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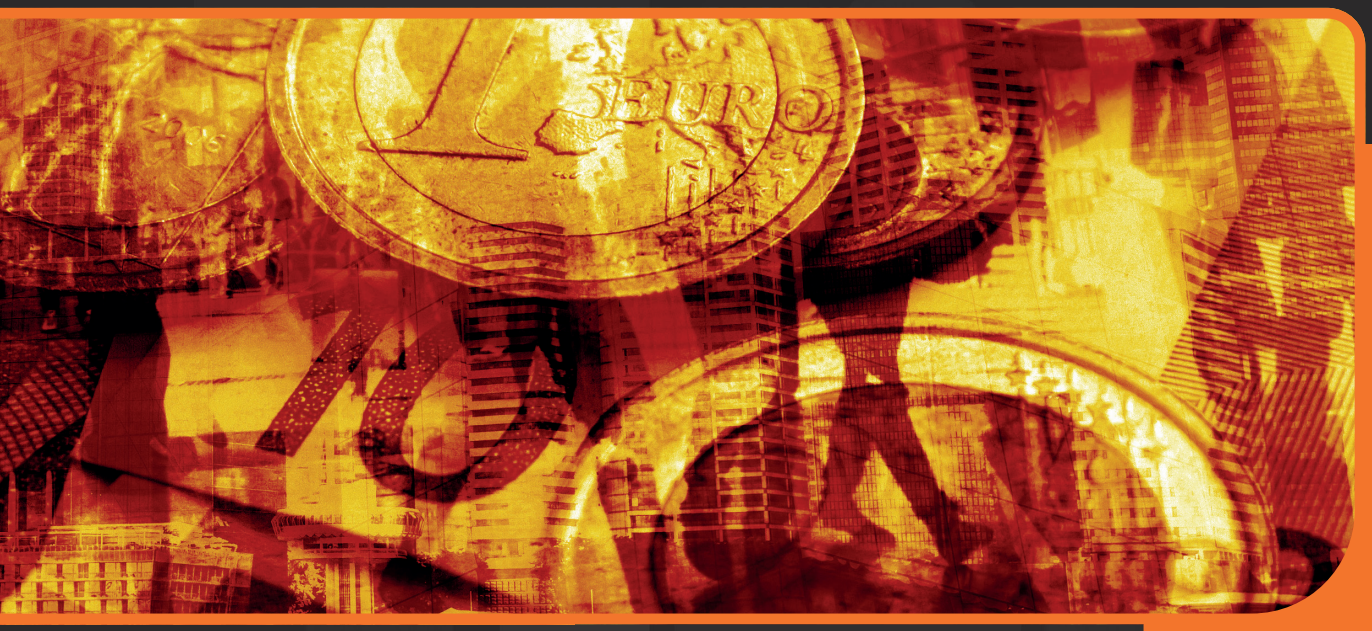

Practical cross-border insights into public investment funds

Public Investment Funds 2023

Sixth Edition

Contributing Editors:
Gregory S. Rowland & Sarah E. Kim
Davis Polk & Wardwell LLP

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1 Registration

1.1 Are funds that are offered to the public required to be registered under the securities laws of your jurisdiction? If so, what are the factors and criteria that determine whether a fund is required to be registered?

Asset management activity in relation to collective investment schemes ("**CIS**") in Singapore is primarily governed by the Securities and Futures Act 2001 ("**SFA**"), the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 ("**SFR**") and the Code on Collective Investment Schemes ("**Code**"), which are administered by the Monetary Authority of Singapore ("**MAS**").

An offer of units in a CIS may only be made to the public if it satisfies the following conditions (unless any exemption applies):

(i) **Authorisation or Recognition**: Where the CIS is constituted in Singapore, it must be authorised under section 286 of the SFA ("**Authorised Scheme**"); where the CIS is constituted outside Singapore, it must be recognised under section 287 of the SFA ("**Recognised Scheme**").

(ii) **Prospectus**: The offer is made in or accompanied by a prospectus in respect of the offer, which is prepared in accordance with such requirements as the MAS may prescribe ("**Prospectus**"), and lodged with and registered by the MAS.

(iii) **Product Highlight Sheet**: The Prospectus is accompanied by a product highlight sheet ("**PHS**") in respect of the offer that complies with such requirements as the MAS may prescribe and a copy of which is lodged with the MAS.

The authorisation/recognition of a CIS and the Prospectus and PHS requirements do not apply to certain offers of units in a CIS ("**Exempted Offers**"), which include:

(i) **Small Offers**: The total amount raised from such offers within any period of 12 months does not exceed S$5 million or such other amount as the MAS may prescribe.

