The Monetary Authority of Singapore Consults on Proposed Regulatory Regime for Managers of Venture Capital Funds

On February 15, the Monetary Authority of Singapore (MAS) issued a Consultation Paper on the Proposed Regulatory Regime for Managers of Venture Capital Funds (Consultation Paper).

The Consultation Paper seeks to introduce a simplified regulatory regime for venture capital (VC) managers by streamlining admission and ongoing requirements for VC managers (VC Manager Regime). This is to differentiate the regulatory treatment accorded to VC managers from other fund managers, and to reflect the MAS’ assessment of the lower risk of business and market conduct issues associated with VC managers.

This briefing summarizes the key proposals in relation to the VC Manager Regime.

**Key Proposals in the Consultation Paper**

A summary of the key proposals in the Consultation Paper is set out below.

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<th>Proposal</th>
<th>Summary</th>
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| 1. Qualifying criteria for the VC Manager Regime | • To be eligible under the VC Manager Regime, the VC manager must meet the following criteria (Qualifying Criteria):  
  o The VC fund must be directly invested\(^1\) in unlisted businesses that have been established or incorporated for no more than five years at the time of the VC fund’s initial investment into them.  
    In the case of investments held by VC managers through special purpose vehicles (SPVs), the five-year requirement will not apply to the SPVs but to the underlying businesses.  
  o The VC fund must be closed-ended.  
    Interests in the VC fund must be non-redeemable at the discretion of the investor and must not be continuously available for subscription.  
  o The VC fund must only be offered to end-investors who are either accredited investors\(^2\) (AI) or institutional investors\(^3\). |

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\(^1\) The underlying investment must be directly acquired from the corporation and not acquired from the secondary market.
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<td>The introduction of the AI opt-in/opt-out regime(^4) will further mitigate risks posed to less sophisticated investors. Under this regime, any “AI-eligible investor” (i.e., an investor, whether an individual or an entity, that meets the AI criteria) will have the choice of electing retail or AI status, and therefore determine whether they wish to enjoy the regulatory safeguards and protection accorded under the Securities and Futures Act (SFA).</td>
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<td>- Restrictions on leverage will not be a qualifying criteria for the VC Manager Regime. The use of leverage will not preclude a VC manager from being eligible under the VC Manager Regime.</td>
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2. **Simplified admission requirements**

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<td>VC managers will need to apply and be licensed by MAS prior to the commencement of business but will not be subject to certain admission criteria. For example, directors and representatives of VC managers will not be required to have at least five years of relevant experience in fund management, and representatives will not be required to satisfy academic and examination requirements.</td>
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<td>- Notwithstanding the above, MAS’ fit and proper criteria(^5) will still apply.</td>
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<td>Application for a license will require the particulars of the VC manager, its substantial shareholders, chief executive officer, directors, representatives, and a clear description of its proposed VC fund(s) and activities to be carried out in Singapore.</td>
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<td>- Applicants can expect an expeditious authorization process.</td>
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<td>A list of VC managers will be maintained in the Financial Institution Directory on the <a href="https://www.mas.gov.sg">MAS website</a>.</td>
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\(^2\) As defined in Section 4A(a) of the Securities and Futures Act (Cap. 289) (SFA).

\(^3\) As defined in Section 4A(c) of the SFA.

\(^4\) More information about the AI opt-in/opt-out regime can be found in a previous Sidley Update [here](https://www.sidley.com).

\(^5\) Set out in MAS Guideline No. FSG-G01 “Guidelines on Fit and Proper Criteria.” These guidelines generally assess the (i) honesty, integrity and reputation; (ii) competence and capability; and (iii) financial soundness of the fund manager itself, as well as its shareholders, directors, representatives, etc.
3. **Simplified ongoing requirements**

- VC managers will not be required to comply with the following requirements which currently apply to fund managers:
  - Capital requirements.\(^6\)
    - VC managers will not be required to maintain a minimum base capital\(^7\) nor comply with any risk-based capital requirements.\(^8\)
  - Business conduct requirements.\(^9\)
    - VC managers will not be required to meet certain business conduct requirements, for example:
      - having an in-house compliance capability;
      - conducting internal audits of their business activities;
      - conducting independent valuation(s) of the fund(s) managed and having an independent party report such valuation(s) to the investors;
      - disclosing and effectively managing and mitigating conflicts of interests; and
      - according priority to customers’ orders and transactions.
  - Independent annual audit of the fund manager.\(^10\)
    - VC managers will not be required to submit annual audited financial statements and auditor reports to MAS.

4. **All other ongoing requirements that are applicable to fund managers will continue to apply to VC managers**

- The MAS will apply to VC managers all other ongoing regulatory requirements that are applicable to fund managers, for example:
  - Notifications to the MAS.
    - VC managers must notify the MAS when they intend to cease their fund management activities, or of any changes to their particulars, e.g. details of their substantial shareholders, representatives, directors, etc., within 14 days of the change.
    - MAS’ prior approval for these changes would not be required.
  - Annual declaration to the MAS.

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\(^6\) Set out in Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licenses) Regulations.

\(^7\) Currently prescribed at S$250,000 for fund managers serving only accredited and institutional investors.

\(^8\) Currently prescribed at not less than 120 percent of the operational risk requirement for licensed fund managers.

\(^9\) Set out in Securities and Futures (Licensing and Conduct of Business) Regulations.

\(^10\) Set out in Division 3 of Part V of the SFA.
VC managers must report annually to the MAS of their funds under management, the number and types of investors, the fund types and deals by geography and sector, and confirm in writing that they meet the Qualifying Criteria under the VC Manager Regime.

- Anti-money laundering and countering the financing of terrorism requirements (AML/CFT).\(^\text{11}\)

VC managers must have in place systems and controls to identify, assess and implement appropriate measures to prevent money laundering and terrorism financing, and to monitor and report any suspicious transaction.

VC managers must also keep abreast of AML/CFT announcements and adhere to amendments to AML/CFT requirements.

- The MAS’ powers to inspect and issue directions.

The MAS will retain existing powers to inspect and investigate managers under the VC Manager Regime, as well as issue directions to and impose conditions on them.

The MAS will also retain existing powers to revoke the regulatory status of the VC manager and issue prohibition orders against the CEOs, directors and representatives of VC managers.

5. **Implementation of the VC Manager Regime**

- Existing fund managers that manage VC funds can operate under the VC Manager Regime after notifying the MAS that they meet the Qualifying Criteria and obtaining the MAS’ acknowledgement of the notification.

- Alternatively, existing fund managers can choose to maintain their current regulatory status and be subject to the full set of ongoing requirements.

- Where a VC manager anticipates that it would no longer be able to meet the Qualifying Criteria under the VC Manager Regime, the VC manager should engage the MAS on the appropriate regulatory status that is needed.

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\(^{11}\) Set out in MAS Notice No. SFA04-N02 “Prevention of Money Laundering and Countering the Financing of Terrorism – Capital Markets Intermediaries” and MAS Notice No. CMG-N01 “Reporting of Suspicious Activities and Incidents of Fraud.”
Invitation for Comments

Please refer to the Consultation Paper for the complete set of proposals. The deadline for comments and feedback to be submitted to the MAS is March 15, 2017. We are collating comments from clients and industry participants for submission to the MAS. If you have any comments on the proposals that you would like us to submit on your behalf, please contact Han Ming Ho (+65 6230 3966, hanming.ho@sidley.com) or Joel Seow (+65 6230 3931, joel.seow@sidley.com).

If you have any questions regarding this update, please contact the Sidley lawyer with whom you usually work, or

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