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The International Comparative Legal Guide to:

Alternative Investment Funds 2019

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A practical cross-border insight into Alternative Investment Funds work

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General Chapters:

Country Question and Answer Chapters:

Chapter 31

Singapore


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1 Regulatory Framework

1.1 What legislation governs the establishment and operation of Alternative Investment Funds?

The applicable legislation that governs the establishment and operation of an Alternative Investment Fund (AIF) in Singapore depends on how the AIF is structured. Some common structures include private limited companies, limited partnerships, and unit trusts. If the AIF is structured as a private limited company, the applicable governing legislation will be the Companies Act (Cap. 50) of Singapore (Companies Act). If the AIF is structured as a limited partnership, then the Limited Partnership Act (Cap. 163B) of Singapore (Limited Partnership Act) will be applicable.

While there is no specific governing legislation applicable to an AIF if it is established as a unit trust, the AIF will need to operate in accordance with the trust deed constituting the AIF. If such units are offered to the retail public for investment, the prudential rules and procedural requirements pursuant to the Securities and Futures Act (Cap. 289) of Singapore (SFA) will apply accordingly.

1.2 Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

Any person conducting fund management activity in Singapore is required to either hold a Capital Markets Services (CMS) licence for fund management or qualify for an exemption to hold a CMS licence under the SFA. Fund management is defined broadly and includes management of a portfolio of capital market products on behalf of a customer (whether on a discretionary authority granted by the customer or otherwise). Therefore, managers and advisers of AIFs are required to be licensed and regulated by the Monetary Authority of Singapore (MAS) unless they qualify for any of the licensing exemptions. Managers managing venture capital funds may also qualify under a simplified regulatory regime and hold a CMS licence for fund management (VCFM Regime). To qualify under the VCFM Regime, venture capital fund managers must only manage funds that: (i) are only offered to accredited and/or institutional investors; (ii) are not continuously available for subscription, and must not be redeemable at the investor's discretion; (iii) invest at least 80% of its committed capital in securities that are directly issued by an unlisted business venture, that has been incorporated for no more than 10 years at the time of the AIF's initial investment; and (iv) invest not more than 20% of its committed capital in other unlisted businesses that do not meet the criteria in (iii) above. As for situations where a manager conducts fund management and the AUM is not more than S$250 million and the investors are not more than 30 qualified investors (i.e. institutional and accredited investors of which no more than 15 may be funds or limited partnership fund structures offered to accredited or institutional investors), the manager may register with the MAS as a Registered Fund Management Company (RFMC) instead of applying for a CMS licence. Another frequently utilised exemption is the "immovable property exemption". That is, managers and advisers of AIFs that directly or indirectly (through another entity) invest in immovable assets (or corporations or unincorporated bodies whose sole purpose is to hold immovable assets) may be exempted from holding a CMS licence if all the investors in the AIF are qualified investors. There are also exemptions from these licensing requirements available for certain financial institutions such as banks and finance companies, provision of fund management services to related corporations, etc., but these exemptions cannot be used by independent investment managers or advisers who want to manage third-party monies.

1.3 Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

While the MAS regulates managers and advisers in Singapore, the AIFs by themselves are not required to be licensed by any specific regulatory body. That being said, if the AIF is incorporated as a Singapore company, it would have to be registered by the Registrar of Companies and comply with the Companies Act and the rules and regulations thereunder. Similarly, if the AIF is structured as a Singapore limited partnership, it would have to be registered by the Registrar of Limited Partnerships and comply with the Limited Partnership Act and the rules and regulations thereunder. In general, an AIF need not be authorised for situations where the AIF is offered to accredited investors or certain other persons pursuant to the prospectus exemption under section 305 of the SFA (S305 Exemption) for investment, in which case, a simple notification of the proposed offer of the interest in the AIF has to be filed with the MAS before it is offered to such investors in Singapore. If the AIF is offered to the retail public for investment, the AIF needs to be authorised or recognised by the MAS and the prudential rules and procedural requirements pursuant to the SFA will apply accordingly.

1.4 Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity v hedge)) and, if so, how?

The regulatory regime in Singapore currently (since 1 July 2013) does not differentiate between open-ended and closed-ended AIFs.

1.5 What does the authorisation process involve and how long does the process typically take?

A person who wishes to apply for a CMS licence for fund management or to register itself as a RFMC is required to submit to the MAS the relevant prescribed forms duly completed along with all supporting documents. These include a simple business plan, a shareholding chart and an organisation chart of the applicant. The MAS would also need details of the applicant's audited financial statements, and where applicable, the consolidated financial statements of the group of which the applicant is a part. After the application is submitted to the MAS via its Corporate Electronic Lodgement system, the MAS would generally take around four to six months to review and raise any queries it may have in respect of the application. 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 SFA and related regulations, provide key details of the application process and requirements.

