



# ASIA Funds & Financial Services

NEWSLETTER

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## IN THIS ISSUE

### NEWS

In Focus – Regulatory Outlook for 2021 (Singapore) ..... 1

Landmark changes to the Hong Kong taxation of Carried Interest Revenue ..... 3

REGULATORY STANDARDS/UPDATES ..... 5

INTERMEDIARIES/MARKET SUPERVISION ..... 5

KEY PRODUCT DEVELOPMENTS ..... 6

SIGNIFICANT ENFORCEMENT ACTIONS ..... 6

This issue of Sidley’s Asia Funds and Financial Services Newsletter discusses important regulatory and enforcement developments that impact financial institutions, investment advisers, and investment funds operating in the Asia-Pacific region in a fast-changing regulatory landscape, with a special focus on the regulatory outlook for 2021 in Singapore and the introduction of landmark tax concessions for carried interest for eligible fund managers in Hong Kong, which will take effect retroactively from April 1, 2020 (once enacted).

### NEWS

#### IN FOCUS — REGULATORY OUTLOOK FOR 2021 (SINGAPORE)

We highlight several noteworthy regulatory developments that will likely be of interest to fund management companies (FMCs) in Singapore in the year ahead.

#### Environmental Risk Management

In line with the increasing global focus on environmental, social, and governance (ESG) issues, the Monetary Authority of Singapore (MAS) has been taking steps to turn Singapore into a leading center for green finance. It recently published the following industry standards and guidelines to encourage Singapore financial institutions to consider ESG criteria in the decisionmaking process:

- **Guidelines on Environmental Risk Management for Asset Managers.** MAS issued the Guidelines on Environmental Risk Management for Asset Managers ([ERM Guidelines](#)) on December 8, 2020. This is part of a series of guidelines issued to banks, FMCs, and insurers. The ERM Guidelines aim to enhance the resilience of funds and segregated mandates that are managed by Singapore FMCs by setting out sound environmental risk management practices that Singapore FMCs can adopt. It applies generally to all Singapore FMCs that have discretionary authority over the investments of the funds/mandates they are managing. Although already in effect, MAS has indicated that it will provide an 18-month transition period for FMCs to implement the ERM Guidelines, and it will start engaging larger FMCs from Q2 2021 on their implementation progress. As such, this is likely to be a key regulatory focus for Singapore FMCs in 2021. Please refer to our [update](#) for further information.
- **Handbook on Implementing Environmental Risk Management.** As a complement to the ERM Guidelines, the Handbook on Implementing Environmental Risk Management for Asset Managers, Banks and Insurers ([Handbook](#)) was issued on January 28, 2021, by the Green

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Finance Industry Taskforce (GFIT), a task force convened by MAS. Written by industry practitioners, the Handbook seeks to offer guidance on best practices in environmental risk management and support the financial industry's efforts to implement the Guidelines.

- **Consultation on green and transition taxonomy.** GFIT also issued a [consultation paper](#) setting out a taxonomy for Singapore-based financial institutions to identify and classify activities that can be considered green or in transition. Compared to other taxonomies, a key feature of the proposed taxonomy is that it encompasses transition activities that allow for a progressive shift toward greater sustainability while taking into account starting positions and supporting inclusive economic and social development. The consultation seeks feedback on GFIT's recommendations on the environmental objectives, focus sectors, and a "traffic-light" system that sets out how activities can be classified as green, yellow (transition), or red according to their level of alignment with environmental objectives. Interested parties were invited to submit their comments by March 11, 2021.

As the implementation of environmental risk management practices will evolve and mature over time, we expect that MAS will continue to work closely with the industry to identify and promote good practices during the course of this year.

### Technology Risk Management

On January 18, 2021, MAS published the revised Guidelines on Risk Management Practices — Technology Risk ([TRM Guidelines](#)), the first major revision of the TRM Guidelines since 2003. The revision of the TRM Guidelines reflects the need to keep pace with emerging technologies and shifts in the cyberthreat landscape and sets out MAS' higher expectations in the areas of technology risk governance and security controls. MAS will be expecting financial institutions, including Singapore FMCs, to conduct an assessment to identify gaps against the TRM Guidelines relevant to their operations and to implement measures to address any gaps between the TRM Guidelines and their current practices.

### Individual Accountability and Conduct

The Guidelines on Individual Accountability and Conduct ([IAC Guidelines](#)), issued by the MAS last year, takes effect on September 10, 2021. The IAC Guidelines focus on the measures financial institutions, including Singapore FMCs, should put in place to promote the individual accountability of senior managers, strengthen oversight over material risk personnel, and reinforce standards of proper conduct among all employees. It sets out five accountability and conduct outcomes that financial institutions should achieve.