(ii) **Private Placement**: Offers that are made to no more than 50 persons within any period of 12 months.

(iii) Offers made to accredited or institutional investors.

These Exempted Offers are subject to certain conditions, such as the prohibition against advertising and specific disclosures being made to investors.

1.2 What does the fund registration process involve, e.g., what documents are required to be filed?

The documents required to be filed for the purposes of obtaining the MAS's approval for offers of a unit in a CIS to the public include:

(i) the prescribed "**Form 1**" in the case of an Authorised Scheme along with its relevant supporting documents (e.g. the trust deed or constitutive documents), or the prescribed "**Form 2**" in the case of a Recognised Scheme along with its relevant supporting documents (e.g. evidence of the scheme's registered status in the jurisdiction under which it is principally regulated);

(ii) the Prospectus; and

(iii) the PHS,

together with certain documents prescribed in the CIS Practice Note 1/2005 on Administrative Procedures for Retail Schemes issued by the MAS, and the requisite filing fees payable to the MAS.

The application for authorisation or recognition of schemes should be submitted at least 21 days before the proposed launch date of the scheme. In normal circumstances, the Prospectus will be registered between seven and 21 days from the date of lodgement.

1.3 What are the consequences for failing to register a fund that is required to be registered in your jurisdiction?

If any person makes an offer of units in a CIS to the public that has not been authorised under section 286 or recognised under section 287 of the SFA, such person shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S$150,000 or to imprisonment for a term not exceeding two years or to both and, in the case of a continuing offence, to a further fine not exceeding S$15,000 for every day or part of a day during which the offence continues after conviction.

1.4 Are there local residency or other local qualification requirements that a fund must meet in order to register in your jurisdiction? Or are foreign funds permitted to register in your jurisdiction?

The MAS may, upon an application made to it in such form and manner as may be prescribed, recognise a CIS constituted outside Singapore, subject to the following (it should be noted that this is not exhaustive):

(i) **Equivalent Protection to Investors**: The laws and practices of the jurisdictions under which the scheme is constituted and regulated affords to investors in Singapore protection that is at least equivalent to that provided to them by or under Division 2 of the SFA in the case of comparable Authorised Schemes. In other words, the offshore CIS is subject to investment guidelines in its home jurisdiction that are substantially similar to those in Singapore.

(ii) **Manager of the CIS**: The manager of the offshore CIS is licensed or regulated in the jurisdiction of its principal place of business and is a fit and proper person in the opinion of the MAS. In addition, the manager is also required to be managing at least S$500 million of discretionary funds in Singapore, unless any of the units in the offshore CIS have been approved for listing for quotation on an approved exchange and will be traded on the approved exchange, or where units in the offshore CIS are being offered in Singapore pursuant to the ASEAN CIS Framework (see below).

(iii) **Singapore Representative**: There is a representative for the offshore CIS to carry out the prescribed functions set out in section 287(13) of the SFA. The Singapore Representative shall be an individual resident in Singapore, or a company or a foreign company registered under Division 2 of Part 11 of the Companies Act 1967.

The ASEAN CIS Framework is an initiative undertaken by the ASEAN Capital Markets Forum that allows the units of a CIS constituted in one of its member jurisdictions to be offered in other member jurisdictions under a streamlined authorisation process. The current ASEAN CIS Framework member jurisdictions are Singapore, Malaysia, Philippines and Thailand.

In addition, foreign corporate entities with structures similar to a variable capital company ("**VCC**") may apply to transfer their registration to Singapore. If they have adopted other structures, they may need to restructure before they re-domicile to Singapore. Alternatively, they may decide to incorporate a new VCC and transfer their assets and liabilities to the VCC instead. Once the re-domiciliation process has been completed, an application for the VCC to be an Authorised Scheme may be submitted.

2 Regulatory Framework

2.1 What are the main regulatory restrictions and requirements that a public fund must comply with in the following areas, if any? Are there other main areas of regulation that are imposed on public funds?

i. Governance

Authorised Schemes

An Authorised Scheme is required to appoint a manager and a trustee (where it is constituted as a unit trust) ("**Approved Trustee**") or a custodian that is an approved trustee (where it is constituted as a VCC or a sub-fund of a VCC) ("**Custodian**") that satisfies the following requirements:

(i) **Manager**: If the Authorised Scheme is a listed real estate investment trust, the manager is required to be the holder of a capital markets services licence ("**CMS Licence**") for real estate investment trust management. In all other cases, the manager is required to be the holder of a CMS Licence for fund management or is otherwise exempted from holding such licence. In addition, the manager is required to satisfy the MAS that he is a fit and proper person. A VCC cannot be its own manager.