1.6 Are there local residence or other local qualification requirements?

Where the AIF is incorporated as a Singapore company, at least one Singapore resident director must be appointed onto the board of the AIF (i.e. Singapore citizen, Singapore permanent resident or holder of an employment pass issued by the Ministry of Manpower in Singapore). The other directors on the board of the AIF can be residents of foreign countries. Where the AIF is set up as a Singapore limited partnership and the general partner is ordinarily resident outside of Singapore, the Registrar of Limited Partnerships will require an ordinarily resident natural person to be appointed as the local manager.

1.7 What service providers are required?

In general, the MAS requires Assets Under Management (AUM) to be held by an independent custodian; i.e. a prime broker, depositories or banks which are properly registered or authorised in their home jurisdictions, although it recognises that private equity and wholesale real estate funds may adopt other methods, subject to appropriate disclosures and other safeguards. The AUM 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. Investment managers or advisers are also expected to put in place internal audit procedures and comply with annual external audit requirements. The annual external audit performed by the independent auditor is meant to serve as a periodic check on the valuation of the assets and the MAS has emphasised that taken on its own, the annual audit will not fulfil the requirement for independent valuation.

It must also be noted that all arrangements with third-party service providers have to be in accordance with the requirements set out in the MAS Guidelines on Outsourcing, where applicable.

1.8 What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?

Under the Guidelines on Licensing, Registration and Conduct of Business for Fund Management Companies issued by the MAS, managers or advisers regulated under the MAS should be Singapore incorporated companies and have a permanent physical office in Singapore. Therefore, foreign managers or advisers wishing to manage or advise or otherwise operate funds in Singapore should set up a subsidiary in Singapore and would be subject to the licensing requirements unless it qualifies for an exemption.

1.9 What co-operation or information sharing agreements have been entered into with other governments or regulators?

Singapore has concluded several international co-operation and information sharing agreements with other governments or regulators as follows:

(a) Exchange of Information Agreements;

(b) Convention on Mutual Administrative Assistance in Tax Matters; and

(c) International Tax Compliance Agreements (e.g. Foreign Account Tax Compliance Act (FATCA), Common Reporting Standard (CRS), Country-by-Country Reporting, Multilateral Competent Authority Agreements on Automatic Exchange of Financial Account Information under the CRS and Exchange of Country-by-Country Reports.

2 Fund Structures

2.1 What are the principal legal structures used for Alternative Investment Funds?

While the structure of the AIF would depend on various factors such as the type of the underlying investments and the nature of the investors etc., the legal structures principally used for AIFs are private limited companies and limited liability partnerships.

2.2 Please describe the limited liability of investors.

If the AIF is structured as a private limited company, the liability of the investors is limited to the extent on any amount unpaid on their shares. The investors do not have to contribute any amount more than the share capital they have paid into the AIF.

If the AIF is structured as a limited partnership, the investor as 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.

2.3 What are the principal legal structures used for managers and advisers of Alternative Investment Funds?

The manager or adviser to the AIF is typically incorporated as a separate private limited company.

2.4 Are there any limits on the manager's ability to restrict redemptions in open-ended funds or transfers in open-ended or closed-ended funds?

There are no statutory limits on the manager's ability to restrict redemptions in open-ended funds or transfers in open-ended or closed-ended funds. That said, for AIFs that have been authorised by the MAS for investment by the public and are not listed on the Singapore Exchange, there are certain prescribed liquidity requirements under the Code on Collective Investment Schemes (CIS Code).

2.5 Are there any legislative restrictions on transfers of investors' interests in Alternative Investment Funds?

Where the AIF is managed by a manager who is licensed by the MAS to manage funds for qualified investors, all transfers of investors' interests in the AIF shall be made only to qualified investors. Where an AIF is not authorised by the MAS for investment by members of the public, the manager shall not make any offering of such interests in the AIF to members of the public, unless one or more exemptions are invoked (i.e. private placement exemption, the institutional investors' exemption, the accredited investors' or certain other relevant persons' exemption). In addition, the constitutive documents of the AIF should restrict transfers of their investors' interest so that such interests are not held by any member of the public.

2.6 Are there any other limitations on a manager's ability to manage its funds (e.g. diversification requirements, asset stripping rules)?