One of the requirements of the IAC Guidelines is to identify senior managers who have responsibility for functions that are core to the management of the financial institution's affairs and ensure that they are held responsible for the actions of their employees and the conduct of the business under their purview. For financial institutions with fewer employees (e.g., under 50 headcount), the five outcomes in the IAC Guidelines should still be achieved, but they will not ordinarily be expected by MAS to adopt the specific guidance as described in the IAC Guidelines. Please refer to our [update](#) for further information.

### Over-the-Counter (OTC) Derivatives Reporting

In response to the COVID-19 pandemic, MAS last year deferred the implementation of the the last phase of the reporting requirements relating to OTC commodity, equity, and foreign exchange derivative contracts booked or traded in Singapore by FMCs (and certain other nonbank financial institutions). The reporting of these derivative contracts by Singapore FMCs will commence on October 1, 2021.



## Personal Data Protection

The Singapore Personal Data Protection Act (PDPA) was amended on February 1, 2021. Some of the key amendments to the PDPA include a new mandatory data breach notification requirement (with respect to both the Personal Data Protection Commission and affected individuals), an expansion of the circumstances in which consent may be deemed to have been given by an individual (e.g., based on contractual necessity or provision of a notification to individuals and a reasonable time period to opt out), and new prescribed exceptions to the consent requirement (e.g., a new business improvements exception and legitimate improvements exception). The amendments affect all Singapore FMCs and other organizations that operate in Singapore, handle Singapore personal data, or maintain a server in Singapore.

## Special Purpose Acquisition Companies (SPACs)

With the increase in SPAC listings, a greater number of acquisitions anticipated as SPACs have to consummate a merger transaction with a target company within a typical timeframe of 18 to 24 months of the listing of the relevant SPAC. It is noteworthy that to date, the majority of SPAC listings have taken place on United States exchanges.

- **Effect of SPACs in Asia:** Given the proliferation of U.S.-listed SPACs pursuing potential target companies to acquire via merger in the U.S., there is a growing interest by U.S.-listed SPACs (including SPACs headquartered in the U.S. or Asia) to source in Asia for potential target companies, in particular Southeast Asian unicorns, specifically in the technology, media, and telecommunication sectors.
- **Developments in Singapore:** The current rules of the Singapore Exchange Securities Trading Limited (SGX) do not allow for a SPAC listing on the SGX. Earlier this year, the SGX held a [media briefing](#) stating its intention to look into the possibility of permitting the listing of SPACs on its exchanges. It is noteworthy that while the SGX had issued a [consultation paper](#) on SPACs in 2010, there was insufficient interest among businesses and investors at the time to generate the traction and momentum to carry this forward. Notwithstanding, the safeguards proposed in the 2010 consultation paper may serve as a useful reference for safeguards that the exchange may introduce as part of its consultation on SPACs later this year.
- **Developments in Hong Kong:** The current rules of the Hong Kong Stock Exchange (HKEX) do not allow for a SPAC listing on the HKEX. Notwithstanding the absence of such listings, it is our understanding that the listing of SPACs on the HKEX may be contemplated and considered; however, such development has yet to be confirmed or acknowledged by the exchange.

## LANDMARK CHANGES TO THE HONG KONG TAXATION OF CARRIED INTEREST REVENUE

On January 29, 2021, the Inland Revenue (Amendment) (Tax Concessions for Carried Interest) Bill 2021 (Bill) was gazetted to provide significant tax concessions for carried interest distributions by eligible funds operating in Hong Kong. The Bill was presented before the Legislative Council for first reading on February 3, 2021. Once the Bill becomes law, it will take effect retroactively from April 1, 2020.

### *What is the Bill's significance?*

Carried interest is the predominant revenue stream generated for the private equity fund management industry. The Bill aims to (i) relax the current tax arrangements applicable to carried interest revenue derived from investment management services undertaken in Hong Kong, (ii) attract and retain additional private equity firms that may wish to domicile and operate in Hong Kong, and (iii) provide greater tax certainty in relation to the limited



partnership fund regime introduced pursuant to the Limited Partnership Fund Ordinance (Cap. 637) on August 31, 2020.

### ***What changes does this Bill introduce?***

Currently, carried interest is assessed as taxable service income for profits tax purposes or employment income for salaries tax, provided that the carried interest is derived from investment management services undertaken in Hong Kong.

The Bill, once enacted, benefits fund managers that use private equity-related investment strategies for their funds (provided that all or part of the fund strategy falls within the scope of qualified transactions) by providing a highly concessionary tax treatment in the form of a 0% profits tax rate on eligible carried interest and the exclusion of 100% of the eligible carried interest from employment income for the purpose of calculation of salaries tax.