(ii) **Approved Trustee/Custodian**: The MAS may approve a public company to act as a trustee if it is satisfied that the public company has a paid up capital of not less than S$1 million, shareholders' funds of not less than S$1 million, a sound financial position and a sufficient number of qualified personnel with experience in performing the duties of an approved trustee or other relevant experience, having regard to the nature and extent of the activities that the public company carries on or will carry on. The MAS is also required to be satisfied that the public company and each of its officers are fit and proper persons and that if so required by the MAS, the public company has obtained the necessary professional indemnity insurance or provided the MAS with a performance bond, guarantee or any similar instrument (by whatever name) from its holding company, if any.

The operational requirements and obligations of Approved Trustees are set out in regulation 7(1) and 8(2)(b) of the SFR and Chapter 2 of the Code, which includes: taking into custody or controlling all the property of the scheme and holding the property on trust for the participants; ensuring that all the property of the scheme is properly accounted for; ensuring that the property of the scheme is kept distinct from its own property and the property of its other clients as well as keeping and maintaining a register of the participants in the scheme.

On the other hand, the operational requirements and obligations of Custodians are set out in regulations 7A, 7B, 10AC(c) and 10AD(c) of the SFR, as well as Chapter 2A of the Code, which includes ensuring the safekeeping of the property of the VCC as well as maintaining proper and updated records.

An Authorised Scheme that is constituted as a VCC or a sub-fund of a VCC is also required to appoint at least three directors, at least one of whom is independent in accordance with the criteria set out in the Code. In addition, at least one of the directors must be ordinarily resident in Singapore and at least one director (who may be the same person ordinarily resident in Singapore) must either be a director or a qualified representative of the manager of the VCC.

Recognised Schemes

Please refer to question 1.4 above.

ii. Selection of investment adviser, and review and approval of investment advisory agreement

The manager of an Authorised Scheme must hold a CMS Licence for real estate investment trust management or for fund management (unless otherwise exempted), as applicable, and must also be a fit and proper person in the opinion of the MAS.

In respect of an Authorised Scheme constituted as a unit trust, regulation 8(2) of the SFR provides for certain covenants to be binding upon the manager and to be included in the trust deed, such as to use its best endeavours to carry on and conduct the business in a proper and efficient manner and to ensure that the scheme is carried on and conducted in a proper and efficient manner. Regulation 9 of the SFR also contains details of other particulars that are to be included in the trust deed.

In respect of an Authorised Scheme constituted as a VCC or a sub-fund of a VCC, the investment advisory agreement with the manager must contain certain provisions that are binding on the manager, as set out in regulations 10AC and 10AD of the SFR respectively. For example, the investment advisory agreement must include provisions binding the manager to use its best endeavours to carry on and conduct the business of the VCC in a proper and efficient manner and to ensure that the scheme is carried on and conducted in a proper and efficient manner.

iii. Capital structure

There is currently no minimum fund size requirement for a CIS under the SFA. However, if the launch of a CIS or its continued operation is conditional upon a minimum fund size, this fact should be stated in the Prospectus together with the amount of the minimum fund size.

In relation to a VCC, the actual value of the paid-up share capital of the VCC must at all times be equal to the net asset value of the VCC. In addition, the assets of a sub-fund of an umbrella VCC must not be used to discharge any liability of the VCC or

any other sub-fund of the VCC, including in the winding up of the VCC or the other sub-fund, and any liability of a sub-fund of an umbrella VCC must be discharged solely out of the assets of that sub-fund, including in the winding up of the sub-fund.

iv. Limits on portfolio investments

Appendix 1 of the Code sets out the core investment guidelines and restrictions for all Authorised Schemes (unless otherwise stated in the Code), save in respect of property funds and precious metal funds. Appendix 2 to 7 of the Code sets out the specific guidelines and restrictions that are applicable to money market funds, hedge funds, capital guaranteed funds, investment funds, property funds and precious metal funds respectively.

In general, Recognised Schemes should be subject to substantially similar investment guidelines and restrictions in their home jurisdiction.

v. Conflicts of interest

An Approved Trustee/Custodian should be independent of the manager and the Custodian should also be independent of the VCC. As a guide, an Approved Trustee/Custodian may not be considered independent of the manager or the VCC (as applicable) if any person who has an interest in 20% or more of the shares issued by the Approved Trustee/Custodian also has an interest in 20% or more of the shares issued by the manager, the VCC or their related corporations (as applicable). Such interest would include deemed interest in the shares of the Approved Trustee/Custodian, the manager or the VCC, as the case may be, under sections 4(4) and (5) of the SFA.