There are no statutory limitations on the manager's ability to manage its funds. However, the CIS Code prescribes various requirements for retail funds with respect to permissible investments and borrowing. There are restrictions as to the maximum amount of exposure to unlisted securities, listed and unlisted derivatives as well as maximum exposure to transferrable 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 such as a currency fund, money market fund, hedge fund, or a property fund, etc.

3 Marketing

3.1 What legislation governs the production and offering of marketing materials?

The SFA, the Financial Advisers Act (Cap. 110) of Singapore and the rules and regulations made thereunder including the various guidelines issued by the MAS govern the offering of marketing materials.

3.2 Is the concept of "pre-marketing" (or equivalent) recognised in your jurisdiction? If so, how has it been defined (by law and/or practice)?

There is no concept of pre-marketing recognised in Singapore.

3.3 What are the key content requirements for marketing materials, whether due to legal requirements or customary practice?

For offers made under the S305 Exemption, there is a prescribed list of specific matters that have to be disclosed in the information memorandum of such AIFs. Amongst the matters which must be disclosed are: the investment objectives and focus of the AIF; the investment approach of the manager; the risks of subscribing for or purchasing units in the restricted scheme; where applicable, the conditions, limits and gating structures for redemption of the units; where applicable, the past performance of the restricted scheme; details of where the accounts of the restricted scheme may be obtained; and the fees and charges payable by the investors and by the restricted scheme. Further, the Guidelines on Licensing, Regulation and Conduct of Business for Fund Management Companies also set out matters to be disclosed to investors. These include: disclosure of counterparties; brokers and prime brokers used by the AIF; disclosure of custodians, trustee, fund administrators and/or auditors used by the AIF; disclosure of valuation policy and performance measurement standards; disclosure of professional indemnity insurance arrangements or the absence of such arrangements; and disclosure on the use of leverage and the extent to which it is permitted.

In practice, even for AIFs that are not offered under the S305 Exemption, it is common or customary to see almost all of the aforementioned matters disclosed in the information memorandum.

3.4 Do the marketing or legal documents need to be registered with or approved by the local regulator?

Whether the marketing materials for the AIF would need to be registered with the MAS depends on which specific prospectus exemption is being invoked. Where an AIF is offered or marketed to accredited investors under the S305 Exemption, a copy of the information memorandum would need to be submitted to the MAS for its records. The MAS does not approve the said information memorandum.

Here, information memorandum refers to any materials given to investors to enable them to decide whether or not they want to invest in the AIF (e.g. private placement memorandum and fund fact sheets).

3.5 What restrictions are there on marketing Alternative Investment Funds?

An offer of interests in AIFs in Singapore would generally have to be made in or accompanied by a prospectus that is registered with the MAS, unless the said offer is made under one of the exemptions or safe-harbours in the SFA.

The restrictions on marketing the AIFs depend on which safe-harbour or prospectus exemption is being invoked. In the event that the offer is made under the private placement exemption in the SFA, the AIF may be offered to not more than 50 offerees over a period of 12 months. In the event that the offer is made under the "small offers" exemption, then not more than S$5 million can be raised by a person from "personal offers" of interests in the AIF over a period of 12 months. In both scenarios, no advertisements relating to the offer can be published, and marketing of the AIF can only be done by a holder of a CMS licence for dealing in capital markets products or by a person exempted from holding such a licence.

3.6 Can Alternative Investment Funds be marketed to retail investors?

AIFs are usually marketed to institutional investors and accredited investors (as opposed to members of the public), either due to the terms of offer of the AIF (e.g. higher minimum subscription amounts) or because the licence granted by the MAS to the investment manager or adviser restricts its clientele to qualified investors only.

3.7 What qualification requirements must be carried out in relation to prospective investors?

Prospective investors are usually institutional investors and accredited investors. They would usually be required to produce supporting documents such as their latest financial statements or bank statements as evidence of their financial worth.

3.8 Are there additional restrictions on marketing to public bodies such as government pension funds?

No, there are no additional restrictions.

3.9 Are there any restrictions on the use of intermediaries to assist in the fundraising process?

Intermediaries that assist in the fundraising process are required to hold a CMS licence for dealing in capital markets products or be exempted from holding such a licence.

3.10 Are there any restrictions on the participation in Alternative Investment Funds by particular types of investors, such as financial institutions (whether as sponsors or investors)?

