

"Does my family office need a licence in Singapore?" – Clarity from MAS is now given

On 6 February 2017, the Monetary Authority of Singapore ("MAS") issued new Frequently Asked Questions on the Licensing and Registration of Fund Management Companies (the "FMC FAQs"). This update to the FMC FAQs clarifies the regulatory treatment for single family offices ("SFOs") in Singapore and is much welcomed as it brings much needed clarity and thereby enhances Singapore's position as an attractive jurisdiction for the establishment of family offices serving wealthy families in the region as well as demonstrates Singapore's commitment to deepening its asset and wealth management industry.

The term 'family office' is not defined under existing Singapore legislation. Generally, a family office is an entity which carries out the day-to-day administration and management of the assets and investments of ultra-high-net-worth individuals or families for the purposes of wealth preservation and enhancement for their future generations. Ultra-high-net-worth individuals or families may hire professionally-qualified employees to manage their wealth or they may enter into arrangements with professional advisors for wealth management services in structuring their family office.

Lawyers in Singapore have taken dichotomous views about the applicability of regulatory exemptions for professional advisors providing wealth management services as family offices, with the most conservative view being that all persons who manage funds for a customer, are considered to be carrying out fund management activities which is a regulated activity under the Securities and Futures Act (Chapter 289 of Singapore) (the "SFA"). At WongPartnership LLP, we have always taken a considered and informed approach in our advice to managers and operators of family offices to avail of the related corporation exemption under the Securities and Futures (Licensing and Conduct of Business) Regulations if the family office carries on business in fund management for another related entity within the same corporate group structure and none of the assets under management are beneficially held for, or the benefit of the fund management services given to, any entities or persons outside the group. Clarity has arrived now that the FMC FAQs are published.

How is an SFO defined for licensing or regulatory purposes?

"Single family office" is not defined under the SFA

At the outset, the term "single family office" is not defined under the SFA. An SFO typically refers to an entity which manages assets for or on behalf of only one family and is wholly owned or controlled by members of the same family. The term "family" in this context may refer to individuals who are lineal descendants from a single ancestor as well as the spouses, ex-spouses, adopted children and step children of these individuals.

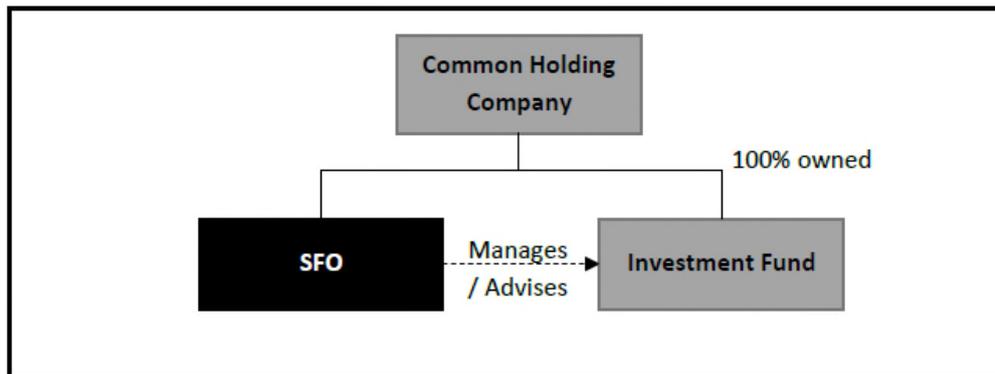
Is an SFO required to be licensed under the SFA and/or the FAA?

MAS does not intend to license or regulate SFOs

It is not the MAS' intention to license or regulate SFOs. Indeed, there are existing class exemptions from licensing under the SFA and Financial Advisers Act (Chapter 110 of Singapore) ("**FAA**") for the provision of fund management and financial advisory services respectively to related corporations.

