The Simplified VC Manager Regime

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INTRODUCTION

On 20 October 2017, the Monetary Authority of Singapore ("**MAS**") announced that managers of venture capital funds ("**VC Managers**") can qualify for a separate and simplified regulatory regime (the "**VC Manager Regime**") effective immediately. This is a genesis of a public consultation by MAS on the proposal between 15 February 2017 to 15 March 2017 and feedback received.[1] Collyer Law LLC was one of the respondents to the public consultation.[2]

The VC Manager Regime simplifies and shortens the authorisation process for VC Managers, recognising the lower risks posed by them given their business model and sophisticated investor base, as well as the typical contractual safeguards. This will improve access to the pool of VC funds available for start-ups in Singapore and the region.

Qualifying for the VC Manager Regime – Overview of Requirements

To qualify for the VC Manager Regime, the funds that the VC Manager manages must meet the following eligibility criteria (the "**Eligibility Criteria**"):

(a) invest in business ventures that are not listed on a securities exchange:

(i) invest at least 80% of committed capital in securities that are directly issued by unlisted business ventures no more than 10 years old (applicable to the operating portfolio company, and not the entity/trust/other vehicle set up to hold the investment)*;

(ii) the remaining 20% of committed capital can be invested in other unlisted business ventures (e.g. unlisted companies more than 10 years old, or investments made through acquisitions from other VC funds or existing owners in the secondary market);

[1] MAS Response to Feedback Received on Proposed Regulatory Regime for Managers for Venture Capital Funds (the "**MAS Response**").
[2] MAS Response, pages 22-26.

(b) units of the funds are not available for new subscription after the close of fund-raising, and can only be redeemed at the end of the fund life; and

(c) are offered only to accredited and/or institutional investors.

Under the VC Manager Regime, VC Managers will no longer be subjected to:

(a) competency requirements (i.e. to have directors and representatives with at least 5 years of relevant experience in fund management); and

(b) capital requirements and business conduct rules that currently apply to other fund managers.

In admitting and supervising VC Managers, MAS will focus primarily on existing fit and proper and anti-money laundering safeguards under the Securities and Futures Act (Cap. 289).

Summary of MAS Response

Here is a summary of the salient points of MAS' "Response to Feedback Received – Proposed Regulatory Regime for Managers of Venture Capital Funds" (the "**MAS Response**") below:

(a) Only be directly invested in unlisted business ventures that have been established or incorporated no more than five (5) years at the time of initial investment

MAS recognised the lack of a generally accepted industry definition of "VC fund", and has sought to distinguish VC funds by applying the abovementioned criteria with regard to the VC fund's investments, taking into consideration their operational needs. **MAS has advised that it would be prudent for investors to assess the fund size, minimum investment amount, and domicile of VC funds to negotiate appropriate safeguards that they might require of a VC manager in their contractual agreements.**

(b) Not be continuously available for subscription, redemption only at the end of fund life

There is no prescribed fund-raising period, or the number of fund subscription rounds occurring during the fund-raising round. MAS is of the view that VC funds would not typically be continuously available for subscription after the final close of fund raising.

(c) Offered only to accredited and/or institutional investors

No exemption for VC Managers' employees who are not accredited investors to invest in VC funds.

(d) Restrictions on use of leverage in VC funds

No restrictions on leverage. MAS notes that leverage in VC funds is atypical for most VC Managers.

(e) Authorisation & Business Conduct Requirements under the VC Manager Regime

There are no competency, capital and ongoing business conduct requirements placed on VC Managers at this juncture. **As such, it would be prudent for investors to assess competency, capital and ongoing business conduct requirements on the VC Manager they invest with.**

Separately, VC Managers will be required to disclose to investors that they are not subject to all of the

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regulatory requirements imposed on other fund management companies.

(f) Implementation of the VC Manager Regime

Existing licensed fund managers and registered fund managers (collectively the "**FMCs**") which seek to transit to the VC Manager Regime are only required to notify MAS of their intention to be a VC Manager by submitting Form 1V (Application for a CMS licence to operate as a VCFM)[3], together with the relevant supporting documents, through the MAS Corporate e-Lodgement system. **The FMCs should continue to comply with all existing business conduct and other regulatory requirements until it is informed by MAS that it can operate under the VC Manager Regime.**

A fund manager may operate under the VC Manager Regime only if and only if all of the funds it manages meets the Eligibility Criteria.

Summary of MAS Guidelines

Here is a summary of the salient points of the MAS Guidelines on Licensing, Registration and Conduct of Business for Fund Management Companies (the "**MAS Guidelines**")[4], for FMCs intending to operate under the VC Manager Regime:

(a) Application & Admission
A VCFM needs to submit Form IV, and obtain a CMS licence for fund management.

(b) Fund Eligibility
Please refer to the Eligibility Criteria set out above.

(c) Ongoing Requirements

(i) Fit & Proper: to satisfy MAS that the VCFM and its shareholders, directors, representatives, employees are fit and proper, in accordance with its guidelines.[5]

(ii) Place of Incorporation: Singapore incorporated company, with permanent physical office here.

(iii) Disclosure: disclosure to investors that they are not subject to all of the regulatory requirements imposed on other FMCs.

(iv) AML/CFT Requirements: compliance with anti-money laundering and countering the financing of terrorism requirements set out in the relevant MAS notice[6].

(v) Periodic Returns: submit periodic regulatory returns on changes to key appointments,

[3] Accessible at: http://www.mas.gov.sg/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Funds-Management/Forms/2017/Form-1V.aspx

[4] MAS Guidelines on Licensing, Registration and Conduct of Business for Fund Management Companies, Guideline No. [SFA 04-G05], Appendix 7 (Requirements for Venture Capital Fund Managers), pages 20-21.

[5] MAS Guidelines on Fit and Proper Criteria, Guideline No. [FSG-G01].

[6] MAS Notice to Capital Markets Service Licensees and Exempt Persons on Prevention of Money Laundering and Countering the Financing of Terrorism, Guideline No. [SFA04-N02].

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AUM, investor types and numbers, fund types and deals by geography and sector.

Conclusion

The VC Manager Regime attempts to enable a more diverse and robust start-up ecosystem by encouraging international and regional VC players to set up shop in Singapore as a VC Manager. This will hopefully increase access to a broader and more diverse set of VC funds for local and regional start-ups and growth stage businesses. While certain ambiguities and uncertainties still exist, the VC Manager Regime is definitely a step in right direction, and is reflective of the government's progressive attitude towards innovation, and the importance of the emerging technology sector as a major driver of the future economy.