Under Section 32 of the Banking Act of Singapore, banks in Singapore are prohibited from acquiring or holding any major stake (that is, any beneficial interest exceeding 10% of the total number of issued shares or control over more than 10% of the voting power) in a company undertaking non-financial business, unless the prior approval of the MAS has been obtained. However, private equity and venture capital investments are excluded from the scope of Section 32 of the Banking Act of Singapore pursuant to Regulation 7 of the Banking Regulations. The scope of private equity and venture capital investments that can be undertaken by Singapore banks, the duration of investments and the bank's involvement in the management of such investments can be found in MAS Notice 630 to banks on private equity and venture capital investments. For instance, a bank shall not hold any indirect private equity and venture capital investment if such investee is not managed by the bank or a related party, for a period exceeding 12 years from the date of its first investment in the investee.

4 Investments

4.1 Are there any restrictions on the types of activities that can be performed by Alternative Investment Funds?

There are currently no statutory or regulatory restrictions on the types of activities that can be performed by AIFs that are not registered by the MAS for offers to members of the public. However, it is common for investment restrictions to be provided for contractually.

4.2 Are there any limitations on the types of investments that can be included in an Alternative Investment Fund's portfolio whether for diversification reasons or otherwise?

There are no such limitations for AIFs that are not registered by the MAS for offers to members of the public.

4.3 Are there any restrictions on borrowing by the Alternative Investment Fund?

There are currently no statutory or regulatory restrictions on borrowing by AIFs that are not registered by the MAS for offers to members of the public. However, it is common for restrictions on borrowing to be provided for contractually.

5 Disclosure of Information

5.1 What public disclosure must the Alternative Investment Fund or its manager make?

AIFs structured as Singapore companies must file their financial statements and information on their shareholders and directors with the Accounting and Corporate Regulatory Authority of Singapore (ACRA). Members of the public can obtain such information from ACRA upon payment of a fee.

AIFs structured as limited partnerships do not need to file annual returns with ACRA. If the AIF is managed by a licensed manager or a person exempt from the requirement to be so licensed, the particulars of its limited partners will not be open to inspection by members of the public.

AIFs which are registered by the MAS for offers to members of the public have extensive disclosure obligations in the prospectus that they have to lodge with the MAS. As continuing disclosure obligations, such AIFs have to disclose the interests of its substantial investors (i.e. those who hold 5% or more of the equity interests in the AIFs), directors and the chief executive officer of the manager in the AIFs and the financial performance of the AIFs.

5.2 Are there any requirements to provide details of participants (whether owners, controllers or investors) in Alternative Investment Funds or managers established in your jurisdiction (including details of investors) to any local regulator or record-keeping agency, for example for the purposes of a public (or non-public) register of beneficial owners?

The details of members and directors of AIFs structured as Singapore companies are available as a matter of public record. The details of the partners of AIFs structured as a Singapore limited partnerships and managed by Singapore-based fund managers are not available as a matter of public record. The details of the investors in the proposed VCC structure (explained in the answer to question 7.1 below) will also not be available as a matter of public record.

In addition, AIFs that are structured as Singapore companies or limited liability partnerships are required to maintain a register of controllers as part of their statutory records, unless exempted. The definition of a controller includes individuals or legal entities holding a significant interest in, or significant control over, an AIF. The threshold for holding a significant interest or significant control in the AIF will, depending on the legal form of the AIF concerned,

generally be met by holding more than 25% of the shares or capital, or by having the right to appoint or remove a majority of the directors of the AIF, or by having more than 25% of the total voting power in the AIF. The aforementioned register will not be disclosed or made available to the public. However, it must be available for inspection upon the request of ACRA and other law enforcement authorities or public agencies.

Separately, details of, *inter alia*, the directors and shareholders of the manager are usually provided to the MAS during the application process for a CMS licence for fund management (including those under the VCFM Regime) or to register itself as a RFMC.

5.3 What are the reporting requirements in relation to Alternative Investment Funds or their managers?

AIFs structured as companies would need to make regular filings with ACRA, such as filings relating to issuance of securities, changes in directors and shareholders, creation of charges and annual reports. A general partner of a limited partnership is also required to lodge a statement with the Registrar of Limited Partnerships if there are changes in the registered particulars of the limited partnership.

AIFs that are registered by the MAS for offers to the members of the public are required to send semi-annual and annual performance reports to their investors.

5.4 Is the use of side letters restricted?

There are no restrictions on the use of side letters. However, the MAS has prescribed certain disclosures under the Section 305 Exemption to be made to investors in the private placement memorandum on such side letter arrangements (e.g. the nature and scope of such side letters) for restricted funds marketed only to accredited investors.