The manager should not, amongst others, lend monies of the Authorised Scheme to its related corporations, or invest the monies of the Authorised Scheme in the manager's own securities or securities-based derivative contracts, or those of any of its related corporations unless the securities are constituents of the Authorised Scheme's reference benchmark, which is constructed by an independent party, and the Authorised Scheme complies with paragraph 2.3 of Appendix 1 of the Code. Where the manager may face any conflict of interest in exercising voting rights relating to investments of the Authorised Scheme, the manager should cause these votes to be exercised in consultation with the Approved Trustee (in the case of an Approved Scheme constituted as a unit trust) or the VCC directors (in the case of an Authorised Scheme constituted as a VCC or a sub-fund of a VCC).

In addition, the VCC directors should avoid situations where conflicts of interest may arise, including any actual or potential conflicts that may arise between different parties, in respect of the VCC. Where conflicts of interests cannot be avoided, the VCC should have effective arrangements in place to manage such conflicts of interests.

The Approved Trustee, Custodian, manager, VCC directors and VCC should also conduct all transactions with or for the Authorised Scheme on an arm's-length basis.

The SFR requires to be disclosed in the Prospectus any potential or actual conflicts of interest in relation to the CIS and its management, and whether these conflicts will be resolved or mitigated and, if so, how they will be resolved or mitigated.

vi. Reporting and recordkeeping

Reporting

The semi-annual accounts and semi-annual report relating to the Authorised Scheme should be sent to participants within two months from the end of the period covered by the accounts and report. The annual accounts, report of the auditors on the annual accounts and annual report relating to the Authorised Scheme should be sent to participants within three months from the end of each financial year of the Authorised Scheme. The accounts and reports may be sent or made available to participants by electronic means, although participants should be given the option to request hard copies within one month from the notification of the availability of the accounts and reports.

Unless an exemption has been obtained, every VCC must lodge a return with the Accounting and Corporate Regulatory Authority ("**ACRA**") after its annual general meeting and within seven months after the end of its financial year. In addition, the VCC directors must lay before the VCC at its annual general meeting the financial statements for the relevant financial year.

Recordkeeping

The manager of an Authorised Scheme constituted as a unit trust is required to maintain a record of the instructions, if any, to the Approved Trustee as to how votes in relation to investments of the Authorised Scheme should be exercised. In the case of an Authorised Scheme constituted as a VCC or as a sub-fund thereof, the VCC should maintain a record of the instructions, if any, as to how votes in relation to investments of the Authorised Scheme should be exercised. The manager of an Authorised Scheme should also maintain record of all soft dollars received.

The VCC Act 2018 ("**VCC Act**") contains additional recordkeeping obligations that are applicable to VCCs. This includes keeping such accounting and other records as will sufficiently explain the transactions and financial position of the VCC and enable true and fair financial statements and any documents required to be attached thereto to be prepared from time to time.

Recognised Schemes are required to comply with the relevant reporting and recordkeeping regulations in their home jurisdictions.

vii. Other

The manager (in the case of an Authorised Scheme constituted as a unit trust) or the VCC (in the case of an Authorised Scheme constituted as a VCC or as a sub-fund thereof) is required to inform the MAS and existing participants of any significant change to be made to the Authorised Scheme not later than one month before the change is to take effect. If the significant change cannot be determined at least one month in advance, the manager or the VCC, as the case may be, should inform the MAS and existing participants of the significant change as soon as possible.

2.2 Are investment advisers that advise public funds required to be registered and/or regulated in your jurisdiction? If so, what does the registration process involve?

As the provision of fund management services is a regulated activity under the SFA, any person carrying on such business is required to hold a CMS Licence, unless an exemption applies.

An application for the relevant CMS Licence may be made by submitting the relevant prescribed application forms along with the prescribed application fee of S$1,000 to the MAS. The MAS may take up to six months to review applications or such longer period if the applicant does not fully meet the relevant admission criteria, has unique and complex business models, or does not submit all necessary forms, information and documents in the initial application.

2.3 In addition to the requirements above, are there additional regulatory restrictions and requirements imposed on investment advisers that advise public funds?

In assessing an application for a CMS Licence, the MAS takes into account factors including the fitness and propriety of the

applicant, its shareholders and directors, the track record and management expertise of the applicant and its parent company or major shareholders, the applicant's ability to meet the minimum financial requirements prescribed under the SFA, the strength of the applicant's internal risk management and compliance systems as well as the business model, projections and associated risks. The applicant will also need to meet the prescribed staffing and competency requirements for key individuals.

