



Asian Presence. Global Reach.

AIWM Regulatory Updates

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Introduction

Shook Lin & Bok LLP is one of the leading and full service law firms in Singapore with a strong Asian presence and global reach. We have close to a century of rich legal heritage with a number of partners who are eminent lawyers in their respective areas of expertise.

We believe that our success lies in our team of well-trained and experienced lawyers who are innovative and effective in solving complex and difficult legal issues, and who are able to provide customised and value-added legal services to our clients. Over the years, we have built a strong base of clients comprising both local and international financial institutions, as well as large multinational corporations.



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Key Regulatory Updates Affecting EAMs

Relevant Regulatory Updates

- Financial Advisers (Complaints Handling & Resolution) Regulations 2021 – 1 June 2022
 - requirements for FA firms to exercise management oversight & establish policies & procedures for handling & resolving complaints independently & promptly
- Guidelines on Business Continuity Management – 6 June 2022
 - need for FIs to take an end-to-end service-centric view in ensuring the continuous delivery of critical business services to their customers. FIs should meet the new Guidelines & establish a BCM audit plan within 12 months following its issuance. The first BCM audit should be conducted within 24 months of the Guidelines' issuance.

Relevant Regulatory Updates

- CFC 02/2022 Disclosure & Reporting Guidelines for Retail ESG Funds – 28 July 2022
 - expectations on how existing requirements under the Code on CIS & the Securities & Futures (Offers of Investments) (CIS) Regulations apply to retail ESG funds, & the disclosure & reporting guidelines applicable to these funds.
 - FMs of private funds can take reference
- Circular on Enhancing Anti-Money Laundering & Countering the Financing of Terrorism Controls in the VCC Sector – 13 Sep 2022
 - MAS conducted an industry-wide survey of VCCs & a series of thematic engagements of EFIs, on AML/CFT risk management & controls. Sets out MAS' key observations & supervisory expectations for effective AML/CFT frameworks & controls that VCCs & their appointed EFIs should note.

Relevant Regulatory Updates

- Guidelines to Notice SFA04-N16 on Execution of Customers' Orders – 4 Nov 2022
 - apply to CMS licensees & banks, merchant banks & finance companies which conduct the regulated activities of dealing in capital markets products, fund management or REIT management
 - guidance on the requirements in Notice SFA04-N16 on Execution of Customers' Orders to have policies & procedures to place & execute customers' orders on the best available terms to support fair outcomes for customers

Relevant Regulatory Updates

- Guidelines on Licensing, Registration & Conduct of Business for Fund Management Companies [SFA 04-G05] – 16 Nov 2022
 - guidelines were updated to include a section on the anchoring of key individuals to ensure stability in a FMC's Board & management team. If FMC is not part of an established business group, & is owned by one or more individual shareholders (whether directly or through holding companies), the FMC's CEO & EDs must maintain a controlling stake (>50% effective voting interest) in the FMC. No side arrangements allowed.



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Trends & Developments

Trends & Developments

- MAS resources are stretched
 - Processing time for new licence/registration applications, 13O & 13U applications, change of control applications generally doubled
- Lots of assets & personnel coming in from North Asia & Europe
- Shift from offshore jurisdictions or tax havens to Singapore
 - Especially PRC, Europeans, Indonesians & Indians
 - Especially Institutional Investors, SWFs & large family offices
- Some consolidation of FMCs
- New fund managers & wealth managers (as at 1st Dec 2022)
 - CMS-FMs: 723
 - CMS-VCFMCs: 152
 - RFMCs: 294

Trends & Developments

- More applications for 13O & 13U
- Healthy growth of SFOs
- Healthy growth of VCCs
- MAS' concerns about hot money flow & AML weaknesses
- MAS wants anchoring of senior management in the FMC, including Singaporean core
- Challenges in opening & maintaining accounts for offshore entities (rejections & ejections)
- Some aggressive tax planning
- Some forward-looking tax planning for compliant & robust structures