6 Taxation

6.1 What is the tax treatment of the principal forms of Alternative Investment Funds identified in question 2.1?

Singapore limited partnerships are not treated by the Inland Revenue Authority of Singapore (IRAS) as a legal person and therefore no tax will be levied at the partnership level. However, the share of income accruing to each partner from the limited partnership will be taxed at the rates applicable to them accordingly.

Singapore income tax is imposed on income accruing in or derived from Singapore and on foreign-sourced income received or construed to have been received in Singapore, subject to certain exceptions.

Singapore does not impose tax on capital gains; however, gains from the disposal of investments may be construed to be of an income nature and subject to Singapore income tax. Generally, gains on the disposal of investments are considered income in nature and sourced in Singapore if they arise from or are otherwise connected with the activities of a trade or business carried on in Singapore. Therefore, one common issue for AIFs on taxation is whether gains are capital in nature, and thus not taxable in Singapore, or taxable as trading income.

AIFs incorporated as Singapore companies are generally taxed at a fixed rate of 17% on their chargeable income. That said, there is an exemption where if an AIF 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 provided they are disposed of between 1 June 2012 and 31 May 2022.

Over the years, Singapore has also developed several tax incentive schemes in order to attract managers and AIFs alike to the city state. The MAS administers certain tax incentive schemes which are available for AIFs that are managed by Singapore-based managers. Such schemes allow AIFs that satisfy the qualifying conditions to enjoy exemption from all incidents of income tax save for income sourced from immovable properties in Singapore.

It must be noted that an AIF may not make taxable supplies for Goods and Services Tax (GST) purposes and therefore its ability to recover input tax suffered on supplies made to it is very limited. Management fees payable to the manager or adviser will in principle attract GST. MAS has issued a circular to allow AIFs qualifying for income tax concessions managed or advised by a manager or adviser to recover most of this GST.

6.2 What is the tax treatment of the principal forms of investment manager / adviser identified in question 2.3?

Investment managers and advisers are usually structured as private limited companies and the general corporate income tax rate in Singapore is 17%. Under the Financial Sector Incentive-Fund Management (FSI-FM) Scheme, fee income derived by an approved Singapore domiciled investment manager or adviser from the provision of prescribed fund management or investment advisory services would be subject to a concessionary tax rate of 10%. An application needs to be made to the MAS for the grant of this award and the award of the concessionary tax rate is subject to MAS' discretion. One of the conditions that the investment manager or adviser needs to satisfy for the grant of this award is that the investment manager or advisor should have a minimum of S$250 million of AUM. Accordingly, an investment manager or adviser with AUM above this level will be able to apply for the FSI-FM Scheme, but RFMCs will not be able to avail themselves of this incentive as a RFMC must not have AUM in excess of S$250 million.

The FSI-FM Scheme is extended until 31 December 2023 as announced in the Budget Statement for Financial Year 2018 delivered in the Singapore Parliament on 19 February 2018 (Budget 2018).

6.3 Are there any establishment or transfer taxes levied in connection with an investor's participation in an Alternative Investment Fund or the transfer of the investor's interest?

No establishment taxes are levied in connection with an investor's participation in an AIF. However, investors in an AIF structured as a Singapore company will attract stamp duty upon a transfer of shares in the AIF at a rate of 0.2% of the consideration for the transfer or the net asset value of the shares transferred, whichever is higher. Stamp duty may be incurred on the transfer of limited partnership interests in an AIF if the assets of the partnership include shares of Singapore companies and immovable properties in Singapore.

6.4 What is the tax treatment of (a) resident, (b) non-resident, and (c) pension fund investors in Alternative Investment Funds?

If the AIF is not able to invoke any of the available tax exemption schemes such as the basic tier tax incentive scheme or the enhanced tier tax incentive scheme, the tax treatment of investors in an AIF becomes a relevant consideration for investors. Limited partnerships are tax-transparent vehicles. Accordingly, income and gains received by the fund are taxable in the partners' hands. The particular partner's tax profile would determine the tax payable by him. Resident individual investors are taxed at progressive tax rates of up to 22% on their taxable income. Corporates are taxed at 17% on their taxable income.

Non-resident investors in a private equity fund structured as a Singapore company are not subject to taxation. There is no withholding tax on dividend distributions made to non-resident investors by AIFs structured as Singapore companies. Withholding tax at a rate of 15% is applicable if any interest or royalty is paid by an AIF to a non-resident investor.

Pension fund investors are subject to tax on their taxable income in the same way as corporate investors.

6.5 Is it necessary or advisable to obtain a tax ruling from the tax or regulatory authorities prior to establishing an Alternative Investment Fund?