### ***What are the eligibility requirements?***

To benefit from the concessionary tax treatment, the “eligible carried interest” must be received by the “eligible carried interest recipient” from the “eligible carried interest payer.” A Hong Kong Monetary Authority (HKMA) approval mechanism is in place to ensure that the eligibility requirements are fulfilled.

“Eligible carried interest” must satisfy the following conditions: (i) The eligible carried interest arises only if there are profits during a relevant period of assessment arising from (a) the investments of the fund, (b) particular investments of the fund, or (c) the disposal of an investment of the fund; (ii) the eligible carried interest paid varies by reference to the profits; and (iii) the returns to external investors are determined by reference to the same profits. In addition, the transactions in (i)(a) to (c) must meet the definition of “qualified transactions,” which are transactions (w) in shares, stocks, debentures, loan stocks, funds, bonds, or notes of, or issued by, a private company specified under Schedule 16C to the Inland Revenue Ordinance (Cap. 112) (IRO); (x) in shares of, or comparable interests in, a special purpose entity or interposed special purpose entity that is solely holding (whether directly or indirectly) and administering one or more investee private companies; (y) in shares, stocks, debentures, loan stocks, funds, bonds, or notes of, or issued by, an investee private company held by a special purpose entity or an interposed special purpose entity per the subparagraph immediately above; or (z) incidental to the carrying out of the qualifying transactions detailed in the three subparagraphs above.

“Eligible carried interest recipient” must be (i) a licensed corporation or an authorized financial institution regulated under the Hong Kong Securities and Futures Ordinance; (ii) a person carrying out investment management services or arranging such services to be carried out in Hong Kong for a certified investment fund that is a “qualified investment fund,” as defined in section 20AN(6) of the IRO; or (iii) an individual deriving assessable income from employment with qualifying persons, or their associated corporation or associated partnership operating in Hong Kong, by providing investment management services in Hong Kong to a certified investment fund on behalf of the qualifying persons.

“Eligible carried interest payer” (i) must meet the definition of a “fund” pursuant to section 20AM of the IRO; (ii) must be certified by the HKMA as eligible; and (iii) in the case of a nonresident fund, must appoint an authorized local representative responsible for providing the necessary particulars and information to the Inland Revenue Department and the HKMA on behalf of the fund.

### ***Who will benefit from this new law?***

It is envisaged that the Bill, once enacted, will benefit fund managers that use private equity-



related investment strategies in Hong Kong for their funds. This is not limited to traditional private equity funds but also extends to venture capital, hybrid hedge and private equity funds, and credit funds, provided that all or part of the strategy of the fund falls within the scope of the qualifying transactions, as specified in the Bill.

If you would like to discuss the best manner in which to structure carried interest and other fee streams in order to secure eligibility for the carried interest tax concession or explore how we may be able to assist you, please do not hesitate to contact us.

### REGULATORY STANDARDS/UPDATES

#### New FAQs on EDSP Requirements

**December 2020:** The Securities and Futures Commission (SFC) published new FAQs to provide better guidance on the requirements for using external data storage providers (EDSPs) to exclusively keep regulatory records or documents. The FAQs confirm that regulated firms that exclusively store regulatory records with affiliates are required to apply, without undue delay, for SFC approval under Section 130 of the Securities and Futures Ordinance (SFO) (regardless of where the affiliate is located and irrespective of whether the recordkeeping is further outsourced to EDSPs).

#### SFC Looks to Curb Errant Book-Building and Placing Activities

**February 2021:** Following a thematic review of buy-side and sell-side industry participants, the SFC launched a three-month consultation to address concerns in both equity and capital markets that for some offerings, the price-discovery process has been hampered by a number of factors, including inflated or opaque demand. The key proposals aim to codify best practices to enhance intermediary conduct and ensure a level playing field. The proposed amendments are expected to be implemented subject to a six-month transition period.

### INTERMEDIARIES/MARKET SUPERVISION

#### SFC Poised to Revamp Competency Standards

**December 2020:** The SFC launched a two-month consultation to raise the industry's professional standards. The proposed changes are (primarily) intended to raise the entry and ongoing competence requirements and continuous professional training (CPT) guidelines for licensed intermediaries who advise on matters or transactions falling within the ambit of the Code on Takeovers and Mergers and Share Buy-backs. More generally, it provides further elaboration on relevant industry experience and management experience requirements for licensed persons, including increases to the minimum CPT requirements to 10 hours for licensed representatives and 12 hours for responsible officers. The amendments are expected to take effect no earlier than December 31, 2021.