The MAS may grant a CMS Licence subject to such conditions and restrictions as it thinks fit. The holder of a CMS Licence is also subject to ongoing duties and obligations relating to the conduct of business, filing, and reporting requirements.

2.4 Are there any requirements or restrictions in your jurisdiction for public funds investing in digital currencies?

There are currently no prescribed requirements or restrictions by the MAS for Authorised Schemes investing in digital currencies. However, the MAS has observed that the function of digital currencies/tokens has evolved beyond just being a virtual currency and may, for example, represent ownership or a security interest over an issuer's assets or property. Such digital currencies/tokens may therefore be considered an offer of shares or units in a CIS under the SFA. In such cases, care should be exercised, and the Authorised Scheme should ensure that it complies with the applicable guidelines and restrictions on investing in other CISs under the Code.

2.5 Are there additional requirements in your jurisdiction for exchange-traded funds?

A CIS may be listed as an exchange-traded fund ("**ETF**") on the Mainboard of the Singapore Exchange Securities Trading Limited ("**SGX-ST**"). Chapter 4 of the listing manual of the SGX-ST ("**Listing Manual**") sets out the listing requirements for ETFs.

The Prospectus of an ETF must, unless waived by the SGX-ST, also contain the information and disclosures required under Parts 2 and 3 of Chapter 6 of the Listing Manual, in addition to such information and disclosures ordinarily required.

3 Marketing of Public Funds

3.1 What regulatory frameworks apply to the marketing of public funds?

The marketing of a CIS in Singapore is regulated under the SFA.

3.2 Is licensure with a regulatory authority required of persons (whether entities or natural persons) engaged in marketing activities? If so: (i) are there commonly available exceptions that may be relied on?; and (ii) describe the level of substantive regulation applied to licensed persons.

The marketing of units in a CIS falls under the definition of "dealing in capital markets products" under the Second Schedule of the SFA and is therefore a regulated activity. Accordingly, unless an exemption applies, only a holder of a CMS Licence may engage in marketing activities in respect of units in a CIS in Singapore.

A responsible person for a CIS may be exempted from holding a CMS Licence to market the CIS if: (a) it is the holder of a CMS Licence, or an exempt person, in respect of fund management; and (b) the dealing is effected through the holder of a CMS Licence to deal in capital markets products that are securities, units in a CIS or specified exchange-traded derivatives contracts, or an exempt person in respect of dealing in capital markets products that are units of any CIS. The "responsible person" refers to the VCC (where the CIS is constituted as a VCC or a sub-fund), the corporation (where the CIS is constituted as a corporation other than a VCC), or the manager (in any other case).

In addition, a corporation that carries on business in fund management, when dealing in capital markets products that are units of a CIS that is managed by the corporation or any of its related corporations is also exempted from the requirement to hold a CMS Licence to market the CIS.

Further exemptions from the requirement to hold a CMS Licence to deal in capital markets products are set out in the Second Schedule of the Securities and Futures (Licensing and Conduct of Business) Regulations ("**SF(LCB)R**").

The holder of a CMS Licence for dealing in capital markets products is required to comply with ongoing capital, financial and reporting requirements under the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations, as well as fit and proper requirements, customer's money and assets, and conduct of business rules under the SF(LCB)R.

3.3 What are the main regulatory restrictions and requirements in the following areas, if any, that must be complied with by entities that are involved in marketing public funds?

i. Distribution fees or other charges

Pursuant to the SFR, the fees and charges payable by the fund (including any management or trustee fees) should be stated in the Prospectus and the PHS.

The Code of Ethics & Standards of Professional Conduct ("**IMAS Code**") released by the Investment Management Association of Singapore ("**IMAS**") also provides that all fees or other material costs to be charged by its members should be disclosed to the client in the members' business representations, investment management agreements and Prospectuses. Although the IMAS Code does not have the force of law and applies only to members of IMAS, it is generally taken to represent the guidelines on standards of conduct applicable to the investment management industry in Singapore.

ii. Advertising

Advertisements or publications ("**Advertisements**") in respect of offers of units in a CIS are regulated under the SFA, SFR and the Code. Some of the key regulations include the requirement that Advertisements must: not be false or misleading; provide a fair and balanced view of the risks and benefits of the units in the CIS; be presented in a clear and legible manner; and contain the following statement "This advertisement or publication has not been reviewed by the Monetary Authority of Singapore." The senior management of the person publishing or disseminating the Advertisement should also approve of the Advertisement before it is published or disseminated.