Generally, it is not necessary to obtain a tax ruling from the tax or regulatory authorities prior to establishing an AIF. There are tax exemption schemes for AIFs in Singapore called the basic tier tax incentive scheme and the enhanced tier tax incentive scheme as mentioned in the answer to question 6.8. Many investment managers or advisers of AIFs would consider applying for a tax exemption scheme in practice if they were able to meet the qualitative and quantitative conditions.

6.6 What steps have been or are being taken to implement the US Foreign Account and Tax Compliance Act 2010 (FATCA) and other similar information reporting regimes such as the Common Reporting Standard?

Singapore and the US signed a FATCA Model 1 intergovernmental agreement (IGA) on 9 December 2014 to ease the FATCA compliance burden of Singapore-based financial institutions (SGFIs). The IGA and Regulations came into force on 18 March 2015.

SGFIs now have to register with the FATCA Registration Portal as a "Registered Deemed-Compliant Financial Institution (Including a Reporting Financial Institution under a Model 1 IGA)" pursuant to the IGA and Regulations. SGFIs will obtain a Global Intermediary Identification Number when they register with the US Internal Revenue Service. SGFIs need to perform due diligence procedures relating to new individual accounts and new entity accounts opened on or after 1 July 2014. SGFIs also need to automatically remit information regarding accounts believed to be beneficially owned by US persons (including US entities) to the new US government via the Inland Revenue Authority of Singapore (IRAS). Such information would include the holder's name, US Tax Identification Number, account balance and interest earned on the account.

The Income Tax (International Tax Compliance Agreements) (Common Reporting Standard) Regulations 2016 of Singapore (CRS Regulations) were published on 2 December 2016. The CRS Regulations allow Singapore to implement the Standard for Automatic Exchange of Financial Account Information in Tax Matters (AEOI) (also known as the Common Reporting Standard (CRS)) from 1 January 2017 onwards. Pursuant to the CRS Regulations, all SGFIs have to put in place necessary processes and systems to collect CRS information from all non-Singapore tax resident account holders from 1 January 2017. This is necessary to enable the SGFIs to submit the required information to IRAS in 2018 for subsequent exchange under the CRS.

Reporting SGFIs would need to transmit to IRAS the CRS information of their account holders who are tax residents of jurisdictions with whom Singapore has a Competent Authority Agreement for CRS.

On 13 November 2018, Singapore and the US signed a Tax Information Exchange Agreement (TIEA) and a reciprocal FATCA Model 1 IGA (Reciprocal FATCA IGA). The Reciprocal FATCA IGA seeks to improve international tax compliance and provide for the implementation of FATCA based on domestic reporting and reciprocal automatic exchange pursuant to the TIEA. The TIEA will enter into force after its ratification by Singapore. This arrangement shall supersede the current non-reciprocal IGA when it enters into force. Also, the Reciprocal FATCA IGA will enter into force after its ratification by both countries.

6.7 What steps are being taken to implement the OECD's Action Plan on Base Erosion and Profit-Shifting (BEPS), in particular Actions 6 and 7, insofar as they affect Alternative Investment Funds' operations?

On 16 June 2016, Singapore joined the inclusive framework for the global implementation of the BEPS project, which is that profits should be attributable to the jurisdiction where the substantial economic activities giving rise to the profits are conducted. The inclusive framework was proposed by the OECD and endorsed by the G20 in February 2016. By joining this framework, Singapore will work with other participating jurisdictions to ensure the consistent implementation of measures under BEPS, and a level playing field across jurisdictions. Singapore has stated that it is committed to implementing the four minimum standards under BEPS, namely, the standards on countering harmful tax practices, preventing treaty abuse, transfer pricing documentation, and enhancing dispute resolution.

Action 6 deals with treaty abuse, namely treaty shopping. IRAS has stated that they do not condone treaty shopping. In this regard, a number of Singapore's bilateral tax treaties do contain anti-treaty shopping provisions to prevent abuse. In line with Singapore's commitment to implement the minimum standard on preventing treaty abuse, Singapore has participated actively in the *ad hoc* group formed under the aegis of the OECD and the G20 to develop a Multilateral Instrument (MLI), and on 7 June 2017, 68 jurisdictions including Singapore signed the MLI. The MLI seeks to facilitate the efficient updating of existing avoidance of Double Taxation Agreements (DTAs) to incorporate treaty-related measures recommended by OECD to counter BEPs, without the need for jurisdictions to bilaterally re-negotiate each DTA. Signatory jurisdictions may choose which of their DTAs they wish to be modified by the MLI, and a DTA is only modified by the MLI if both parties to the DTA choose for the DTA to be modified by the MLI. For DTAs that will be amended by the MLI, some of the key provisions adopted by Singapore that will bring about changes to the existing DTAs include (i) a statement of intent that a DTA is to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion

or avoidance, (ii) the adoption of a general anti-abuse rule, commonly known as the Principal Purpose Test, and (iii) the inclusion in some DTAs of provisions which allow taxpayers to request for mutual agreement procedure cases to be resolved through an arbitration process if the competent authorities are unable to reach an agreement within a specified time period. These changes will only take effect after the MLI has been ratified by both Singapore and the DTA jurisdiction. The specific textual changes to each DTA will be provided through subsidiary legislation made under the Income Tax Act (Cap. 134) of Singapore (ITA). On 1 April 2019, the MLI entered into force in Singapore.

Action 7 deals with Permanent Establishment (PE) status and mandates the development of changes to the definition of PE in Article 5 of the OECD Model Tax Convention (MTC) to prevent artificial avoidance of PE status. Although Singapore has signed the MLI, Singapore has elected to reserve against this optional amendment, so the specific activity exemptions from PE under all the existing DTAs which correspond to Articles 5(4)(a) to (d) of the MTC will be preserved.

6.8 Are there any tax-advantaged asset classes or structures available? How widely are they deployed?

There are no specific tax-advantaged asset classes available in Singapore. However, there are tax exemptions available for the returns generated by the AIF (i.e. tax incentives for the AIF).

A foreign AIF managed by a Singapore domiciled manager who holds a CMS licence in Singapore or is exempted from holding such a licence will be exempt from tax on specified income from designated investments if the fund is a "prescribed person" (Offshore Fund Scheme). A fund will generally qualify as a prescribed person if it is not resident in Singapore.

For AIFs that are based in Singapore, they may be exempt from tax on specified income from designated investments if the AIF is an "approved company" (Singapore Resident Fund Scheme). An AIF will generally qualify as an approved company if: (i) the AIF is incorporated in Singapore and the manager is registered with the MAS or holds a CMS licence or is expressly exempted from holding a CMS license; (ii) the AIF has a local business spending amounting to S$200,000 per year; (iii) the AIF uses a Singapore-based fund administrator; and (iv) the MAS approves of the tax exemption and there is no change in investment strategy or objective after such approval by the MAS.

There is also another tax exemption that is available to onshore and offshore AIFs if the size of the AIF is over S$50 million, the AIF is managed by a Singapore manager, the manager or adviser employs at least three investment professionals and incurs at least S$200,000 local business spending per year (Enhanced Tier Fund Scheme). In the Budget 2018, the Enhanced Tier Fund Scheme was extended to all fund vehicles constituted in all forms besides companies, trusts and limited partnerships provided they fulfil all qualifying conditions.

As announced in the Budget Statement for Financial Year 2019 delivered in the Singapore Parliament on 18 February 2019 (Budget 2019), the aforementioned exemptions, which were due to lapse after 31 March 2019, are currently available until 31 December 2024. Furthermore, the Budget 2019 also introduced several enhancements to the tax exemptions as further described in the answer to question 6.10 below.

For Singapore-based AIFs, the Singapore Resident Fund Scheme and the Enhanced Tier Fund Schemes are commonly used, whereas for many offshore AIFs, such as those domiciled in the Cayman Islands, the Offshore Fund Scheme is commonly used. Managers should note that even if the AIF is based offshore, if most of the fund management activities are conducted in Singapore, the IRAS may still regard the AIF as having a permanent establishment in Singapore and thus subject to Singapore income tax unless it is covered by the Offshore Fund Scheme.

There are also no specific structuring requirements to avail investors of an AIF in Singapore preference in taxation, though master-feeder structures are commonly used where a manager or adviser is seeking to accept subscriptions from different sets of investors with different tax and regulatory regimes. For example, investors based in the US and those based outside of the US, where taxable US investors may have their own structuring requirements.

6.9 Are there any other material tax issues for investors, managers, advisers or AIFs?

There are no other material tax issues for investors, managers, advisers or AIFs.

