The Asset Management Review

Third Edition

Editor
Paul Dickson

Law Business Research Ltd
THE LAW REVIEWS

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Following several challenging years in the wake of the damage wrought by the global financial crisis, in 2013 markets showed signs that the tentative economic recovery is beginning to take hold. The asset management industry has seen some of the positive effects, with global funds under management at an all-time high. In the private equity sector, 2013 saw the highest aggregate amount of capital raised since 2008 and a record number of private equity buyout deals. With the global population becoming larger, older and richer, as well as government initiatives (such as the UK’s automatic enrolment of employees into employer-sponsored pension schemes) potentially increasing funds under management even further, Bank of England Chief Economist Andrew Haldane’s suggestion that we are entering an ‘age of asset management’ seems well justified.

The activities of the financial services industry remain squarely in the public and regulatory eye and the consequences of this focus are manifest in ongoing regulatory attention around the globe. Regulators are continuing to seek to address perceived systemic risks and preserve market stability through regulation, including, in Europe, the revised Markets in Financial Instruments package and the Alternative Investment Fund Managers Directive. Further scrutiny on a global level also appears likely. The Financial Stability Board and the International Organization of Securities Commissions recently consulted on proposed methodologies to identify global systemically important nonbank, non-insurer financial institutions (including investment funds). Industry stakeholders agree that regulatory change – in particular the volume, scope and complexity of new requirements – continues to be one of asset management’s greatest challenges.

It is not only regulators who have placed additional demands on the financial services industry in the wake of the financial crisis; a perceived loss of trust has led investors to demand greater transparency around investments and risk management from those managing their funds. Investors and regulators are also demanding greater clarity on fees and commissions charged by fund managers for services provided.

This continues to be a period of change and uncertainty for the asset management industry, as funds and managers act to comply with new regulatory and investor requirements and adapt to the changing geopolitical landscape. There does appear,
however, to be some cause for optimism. Confidence has begun to return across a number of areas and more positive assessments of the global economic outlook, reflected in a strong performance in equity markets over the period, raise the prospect of increased investment and returns. Although the challenges of regulatory scrutiny and difficult market conditions remain, there have also been signs of a return of risk appetite. The industry is not in the clear, but prone as it is to innovation and ingenuity, it seems well placed to navigate this challenging and rapidly shifting environment.

This third edition of *The Asset Management Review* includes coverage of a number of additional jurisdictions, reflecting the global importance of the industry and this practice area. The publication of this edition is a significant achievement, which would not have been possible without the involvement of the many lawyers and law firms who have contributed their time, knowledge and experience to the book. I would also like to thank Gideon Roberton and his team at Law Business Research for all their efforts in bringing the third edition into being.

The world of asset management is increasingly complex, but it is hoped that the third edition of *The Asset Management Review* will continue to be a useful and practical companion as we face the challenges and opportunities of the coming year.

Paul Dickson
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I OVERVIEW OF RECENT ACTIVITY

Singapore continues to be an attractive proposition for asset management activities, particularly in light of continued wealth creation in Asia and the inflow of wealth from other parts of the world. A recent survey by the Monetary Authority of Singapore (MAS) indicates that the assets under management (AUM) in Singapore increased to S$1.82 trillion at the end of 2013, which represented a growth of 11.8 per cent over the AUM in 2012, demonstrating the continued faith that asset managers have in the regulatory infrastructure established to support asset management in Singapore.

Asset managers in Singapore continue to experience some challenges in the industry, including difficulties in identifying desirable assets to invest in and some difficulties in exiting from their investments in an ideal fashion in the wake of volatile corporate finance markets. However, continued low interest rates and easier access to debt markets have served to counterbalance these factors to some extent. Regulatory oversight across multiple jurisdictions also continues to be an issue that asset managers grapple with as they take steps to ensure compliance with global standards.

The recovering US and European economies may also begin to influence where investment funds are deployed but it is believed that this impact should be moderate, at worst, as the Asian economies continue to grow, led by powerhouses like China as well as newer markets such as the newly opened market of Myanmar. Singapore's position as a pan-Asian hub for asset managers continues to serve in it good stead in this regard.

1 Stefanie Yuen Thio and Dayne Ho are directors at TSMP Law Corporation.

II GENERAL INTRODUCTION TO THE REGULATORY FRAMEWORK

The main legislation for the regulation of asset management activities in Singapore is the Securities and Futures Act (Chapter 289) (SFA) supported by the subsidiary legislation, practice notes and guidelines issued by the MAS. The MAS is the regulator for, \textit{inter alia}, asset management activities in Singapore.

i The SFA

The SFA governs a range of activities in Singapore and, for the purpose of asset management, the most relevant of activities tend to be the following:

\begin{itemize}
  \item \textit{a} real estate investment trust (REIT) management;
  \item \textit{b} trading in futures contracts;
  \item \textit{c} leveraged foreign exchange trading; and
  \item \textit{d} fund management.
\end{itemize}

An entity can only carry out such regulated activities in Singapore if it either holds a relevant capital markets services licence (CMSL) for that specific activity or falls under some form of exemption. Most asset managers will apply for the relevant CMSL, or structure their activities so that they do not need a CMSL, although care needs to be taken to ensure that the structure is appropriately set up so that there is no inadvertent breach of the SFA.

ii Fund management

Generally, fund management, which is broadly defined in the SFA as an ‘undertaking on behalf of a customer (a) the management of a portfolio of securities or futures contracts; or (b) foreign exchange trading or leveraged foreign exchange trading for the purpose of managing the customer’s funds, but does not include real estate investment trust management’, would be the most common regulated activity that an asset manager would carry out in Singapore.

