the entity must be constituted as a Singapore tax resident company and must have its administration performed in Singapore.

The enhanced tier scheme

This scheme, that applies to both Singapore based funds and offshore funds, offers a tax exemption for income and gains from designated investments. There are no restrictions on the percentage of Singapore investors in the fund and there are fewer restrictions on the choice of fund entity. The fund should have a minimum size of S$50 million to use this tax incentive.

The Singapore Resident Fund Scheme and the Enhanced Tier Scheme require MAS approval.

An investment fund may not make taxable supplies for Goods and Services Tax (GST) purposes and so its ability to recover input tax suffered on supplies made to it is very limited. Management fees payable to the manager will in principle attract GST. An MAS circular allows funds qualifying for income tax concessions managed or advised by a fund manager (as defined) to recover most of this GST.

One common issue for investment funds on taxation is whether gains are capital in nature, and thus not taxable in Singapore, or taxable as trading income. It has now been clarified that in essence, where a company owns 20% or more of the ordinary share capital of another company, and has held those shares for at least 24 months prior to their disposal, then the gains will be exempt from tax. These provisions may be helpful for private equity funds that are not using the tax incentives mentioned above.

Tax incentives for the fund management company

A Singapore-based fund management company can apply for a 10% concessionary income tax applying to the income deriving from the management of the fund, under the Financial Sector Incentive Scheme (FSI). This concessionary tax rate is awarded under certain conditions and at MAS's discretion.

The FSI-FM incentive is limited to a fund management company with a minimum (AUM) of at least S$250 million, in addition to meeting other qualitative and quantitative factors under the scheme.

Investors will want to keep in mind that even though the fund is based offshore, if most of the fund management activities are conducted in Singapore, the IRAS may regard the fund as a permanent establishment and thus subject its income to Singapore tax, unless it is covered by the relevant exemption under the Income Tax Act (Chapter 134) for foreign funds that are managed by Singapore fund managers.

2.6 Customary or common terms

Due to the private nature of alternative investment funds and the fact that they are offered mainly to sophisticated investors, there is flexibility in the terms that can be included in such structures. Generally speaking, private equity funds and wholesale real estate funds are constituted as fixed term closed-ended funds, and do not allow for prior redemption. Hedge funds are usually structured such that they may allow for redemptions once a quarter (quarterly dealing is required for retail CIS) or once in two quarters. Non-retail funds typically impose restrictions on the right of participants to transfer their interests to third parties to prevent any legal, fiscal, regulatory or administrative complications for the fund or the investors as a whole.

It is not uncommon for the investors in alternative investment funds to want to see a substantial investment by the management team in the fund to demonstrate their commitment to the fund. The MAS has also stated in the Guidelines on Licensing, Registration and Conduct of Business for Fund Management Companies that it attaches importance to the shareholders in the fund management company demonstrating commitment to the business and investing in the funds it manages.

Provisions regarding removal of the manager are negotiated on a case-by-case basis but it is becoming more common to see investors requiring provisions for no-fault removal, perhaps by a super-majority of investors. Key-man clauses are also often incorporated for the purpose of continuity. Related to these issues are provisions for escrow and clawback of the manager's carried interest (typically 20%), which allow for adjustment of the manager's distribution of cumulative profits, as these fluctuate over the life of the fund.

Singapore places a high level of importance on investor protection and the manner in which assets are held. Even RFMCs that manage monies only on behalf of sophisticated investors are required to demonstrate to MAS that the assets are held by a third party custodian/trustee or otherwise custody risks are appropriately managed. In addition, the fund manager is required to demonstrate that there are proper compliance and risk management procedures in place.

3. RETAIL FUNDS

3.1 Common structures

Unlike alternative investment funds, retail funds are usually structured as a unit trust and are subject to the CIS regulatory regime, including the CIS Code. The participants' interests in the fund are referred to as units and the liability of the participants is limited to the investment made by the participant in the fund.

A unit trust is a special form of trust constituted by a trust deed in which the trust property is vested in a trustee. In dealing with the trust property, the trustee agrees to abide by the directions of a manager for the benefit of the unitholders who collectively own the beneficial interests in the trust property. For schemes constituted in Singapore, the manager must hold a CMS licence or be exempted from holding one, and the manager is generally constituted as a private or a public company in Singapore, as required. For a foreign fund, the manager must be licensed or regulated in the jurisdiction of its principal place of business and be fit and proper.

Types of unit trust schemes in Singapore

The majority of unit trusts in Singapore are structured as umbrella funds. An umbrella fund is a group of stand-alone sub-funds each having its own investment portfolio, with different investment objectives and strategies but all administered by the same manager. The purpose of this structure is to provide investment flexibility and widen investor choice. Investors in an umbrella fund can invest in one or more of the sub-funds offered and can switch or exchange units of one sub-fund for those of another.

Other types of unit trust structure found in Singapore are single funds and feeder funds. The whole of the trust property of a single fund comprises one fund. The assets of a feeder fund are invested in another fund called the master fund, which may be a single fund, or a group of funds.