In addition, the Code also provides guidance on the preparation of Advertisements. For example, Advertisements should be prepared in accordance with the Code of Best Practices in Advertising Collective Investment Schemes and Investment-Linked Life Insurance Policies, jointly issued by IMAS and the Life Insurance Association. Illustrations of income statistics in Advertisements should also be prepared in accordance with the Guidance Notes on Recommended Disclosures to Support the Presentation of Income Statistics in Advertisements issued by IMAS.

iii. Investor suitability

The PHS is required to set out information on product suitability pursuant to the Eighth Schedule of the SFR.

A person who is dealing in or marketing units in a CIS is also required to comply with the MAS Notice SFA 04-N12 on the Sale of Investment Product (unless exempted), which includes the requirement to conduct a review of the customer's knowledge and experience before the customer can transact in the units of the CIS.

A person marketing units in a CIS should ensure that any marketing activities undertaken do not constitute advice relating to the CIS, as this would be considered providing financial advisory services and would be regulated under the Financial Advisers Act 2001 ("**FAA**"). Unless exempt, a person providing financial advisory services is required to hold a financial adviser's licence.

Pursuant to section 36 of the FAA, a licensed financial adviser may only recommend an investment product to a person if the financial adviser has a reasonable basis for making such recommendation. The financial adviser may only have a reasonable basis for making the relevant recommendation if the financial adviser has – for the purposes of ascertaining that the recommendation is appropriate and having regard to the information possessed by the financial adviser concerning the investment objectives, financial situation and particular needs of the person – given such consideration to, and conducted such investigation of, the subject matter of the recommendation, as is reasonable in all of the circumstances, and the recommendation is based on the foregoing consideration and investigation.

In addition, the MAS Notice on Recommendations on Investment Products requires licensed financial advisers to assess a client's knowledge and experience in relation to a CIS and to find out whether investing in units in a CIS is a suitable investment product for the client, considering the client's investment objectives, financial situation and particular needs.

iv. Custody of investor funds or securities

In respect of an Authorised Scheme constituted as a unit trust, the Approved Trustee is responsible for taking into custody or controlling all of the property of the Authorised Scheme and to hold the property on trust for the participants. The Approved Trustee is also required to ensure that the property of the Authorised Scheme is kept distinct from its own property and the property of its other clients.

In respect of an Authorised Scheme constituted as a VCC or a sub-fund thereof, the Custodian is responsible for ensuring the safekeeping of all of the property of the VCC or sub-fund by holding the property, including by means of taking delivery of the property or the documents of title in respect of the property. In addition, the Custodian should take appropriate measures to satisfy itself that each property purportedly owned by the VCC or the sub-fund is in fact the property of the VCC or the sub-fund, as the case may be, and record the measures that were taken.

Part III of the SF(LCB)R sets out the regulations that a licensed fund management company is required to comply with in relation to dealing with customers' money and assets.

3.4 Are there restrictions on to whom public funds may be marketed or sold?

Provided that the Prospectus and PHS requirements have been complied with, units of an Authorised Scheme or a Recognised Scheme may be marketed or sold to retail investors in Singapore. There is currently no restriction on to whom units in such Authorised Schemes or Recognised Schemes may be marketed or sold in Singapore.

3.5 Are there other main areas of regulation that are imposed with respect to the marketing of public funds?

The main areas of regulation have been addressed above.

4 Tax Treatment

4.1 What are the types of entities that can be public funds in your jurisdiction?

Authorised Schemes may be constituted as unit trust, VCC or a sub-fund thereof. There is generally no restriction on how a Recognised Scheme may be structured, which will be governed by the regulations in its home jurisdiction, provided that it meets the requirements under section 287 of the SFA and the Code.

4.2 What is the tax treatment of each such entity (both entity-level tax and taxation of investors in respect of allocations of income or distributions, as the case may be)?

In general, income accruing in or derived from Singapore or received in Singapore from outside Singapore is subject to income tax, under the Income Tax Act 1947 ("**ITA**"). The ascertainment of whether gains are income and the actual source of such income is a practical matter of fact, which should be analysed in the relevant context. Broadly speaking, gains arising from the disposal of investments, or the receipt of distributions or allocations of income may be treated as Singapore-sourced income, if such gains arise from trade or business carried on in Singapore. There is no capital gains tax in Singapore.