Trends & Developments

- MAS Surveys, Audits & Inspections
 - Weaknesses in KYC & AML procedures & processes, as well as record keeping
 - Personnel involved in the regulated business
 - Investment committee members who are not employees & registered representatives
 - Insufficient or no third party AUM
 - Non-FM business
 - Platforms businesses
 - Change of control
 - Unstable business or changes to ownership and/or CEO & senior management soon after approval of licence/registration
 - Businessmen owning FMCs

Trends & Developments

- FMC M&A & Succession Planning
 - Mergers & acquisitions, enjoy economies of scale to attract & retain talent, grow AUM, share in increasing compliance costs
 - Outright sale of FMC to AM/WM veterans or foreign institutions
 - Senior partner transferring control & economics to junior partner or high achieving staff
 - Wills, trust, insurance, buy-sell agreements to deal with succession
 - Employee stock plans

Trends & Developments

- VCC Usage & Development
 - As at Oct 2022, 686 VCCs incorporated, but not all are launched
 - MAS VCC grant/subsidy expires at end of 14 Jan 2023
 - Sudden rush to incorporate VCCs in Q4 2022
 - Much preferred model by clients
 - 13O & 13U tax incentives, DTAs, compliant with substance requirements
 - Usage
 - Fund managers, asset/wealth managers, MFOs, SFOs with tie-ups
 - Singaporeans, Asians (especially PRC & Indonesia), Europeans, Indians
 - Almost all asset classes, almost all strategies, including hedge funds, PE/RE funds, credit funds
 - Mostly umbrella sub-funds model (like Cayman SPC)
 - Big boys & European clients started using & more are paying attention
 - Traction is healthy & looks good beyond MAS VCC grant/subsidy
 - VCC Act version 2.0 expected in 2023

Trends & Developments

- DeFi, Digital Assets, Cryptocurrencies
 - Singapore government & MAS have been saying that it is supportive of the DeFi & Blockchain business & development
 - Singapore government & MAS had said that it is supportive of promoting the digital asset ecosystem in Singapore, & views the innovative combination of tokenisation & distributed ledger technology as offering transformative economic potential
 - Had been very cautious about digital assets trading & speculation, especially for retail investors; even trying to curb retail access to cryptocurrencies
 - Had been very concerned about money-laundering, financing of terrorism, fraud, valuations, wild swings in prices, cyber theft
 - With the collapse of the cryptocurrencies market & crash in valuations, the fallout hit many investors & traders as well as institutions, platforms & operators (eg. FTX, BlockFi, 3 Arrows, Voyager, Celsius)
 - No 13O or 13U tax incentives available for digital assets funds
 - MAS will scrutinise more if FMC launches digital assets funds
 - Differentiate from PE tech/start-up fund that invests in companies in the DeFi space

Trends & Developments

- Post-pandemic Trends
 - Back in office
 - WFH
 - Hybrid
 - WFA
- If your personnel are not all back in office & BAU, note these potential risks & issues
 - Control & management
 - Possibly creating a legal, regulatory & taxable presence
 - Cross border regulations (especially on regulated activities conducted virtually or over social media)
 - Data leak & hacking
 - Risk management
 - Attraction & retention challenges
 - Lack of organisation DNA & culture

ShookLin & Bok



Why Shook Lin & Bok

Why Choose Shook Lin & Bok

- 104 years history
- 6th largest independent law firm in Singapore, approx 145 lawyers
- Ranked highly for various practices
- Funds practice is highly ranked & regarded by peers & industry
- Works closely with the regulators, excellent pulse reading
- Works closely with clients & industry leaders
- 100% track record for licence/registration applications
- Advised on & launched more than 65 VCC funds

- Our Funds practice is a top dedicated practice with 13 specialist lawyers, led by a Band 1 senior partner
- Advised numerous EAMs/IAMs, MFOs & SFOs, VCCs
- Our Funds practice has deep & long experience in all types of funds
- Our Funds practice is bilingual

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Thank You

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