In the early 2000s, feeder funds were common in Singapore as foreign funds could not be offered directly to the public in Singapore. A foreign fund could only be offered through a Singapore-based feeder fund with a Singapore manager and trustee investing in the foreign fund.

Foreign funds can now be offered directly to the public in Singapore provided they are approved by MAS as recognised schemes (if offered to retail investors) or as restricted foreign schemes (if offered to high net worth individuals and corporations).

The key benefits of the trust structure are that there no statutory rules on preservation of capital or distribution of profits, the trust can be structured as an umbrella fund with several sub-funds, giving the investors an opportunity to easily switch between sub-funds, and can use certain tax benefits (see *section 3.5*).

Real estate investment trusts (REITs)

REITs have been very successful in gathering assets and accessing the public capital markets in Singapore in recent years. REITs are formed as unit trusts in Singapore, authorised as CISs and trade as listed securities on the Singapore Exchange (SGX). They must comply with the property fund guidelines in the CIS Code in addition to the SGX listing rules and the manager must hold a CMS licence as a REIT manager.

Business trusts

The business trust (BT) is another vehicle for investment in cashflow-producing assets introduced in Singapore, modelled on the Australian managed investment trust. The Business Trust Act (BT Act) provides the framework for the governance of BTs and regulates the rights of unitholders and creditors and the duties and accountability of the trustee-manager and its directors. The MAS registers BTs formed under the BT Act and the Securities Act regulates public offers of units in BTs in the same way as offers of securities and of units in CIS.

BTs are business enterprises structured as trusts. They are hybrid structures with elements of both companies and trusts and several trade as listed securities on the SGX. There is also scope for using a private, unregistered investment vehicle modelled on the framework of a BT in certain circumstances.

A BT is created by a trust deed under which the trustee-manager has legal ownership of the assets of the underlying business and manages the business for the benefit of the beneficiaries of the trust. As dividends can be paid out of cash flows in a BT structure, BTs are particularly suited to businesses with high levels of capital investment and strong cash flows such as real estate, and other infrastructure/asset-backed businesses in sectors like hospitality, healthcare and shipping.

3.2 Regulatory framework

Please see *section 2.2*. In addition, for the authorisation/recognition requirements for retail funds, please see *section 3.4*.

CPF approved unit trusts

The Central Provident Fund (CPF) is the compulsory savings scheme in Singapore. CPF-approved unit trusts are a special feature of the Singapore unit trust market. These are funds approved by the CPF Board under the CPF

Investment Scheme. CPF members are permitted to use their retirement savings to purchase units in these approved trusts. Fund managers wishing to tap into this market must first have their funds approved by the CPF Board.

3.3 Operational requirements

Please see *section 2.3*. The manager of a retail CIS must prepare half-yearly financial statements and audited financial statements for the semi-annual report and annual report, in the manner prescribed by the Institute of Certified Public Accountants in its Statement of Recommended Accounting Practice 7: Reporting Framework for Unit Trusts. The manager must also prepare quarterly reports covering the information required under the CIS Code. The trustee must send, or cause to be sent to the investors, the semi-annual accounts and semi-annual report relating to the CIS within two months from the end of the period covered by the accounts and report, and the annual accounts, report of the auditors on the annual accounts and annual report relating to the CIS within three months from the end of each financial year of the CIS. The semi-annual report and annual report contain a large amount of information.

Valuation guidelines apply to retail CISs under the CIS Code. Valuation of units is based on the fund's net asset value. The net asset value can be calculated in one of two ways: using market quotations and fair value. The manager of a CIS is responsible for determining whether the quoted price should be considered representative. The basis for determining the fair value of the asset must be documented. Except for quoted securities, all the assets of a CIS must be valued by a person approved by the trustee of the CIS as qualified to value such assets. When the fair value of a material portion of the assets of a CIS cannot be determined, the manager must suspend valuation and trading in the units of the CIS.

The price of units can be adjusted by adding or subtracting fees and charges, provided that those fees and charges are disclosed in the CIS's prospectus or trust deed.

3.4 Marketing the fund

Please see *section 2.4* above. In addition, please note the following in relation to authorisation/recognition requirements for a retail fund before it can be offered to the public.

Schemes constituted in Singapore (authorised schemes)

The following are some of the key requirements to be complied with for retail schemes constituted in Singapore to be authorised by the MAS:

- The fund manager must hold a CMS licence for fund management (or be exempted from holding one or be a public company in certain cases) and be "fit and proper" as per MAS requirements.
- The trustee must be approved to act as such for the CIS if the CIS is constituted as a trust.
- The trust deed must comply with the prescribed requirements in the relevant regulations.
- The CIS must comply with the CIS Code.
- A prospectus in compliance with the Securities Act must be lodged with the MAS.