6.10 Are there any meaningful tax changes anticipated in the coming 12 months?

Several enhancements and refinements to the Offshore Fund Scheme, Singapore Resident Fund Scheme, and the Enhanced Tier Fund Scheme have been announced in the Budget 2019. These include the following:

(a) with effect from the Year of Assessment 2020, removing the condition that an AIF intending to qualify for the Offshore Fund Scheme or the Singapore Resident Fund Scheme must not have 100% of the value of its issued securities beneficially owned, directly or indirectly, by Singapore persons;

(b) with effect on and after 19 February 2019, the Enhanced Tier Fund Scheme will be enhanced to (i) include co-investments, non-company special purpose vehicles (SPVs) and more than two tiers of SPVs, (ii) allow debt and credit funds to access the "committed capital concession", and (iii) include managed accounts;

(c) with effect on and after 19 February 2019, the list of designated investments (DI) under such schemes will be expended by removing the counter-party and currency restrictions, and including investments such as credit facilities and advances, and Islamic financial products that are commercial equivalents of DI. The condition for unit trusts to wholly invest in DI will be removed;

(d) with effect on and after 19 February 2019, the list of specified income will be enhanced to include income in the form of payments that fall within the ambit of section 12(6) of the ITA (i.e. interest and similar payments deemed to be derived in Singapore); and

(e) qualifying non-resident AIFs under the Offshore Fund Scheme and Enhanced Tier Fund Scheme will be able to avail themselves of the 10% concessionary tax rate applicable to qualifying non-resident non-individuals when investing in Singapore-listed real estate investment trusts and real estate investment trusts exchange-traded funds.

Further, the Budget 2019 confirmed that the current concession allowing for qualifying or approved funds under one of the fund management tax incentive schemes to recover GST incurred on expenses will be extended until 31 December 2024.

These enhancements and refinements to the above-mentioned tax exemptions for Singapore-based AIFs (i.e. the Singapore Resident Fund Scheme and the Enhanced Tier Fund Scheme) will

subsequently be extended to the Variable Capital Company (VCC) when the VCC framework comes into force in due course for VCCs which are able to meet the qualifying conditions for such schemes.

Also, as mentioned in Budget 2018, it has been clarified that a VCC will be treated as a company and a single entity for tax purposes and therefore a Singapore-resident VCC would be entitled to enjoy and rely on the various tax treaties Singapore has concluded with other countries. The VCC would therefore be able to enjoy the same tax benefits as a company incorporated in Singapore with the added corporate and regulatory advantages accorded to the VCC (as further described in the answer to question 7.1 below). Also, the FSI-FM Scheme will be extended to approved managers managing an incentivised VCC. The GST remission for AIFs will also be extended to incentivised VCCs.

7 Reforms

7.1 What reforms (if any) are proposed?

On 1 October 2018, the Variable Capital Companies Act (VCC Act) was passed. However, the product has yet to be brought into effect as the rules and regulations to supplement the VCC Act are still being framed. The VCC will be an alternative corporate structure for CIS. As it is anticipated that the VCC will be used in Singapore by Singapore-domiciled investment managers or advisers, it is apposite to note a few of the interesting features of the VCC. The VCC is to be regulated under the VCC Act, administered by ACRA (excluding anti-money laundering and counter financial terrorism matter which would be regulated by MAS), and can be used as a CIS vehicle either as a stand-alone entity, or as an umbrella entity with multiple sub-funds with segregated assets and liabilities.

Importantly, a VCC will be permitted to freely redeem shares and pay dividends using its net assets/capital, thereby providing flexibility in the distribution and return of capital. This is different from the Companies Act which requires a solvency statement to be made by all directors for the redemption of redeemable preference shares. In addition to solvency statements which must be made by all directors, the Companies Act also requires a creditor objection period of six weeks to lapse before the capital reduction can be affected, and stipulates that dividends may only be paid out of the profits of a company. Both open-ended and close-ended funds can adopt the VCC form. Foreign corporate entities equivalent to the VCC may also be re-domiciled to Singapore.

The VCC's assets are to be managed by an investment manager that is regulated by the MAS. An approved custodian must be appointed to supervise custody of the assets of a VCC where the VCC is an authorised CIS. One of the directors of the VCC must be ordinarily resident in Singapore and also be a director or a qualified representative of the VCC's investment manager, and all directors must be "fit and proper persons" for MAS purposes. While the register of holders of a VCC will not be required to be disclosed to the public, it would have to be provided for inspection to the manager of the VCC, custodian of the VCC, MAS, ACRA and other public authorities for regulatory, supervisory and law enforcement purposes.

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Amit's expertise has been recognised in *The Legal 500 Asia Pacific*, 2019 as "Recommended Lawyer for Investment Funds as well as Corporate and M&A". Amit was designated a Sheridan Fellow by the National University of Singapore in 2004 and was awarded the faculty graduate scholarship. In December 2016, Amit was named by *Singapore Business Review* as one of the 70 most influential lawyers in Singapore under the age of 40.

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