Tax treatment of the public fund

In respect of a public fund managed by a Singapore-based fund manager, the activities of the fund manager in managing the investments of the public fund (whether onshore or offshore) may cause the profits of the public fund to be subject to Singapore income tax due to the taxable presence in Singapore created by the fund manager.

Nevertheless, there are tax incentive schemes that are available to such public funds. Please see question 4.3 below for further information.

Tax treatment of the investors

An individual is a Singapore tax resident for a particular year of assessment if he or she is a (a) Singapore Citizen or Singapore Permanent Resident who normally resides in Singapore except for temporary absences, (b) a foreigner who has stayed/worked in Singapore for at least 183 days in the previous calendar year or continuously for three consecutive years, or (c) a foreigner who has worked in Singapore for a continuous period straddling two calendar years and the total period of stay is at least 183 days (this applies to foreign employees who entered Singapore but excludes directors of a company, public entertainers or independent contractors).

Individuals (both Singapore tax residents and non-Singapore tax residents) are subject to Singapore income tax on all income accruing in or derived from Singapore. Any foreign-sourced income (with the exception of those received through partnerships in Singapore from individuals who are Singapore tax residents) brought into Singapore is tax-exempt. While individuals who are Singapore tax residents will be subject to Singapore income tax at progressive rates ranging from 0% to 22%, non-Singapore tax residents are taxed at the higher of a flat rate of 15% or the progressive

resident tax rate. In addition, non-Singapore tax residents are not eligible to claim for personal reliefs.

A company is tax resident in Singapore for a particular year of assessment if the control and management of its business was exercised in Singapore in the preceding calendar year. Companies (both Singapore tax residents and non-Singapore tax residents) are subject to Singapore income tax on all income accruing in or derived from Singapore and, subject to certain exceptions, received in Singapore from outside Singapore. While Singapore-tax-resident and non-resident companies are generally taxed in the same manner, Singapore-tax-resident companies may enjoy certain benefits. For example, provided that certain prescribed conditions are met, Singapore-tax-resident companies may enjoy tax exemption on specified foreign-sourced income that is remitted into Singapore, such as foreign-sourced dividends, branch profits and service income.

In respect of a public fund that is a company or VCC with a Singapore tax residency, under the one-tier corporate tax system (as the tax paid by a company or VCC is final) distributions paid are exempt from Singapore income tax in the hands of its shareholders, regardless of their tax residency status.

4.3 If a public fund, or a type of entity that may be a public fund, qualifies for a special tax regime, what are the requirements necessary to permit the entity to qualify for this special tax regime?

There are three main tax incentive schemes available to public funds that are managed by a Singapore fund manager (i.e. a company holding a CMS Licence for fund management or that is exempted from holding such licence). Under sections 13D, 13O and 13U of the ITA, "specified income" from "designated investments" (both as defined in the Income Tax (Exemption of Income of Prescribed Persons Arising from Funds Managed by Fund Manager in Singapore) Regulations 2010) of such public funds that meet the criteria under the relevant scheme will be exempt from tax in Singapore.

Section 13D of the ITA – Offshore Fund Tax Exemption

To qualify for the tax exemption under section 13D of the ITA, the public fund must, amongst other conditions, be managed by a Singapore fund manager and not be resident in Singapore or have a permanent establishment in Singapore.

Any person who, either alone or together with his associates, beneficially owns: (i) in the case of a public fund that has less than 10 relevant owners or beneficiaries, more than 30% of the of the total value of the public fund; and (ii) in the case of a public fund with at least 10 relevant owners or beneficiaries, more than 50% of the of the total value of the public fund, may be subject to financial penalties, unless such person is, amongst others: (a) an individual; (b) a *bona fide* entity not resident in Singapore who does not have a permanent establishment in Singapore (other than a fund manager) and does not carry on a business in Singapore; or (c) a *bona fide* entity not resident in Singapore (excluding a permanent establishment in Singapore) who carries on an operation in Singapore through a permanent establishment in Singapore where the funds used by the entity to invest directly or indirectly in the public fund are not obtained from such operation ("**Financial Penalty Provision**").

Section 13O of the ITA – Onshore Fund Tax Exemption

The income of a company or VCC that is incorporated and tax resident in Singapore arising from funds managed by a Singapore fund manager may be exempt from tax provided that certain conditions are met ("**Approved Company**"), including the following:

(i) at all times during the basis period for the year of assessment in question, the aggregate value of the Approved Company's issued securities beneficially owned (directly or indirectly) by Singapore persons is less than 100%;
(ii) the investment strategy remains unchanged after approval of the tax exemption has been granted;
(iii) at least S$200,000 of expenses per year will be incurred; and
(iv) the income of the Approved Company is not derived from investments that have been transferred from a person carrying on a business in Singapore where the income derived by that person from those investments was not, or would not have been if not for their transfer, exempt from tax.