Schemes constituted outside Singapore (recognised schemes)

The following are some of the key requirements to be complied with for retail schemes constituted outside Singapore to be recognised by the MAS:

- The fund manager must be licensed or regulated in the jurisdiction of its principal place of business and be fit and proper.
- Laws and practices of the jurisdiction in which the scheme is constituted should afford investors in Singapore protection at least equivalent to that provided by the Securities Act for comparable authorised schemes. The MAS would consider, for example, whether there is a legal requirement for the manager to manage the scheme in the interests of investors, whether there is independent adequate safekeeping of scheme assets, whether there is an independent party (such as an independent trustee in the case of a unit trust, or independent directors in the case of a mutual fund company) which exercises oversight over the fund manager.
- While the CIS is not subject to the investment guidelines set out in the CIS Code, the MAS would only recognise a foreign CIS if it is subject to investment guidelines in its home jurisdiction which are substantially similar to those in Singapore.
- There must be a representative for the scheme in Singapore to act as a liaison between investors and the foreign manager.
- A prospectus in compliance with the Securities Act must be registered with the MAS.
- The fund manager of the fund (together with its related companies) should be managing at least S$500 million of discretionary funds in Singapore.

The information to be disclosed in relation to a retail CIS is specified in the prospectus requirements and additional information to be disclosed regarding the risks attaching to hedge funds is specified in the CIS Code and the CIS Regulations.

The 2013 Regulations stipulate that a retail CIS prospectus will require additional disclosures that relate to:

- Methods of valuation.
- Information on directors and key executives of the manager of the CIS.
- Where the manager delegates any of its functions to a third party, the name of the delegate, the name of the financial supervisory authority which licenses or regulates the manager.
- The names of trustees and custodians.
- Custodial arrangements in respect of the assets.
- For a Qualifying CIS under the ASEAN CIS Framework, the CIS, the manager and the trustee must also comply with the Standards of Qualifying CIS.

3.5 Taxation

Most Singapore retail funds are structured as unit trusts. The trustee, being the legal owner of the income that accrues to the unit trust, is the party who is assessed to tax on the income of the unit trust.

However, if the unit trust avails of the Designated Unit Trust (DUT) scheme and is granted the DUT status by the IRAS, the income of the fund may not be subject to tax.

Taxation of investors

Provided certain conditions are satisfied, distributions made by a CIS that is authorised by MAS to a Singapore investor or non-resident investor will be exempt from Singapore income tax. This will however not apply to investors who hold units in the CIS as trading assets or through a partnership, and such investors will need to pay the necessary income tax.

3.6 Customary or common terms

Retail funds do not generally have a fixed term duration. Retail CISs are required to provide facilities for a holder of a unit to transfer the unit to a third party, in compliance with conditions the manager may impose.

Retail funds typically have daily dealing and the investor can redeem their investment out of the assets of the fund at a price based on net asset value. The manager can place restrictions on the issue and redemption of units in a CIS if this is provided for in the trust deed constituting the CIS.

The liquidity of units that are listed on the SGX will depend on the supply and demand for those shares in the secondary market.

The fund manager of a retail fund will typically levy an initial charge of up to 5% of the investment amount from the investor and an annual management charge. The rate of annual management charge will vary depending on the investment proposition. Performance fees may be charged, which should conform to the requirements under the CIS Code.

In the case of BTs and REITs it is common for the trustee manager or the REIT manager to obtain units in the BT or REIT as management fee.

The CIS Code prescribes various requirements for retail funds with respect to permissible investments and borrowing. There are restrictions on the maximum amount of exposure to unlisted securities, listed and unlisted derivatives as well as maximum exposure to transferable securities and money market instruments issued by a single entity or related entities. The requirements will differ based on whether the fund is a non-specialised fund or a specialised fund like a currency fund, money market fund, or hedge fund. As a general rule, a retail fund can borrow only to meet redemptions and short-term (not more than one month) bridging requirements. Aggregate borrowings for these purposes must not exceed 10% of the deposited property at the time the borrowing is incurred.

4. PROPOSED CHANGES AND DEVELOPMENTS

In February 2015, the MAS issued a consultation paper on certain amendments to the Securities Act, some of which would affect fund managers.

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The definition of "fund management" is proposed to be widened to include persons who undertake on behalf of customers, the management of a portfolio of capital markets products, collective investment schemes or entering into spot foreign exchange contracts for the purpose of managing the customer's funds.

The definition of capital markets products would be very wide and include with its ambit securities, units in collective investment schemes, derivative contracts and spot foreign exchange contracts for the purposes of leveraged foreign exchange trading.

MAS also intends to license and regulate managers of collective investment schemes that invest in physical assets only if such a scheme is offered to retail investors. Persons who manage funds that invest in physical assets, but are offered only to high net worth individuals and corporations, will be exempted from the licensing requirements.

In June 2015, MAS issued another consultation paper under which it is proposed that marketing of CISs be removed as a regulated activity under the FAA. Marketing of CISs will therefore be covered only under the scope of "dealing in securities" under the Securities Act, if the proposed amendments are brought into effect.

This third edition of *Investment Funds* provides a global comparison of the laws and regulations that govern investment funds in over 30 key jurisdictions. Written by the leading practitioners within the field, this title is intended to assist lawyers, advisers and fund managers who are seeking to offer their funds both domestically and internationally.

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