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SIMPLIFIED REGULATORY REGIME FOR VENTURE CAPITAL FUND MANAGERS COMES INTO EFFECT

On 20 October 2017, the Monetary Authority of Singapore (MAS) announced the adoption of a simplified regulatory regime for managers of venture capital funds (VC managers) with immediate effect. The announcement follows a public consultation on the proposed regulatory regime for VC managers, which was published on 15 February 2017 (Consultation Paper). In an effort to encourage the further growth of the VC industry in Singapore, the new regime simplifies the authorisation process and reduces the ongoing requirements for VC managers.

SIMPLIFIED REGULATORY REGIME FOR VC MANAGERS

In recognition that VC funds play an important role in supporting the growth of start-up businesses, which sustain innovation and growth in the economy, and at the same time acknowledging that VC managers and funds they manage are unique, the MAS has introduced a simplified regime for VC managers.

Requirements for VC managers

Eligibility criteria/types of funds

In order to qualify for the simplified regulatory regime, a VC manager may only manage funds that satisfy the following eligibility criteria:

- invest at least 80% of 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 initial investment (the 10 years criterion will apply to the operating portfolio company rather than the holding vehicle);
- invest up to 20% of committed capital in other unlisted business ventures (e.g., other unlisted companies that have been incorporated for more than 10 years and/or investments made through acquisitions from other investors in the secondary market);
- must not be continuously available for subscription, and must not be redeemable at the discretion of the investor (i.e. must be closed-ended); and
- are offered only to accredited and/or institutional investors.

Key issues

- To qualify for the simplified regulatory regime, VC managers must satisfy certain eligibility criteria relating to the funds managed.
- No requirements relating to competency, capital or domicile of VC fund.
- No restriction on use of leverage.
- Reduced ongoing business requirements for VC managers but compliance with AML/CFT requirements and disclosure of VC status to investors required.
- Existing licensed or registered fund management companies seeking to transit to the VC regime, need only notify the MAS of such intention but must continue to comply with all existing regulatory requirements until MAS' confirmation.

The announced eligibility criteria are generally consistent with the proposals set out in the Consultation Paper, with the exception of the MAS broadening the criterion for the unlisted companies to be incorporated for no longer than 10 years rather than, as previously proposed, a period of five years.

Whilst the MAS decided not to impose substantive competency, capital and ongoing business conduct requirements on VC managers, VC managers will continue to be required to meet AML/CFT requirements and file periodic returns (described in further detail below), and will be required to disclose to investors that they are not subject to all of the regulatory requirements imposed on other fund management companies.

In declining to impose any requirements on aggregate fund size, size of individual investments, fund domicile and the use of leverage by VC managers, the MAS appears to have taken the view that these factors were better determined by market forces and negotiated and agreed as part of contractual arrangements.

Admission and ongoing requirements

A VC manager will need to meet the following requirements at all times:

- Fit and Proper - satisfy the MAS that its shareholders, directors, representatives and employees, as well as the VC manager herself/himself, are fit and proper (in terms of financial soundness, integrity and honesty);
- Place of Incorporation - be a Singapore incorporated company with a permanent physical office in Singapore;
- Disclosure - disclose to investors that they are not subject to all of the regulatory requirements imposed on other fund management companies;
- AML/CFT Requirements - comply with the requirements on anti-money laundering and countering the financing of terrorism (AML/CFT) (as such, VC managers must put in place robust and effective controls to detect, monitor and report any such illegal activities); and
- Periodic Returns - submit periodic returns on changes to its particulars, its substantial shareholders, CEO, directors and other representatives, assets under management (AUM), investor types and numbers, fund types, and details of deals by geography and sector.

Implementation of the VC manager regime

A new manager will need to apply to the MAS to operate as a VC manager by submitting an "Application for a Capital Markets Services Licence for Venture Capital Fund Manager" (Form 1V) through the MAS's Corporate Electronic Lodgement (CeL) system, together with relevant supporting documentation.

By contrast, an existing licensed or registered fund management company (FMC) seeking to transit to the VC manager regime need only to notify the MAS of its intention to operate as a VC manager by indicating so in Form 1V (i.e., no requirement to undergo a new licensing process). The FMC must continue to comply with all existing competency, capital and business conduct requirements until it is informed by the MAS that it can operate under the VC manager regime. Once approved, the FMC will be separately listed on the directory of financial institutions on the MAS website.

Tax Incentives

The MAS has previously expressed its commitment to reviewing the requirements for VC funds and VC managers to qualify for tax incentives given that VC funds and VC managers are typically smaller in size and headcount than traditional asset managers.

The three main tax exemption schemes currently available are the: (i) offshore fund tax exemption scheme; (ii) onshore (Singapore-resident company) fund tax (SRF) exemption scheme; and (iii) enhanced tier fund tax exemption (ETF) scheme. To qualify for the SRF scheme, amongst other requirements, there needs to be at least S$200,000 business expenditure per year. In order to qualify for the ETF scheme, amongst other requirements, there is a minimum fund size requirement of S$50 million and a minimum annual local business expenditure requirement of S$200,000.

The MAS has not yet outlined its proposed tax incentives for VC funds and VC managers. This potential development remains on the wish list of VC managers.

Other VC manager regimes – EU and US

Although Singapore's new VC manager regime shares a number of similarities with regimes found in the EU and the US, there are some unique features worth pointing out.

Of the three regimes, Singapore's regime is the most permissive with regard to the use of leverage. An EuVECA (i.e., a qualifying European venture capital fund) is only permitted to borrow, issue debt or provide guarantees at the level of the fund to the extent that it is covered by uncalled commitments. In the US, VC managers relying on the Advisers Act exemption from investment adviser registration may not advise funds that borrow or otherwise incur fund-level leverage in excess of 15% of the fund's aggregate capital contributions and uncalled capital commitments.

Whilst all three regimes impose a requirement to invest a majority of the committed capital in unlisted businesses, with the EU imposing a 70% requirement and the US imposing a 80% requirement (similar to the Singapore regime), it is worth noting that the EU regime also limits qualifying investments to those that employ less than 250 persons and have an annual turnover not exceeding € 50 million, or an annual balance sheet total not exceeding € 43 million.

Conclusion

The implementation of the new VC manager regime in Singapore shows the MAS' appreciation of the important role of VC funds in helping to sustain innovation and growth in the economy.

The MAS has taken a notably commercial approach to the eligibility criteria for VC managers, in particular expanding the criterion for qualifying companies to an upper limit of 10 years, and refraining from imposing any requirements on aggregate fund size, size of individual investments, fund domicile or the use of leverage by VC managers.

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