In order to enjoy the Onshore Fund Tax Exemption under section 13O of the ITA, application to the MAS is required.

Similar to the Offshore Fund Tax Exemption under section 13D of the ITA, the Financial Penalty Provision applies.

In respect of fund vehicles that hold assets for or on behalf of family(ies) and are wholly owned or controlled by members of the same family(ies) ("SFOs"), the MAS has imposed new conditions in relation to applications received from 18 April 2022. These new conditions include (but are not limited to) the following requirements:

(i) having a minimum fund size of S$10 million at the point of application, and committing to increase their assets under management to S$20 million within two years; and
(ii) employing at least two investment professionals.

Section 13 U of the ITA – Enhanced Tier Fund Tax Exemption

Under section 13U of the ITA, fund vehicles (including those structured as a master fund, feeder fund, SPV, masterfeeder fund structure, masterfeeder fundSPV structure or master fundSPV structure) may be exempt from Singapore income tax if they meet certain conditions, including the following:

(i) hold a minimum fund size of S$50 million at the point of application;
(ii) are managed by a Singapore fund manager that employs at least three investment professionals;
(iii) incur at least S$200,000 of local business spending in Singapore in each basis period relating to any year of assessment;
(iv) will not change their investment objective/strategy after being approved for such tax exemption scheme; and
(v) do not concurrently enjoy any other tax incentive schemes.

In order to enjoy the Enhanced Tier Fund Tax Exemption under section 13U of the ITA, application to the MAS is required.

However, unlike under the Offshore Fund Tax Exemption (section 13D of the ITA) and the Onshore Fund Tax Exemption (section 13O of the ITA), the Enhanced Tier Fund Tax Exemption under section 13U of the ITA does not include a similar Financial Penalty Provision.

In respect of SFOs, the MAS has imposed new conditions in relation to applications received from 18 April 2022. These new conditions include (but are not limited to) the requirement that:

(i) at least one of the three investment professionals employed must be a non-family member of the beneficial owner(s); and
(ii) the fund incurs at least S$500,000 in local business spending in each basis period relating to any year of assessment.

Ng Yi Wayn specialises in corporate transactional matters with a particular focus on Mergers, Acquisitions and Divestments (M&A) as well as Private Equity (PE) and Venture Capital (VC) financing transactions.

She has represented global and regional clients across various industries, including: technology, media and communication; logistics, food and beverages; and healthcare and education, and has handled transactions of various sizes, from seed investments up to deals with a transactional value of approximately US$300 million in Asia, Europe, the United Kingdom, and the United States.

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Oon & Bazul LLP
36 Robinson Road, #08-01/06, City House
068877
Singapore

Tel: +65 9799 1906
Email: yiwayn.ng@oonbazul.com
URL: www.oonbazul.com

Tan Tzer Wern, a senior associate in Oon & Bazul LLP's corporate team, practises across a diverse range of domestic and cross-border transactions including M&A, PE, VC investments and corporate finance.

He has represented a spectrum of clients, from financial institutions and multinational corporations to small and medium enterprises as well as start-ups, across various industries, including the investment and finance, technology, real estate, healthcare and retail sectors. Tzer Wern works closely with each of his clients to deliver practical solutions that are tailored for their business objectives.

Oon & Bazul LLP
36 Robinson Road, #08-01/06, City House
068877
Singapore

Tel: +65 6223 3893
Email: tzerwern.tan@oonbazul.com
URL: www.oonbazul.com

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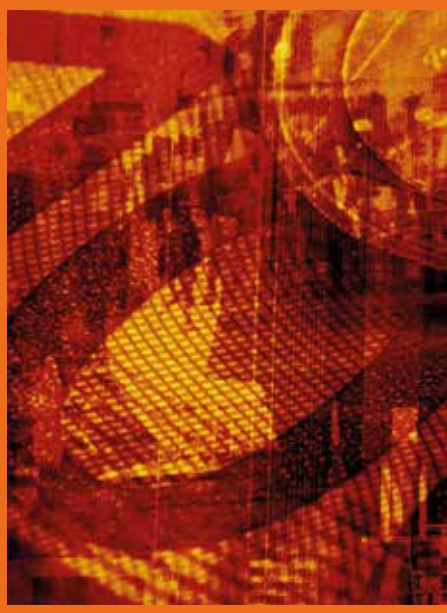

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