#### SFC Signs New MoU with FRC to Regulate Capital Markets

**February 2021:** The SFC entered into a memorandum of understanding (MoU) with the Financial Reporting Council (FRC) to strengthen regulation of the capital markets, particularly in relation to the regulation of auditors of listed entities and compliance by listed entities with financial reporting requirements. The MoU provides a framework to ensure the quality of financial reporting by listed entities and the audit quality of listed entity auditors. The new MoU supersedes the MoU signed in 2007.





## KEY PRODUCT DEVELOPMENTS

### Leveraged Forex Trading Activities

**January 2021:** Effective January 1, 2021, new regulatory standards under the Code of Conduct covering customer due diligence, handling of client orders, conflicts of interest, and information for clients with respect to leveraged foreign exchange trading activities took effect. The SFC has reminded the industry that firms trading leverage foreign exchange (forex) products on an over-the-counter basis must ensure that they have internal controls, systems, and procedures in place to comply with the new standards.

### SFC Signs MoU on Cross-Boundary Wealth Management in the Greater Bay Area

**February 2021:** The SFC entered into an MoU with regulatory agencies in Mainland China and Macau following the launch of the Cross-Boundary Wealth Management Connect pilot scheme in Guangdong-Hong Kong-Macao Greater Bay Area. The MoU provides a framework for the mutual exchange of supervisory information and enforcement cooperation, as well as a mechanism to resolve investor complaints among the regulatory authorities in each jurisdiction.

## SIGNIFICANT ENFORCEMENT ACTIONS

We highlight below several noteworthy disciplinary and enforcement actions in the last quarter that may be of interest to licensed representatives, intermediaries, and others operating in the Hong Kong financial markets.

### Insider Dealing and Civil Liability for Late Disclosure of Inside Information

- **December 2020:** A former company secretary of a listed company who pleaded guilty to insider dealing charges (netting gains under US\$1,000) was jailed for 45 days for purchasing shares using his wife's account after becoming aware of a possible general offer.
- **January 2021:** A former CFO of a listed company was convicted of insider dealing and tipping charges and jailed for three months after he sold down his stake to avoid a loss of HK\$200,000 when he became aware of unaudited losses.
- **February 2021:** A tippee was banned from dealing in securities for two years and ordered to disgorge over HK\$500,000 in illicit profits after being tipped off by the former chairman and executive director of the listed company about a proposed sale. Insider dealing charges against the tipper were dismissed.
- **March 2021:** A listed company and five directors were fined a total of HK\$4 million for late disclosure of inside information relating to a proposed acquisition. The disclosure was delayed for three months. Investors who sold their shares during that time were ignorant of the information, which would have had a positive effect on the value of their shares. The five directors were also disqualified from serving as a director or being involved in the management of a listed company for eight to 24 months.

### Internal Control and Anti-Money-Laundering (AML) Failures

- **December 2020:** A licensed corporation was reprimanded and fined HK\$3.6 million over failures to prevent and detect illegal short-selling activity compounded by a two-week delay to self-report the incidents to the SFC.
- **February 2021:** A fund manager was reprimanded and fined HK\$3.15 million for under-reporting short positions and other reporting errors, including wrongly aggregating short positions for all funds (instead of separately calculating and reporting the net short position for each fund).



- **March 2021:** Two licensed corporations were reprimanded and fined HK\$7.2 million and HK\$5 million, respectively, over multiple AML compliance and reporting failures relating to suspicious cash deposits and third-party fund transfers.
- **March 2021:** A licensed corporation was reprimanded and fined HK\$6.3 million for breaching its licensing conditions by providing discretionary account management services in unlisted bonds.

## Life Bans and Disqualification Orders

- **January 2021:** The SFC banned for life a branch manager employed by a bank for misappropriating HK\$3.6 million from a customer's bank account.
- **February 2021:** The SFC obtained disqualification orders against the former CEO and former CFO of a Hong Kong-listed company (for periods from three to four years). The pair siphoned away HK\$61 million purportedly for an initial public offering (IPO) investment on behalf of the listed company without proper board authorization and/or any agreement to share profits/losses of the IPO investment with the company and, subsequently, published a false and/or misleading announcement reporting the transaction to the investing public as "amounts due from a director."
- **March 2021:** The SFC obtained a series of disqualification orders against five former senior executives and two directors of a Hong Kong-listed company (for periods from seven to nine years) who devised a scheme to window-dress the company's financial position and publish false or misleading announcements to the investing public, which overstated revenue and understated costs.
- **March 2021:** The SFC obtained disqualification orders against the former CEO and a former director of a Hong Kong-listed company (for a period of three years each). The pair admitted to deferring, and later waiving, certain profit guarantee payments due to the company under the terms of an acquisition for their own personal advantage or other ulterior motives. Five other directors were disqualified earlier for a period of two to five years. Disqualification proceedings against seven remaining former directors of the company are ongoing.

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