First exemption for SFOs

An SFO may rely on the exemption provided for a corporation which manages funds for its related corporations, under paragraph 5(1)(b) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations ("**5(1)(b) SFR**"). An example of an ownership structure for an SFO which could fall under this exemption is illustrated below.



Second exemption for SFOs

Alternatively, an SFO that provides financial advisory services to its related corporations may rely on an existing exemption from licensing under regulation 27(1)(b) of the Financial Advisers Regulations.

Case-by-case exemption

Case-by-case exemption for SFOs

Can an entity which does not fall within the scope of existing class licensing exemptions apply for a licensing exemption?

Yes – an entity that is in substance managing funds on behalf of a single family only, but that does not fall neatly within the scope of existing class licensing exemptions, may seek a licensing exemption from the MAS under section 99(1)(h) of the SFA.

Information required for case-by-case exemption application

The following information would be useful to facilitate the MAS' case-by-case assessment of such an application for exemption to be an SFO:

- Names of the shareholders and directors of the SFO;
- A chart depicting the shareholding structure of the SFO;
- A description of how the SFO is related to the investment fund vehicle and the family / beneficiaries;
- A description of the profile of the family whose assets will be managed by the SFO; and
- A description of the nature of activities to be carried out by the SFO.

Typical SFO arrangements considered by the MAS

The MAS considers the following arrangements to be broadly typical of SFO arrangements. An SFO which has (or plans to have) these arrangements is advised to include the information when applying for exemption:

- Where there is no common holding company, but the assets managed by the SFO are held directly by natural persons of a single family;
- Where assets are held under a discretionary trust, the settlor of such trust and the beneficiaries are members of the same family;
- Where a family trust is set up for charitable purposes, the charitable trusts are funded exclusively by settlor(s) from a single family; or
- Where non-family members, such as, key employees of the SFO, are shareholders in the SFO for the purpose of alignment of economic interest and risk-sharing, the initial assets and additional injection of funds are funded exclusively by a single family.

The MAS may take between two to four months to review an application for licensing exemption, depending on, *inter alia*, the complexity of the arrangement, quality of the information submitted and responsiveness of the applicant.

Merits and downsides of applying for exemptions

Managers and operators should consider pros and cons of applying for exemptions

While the MAS has clarified the regulatory status of SFOs in Singapore, managers and operators of SFOs should carefully weigh the merits and downsides involved in relying on the 5(1)(b) SFR exemption or applying for the section 99(1)(h) SFA exemption for their business, instead of making an application to the MAS to be regulated as a registered fund management company ("**RFMC**") or to obtain a capital markets services license for carrying on business in fund management with qualified investors only ("**CMSL-FM**").

There are base capital requirements, a risk-based capital adequacy framework and compliance tasks and costs involved in being regulated as a RFMC or a holder of a CMSL-FM. On the other hand, being a RFMC or CMSL-FM holder allows the managers to diversify its clientele to include close associates and friends of the SFO which is a natural progression of the managers' business model. Further, the SFO concerned may wish to take advantage of tax exemption schemes under section 13R (resident corporate fund exemption) and section 13X (enhanced-tier fund incentive schemes) of the Income Tax Act (Chapter 134 of Singapore) which would require the fund entity to be managed by a licensed or exempt fund manager in Singapore. At first blush, it is arguable that a manager exempted under 5(1)(b) SFR or section 99(1)(h) SFA fulfils this pre-requisite condition, but it would be advisable to consult the MAS on whether this would open the way for the SFO to be an approved fund under section 13R and section 13X.

Albeit not in the context of a manager advising a SFO, at WongPartnership LLP we have previously represented a fund management company which, at its inception, obtained a section 99(1)(h) exemption to carry on business in fund management, and it eventually successfully applied for a CMSL-FM when the company was ready to take on third party investors. Indeed, we believe this might be a cost-effective precedent for managers of SFO to follow.

If you would like more information on this or any other area of law, you may wish to contact the partners at WongPartnership LLP that you normally deal with or any of the following partners:

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