The regulatory regime requires fund managers to be licensed as licensed fund management companies (LFMCs), which are fund management companies that provide fund management services to accredited or institutional investors only (A/I LFMCs) or to all investors (including retail investors) (retail LFMCs). There are some differences in relation to the qualifying criteria for A/I LFMCs and retail LFMCs, such as a lower base capital requirement for A/I LFMCs, and asset managers will need to consider which type of LFMC would be more appropriate for its activities.

The alternative to being licensed as an LFMC is for a fund manager to be registered as a registered fund management company (RFMC). The minimum requirements for registration as an RFMC are less stringent than the requirements imposed on an A/I LFMC or retail LFMC, including more leeway in terms of using outsourced compliance support services for its fund management activities and substantially less annual reporting obligations to the MAS. The key restriction for an RFMC is the requirement that an RFMC is only permitted to carry out its fund management activities with no more than 30 qualified investors (of which no more than 15 may be funds or limited partnership
Fund management companies are also required to:

a) be incorporated in Singapore and have a permanent physical office in Singapore;

b) meet the minimum competency requirements imposed by the MAS in terms of the numbers of executive directors with relevant experience and the number of relevant professionals residing in Singapore;

c) satisfy the MAS that its shareholders, directors, representatives, employees and the fund management company itself are fit and proper according to MAS standards;

d) comply with the minimum base capital prescribed by the MAS at all times. This ranges from S$250,000 to S$1 million;

e) comply with the risk-based capital requirements (for retail LFMCs and A/I LFMCs);

f) ensure compliance arrangements are in place that meet MAS requirements;

g) put in place an appropriate risk-management framework and an appropriate internal audit process;

h) meet annual audit requirements;

i) obtain professional indemnity insurance if required by the MAS, although retail LFMCs and A/I LFMCs are strongly encouraged to maintain such insurance regardless of such requirement;

j) obtain a letter of responsibility from the parent company of an LFMC, should the MAS require it;

k) comply with all business conduct requirements imposed by the MAS, including requirements in relation to valuation and reporting, custody and disclosure;

l) comply with anti-money laundering requirements and requirements against the financing of terrorism;

m) if outsourcing services, comply with the MAS requirements in relation to outsourcing arrangements;

n) make such notifications and obtain such approvals as may be required by the MAS for transactions and changes in particulars; and

o) submit the necessary periodic returns mandated by the MAS.

iii Recent developments to fund management licensing and registration

Since August 2012, entities with fund management as their principal business activity have been required to either obtain a CMSL as an LFMC (if it is either carrying on fund management with all types of investors or with an unlimited number of qualified investors) or be registered with the MAS as a registered fund management corporation (if it is only providing fund management services to no more than 30 qualified investors (of which no more than 15 may be funds or limited partnership fund structures) and the total value of the assets managed does not exceed S$250 million). This represents a departure from the earlier regulatory regime, which adopted a lighter touch in terms of regulatory oversight.

Another regulatory change that took effect on 1 July 2013 is the requirement for certain kinds of collective investment schemes in Singapore to be registered with
the MAS. Prior to this change, foreign collective investment schemes that were offered to accredited investors and other relevant persons could be registered with the MAS by way of a relatively simple notification process and the collective investment scheme could be offered in Singapore thereafter. However, the new changes require collective investment schemes where the units can only be acquired at a consideration of not less than S$200,000 to lodge an information memorandum with the MAS when carrying out the registration process. The information memorandum is meant to be a summary of the salient terms of the collective investment scheme. Under the previous regime, there was no such requirement to lodge an information memorandum. This also means that closed-end funds that are constituted on or after 1 July 2013 (including private equity funds) will need to be registered with the MAS and imposes a new compliance requirement for such funds.

There has also been increasing scrutiny on anti-money laundering requirements and the MAS is paying more attention to the processes which regulated entities in Singapore are required to put in place. The MAS has also recently stressed the importance of technology risk management as newer technologies begin to be adopted in business practices.

iv Capital adequacy

Asset managers have been required to comply with risk-based capital adequacy requirements, but the manner of assessing such requirements was largely an internal process for asset managers. On 3 April 2013, the MAS issued a notice on risk-based capital adequacy requirements for CMSL holders (including retail LFMCs and A/I LFMCs). This establishes the methodology that such CMSL holders are to use to calculate their financial resources and total risk requirement, and CMSL holders will be required to comply with this methodology going forward.

Some of the key features of the methodology are:

a such CMSL holders have to ensure that their financial resources do not fall below their total risk requirement and, where its financial resources falls below 120 per cent of its total risk requirement, immediate notification has to be given to the MAS. The MAS can then direct the CMSL holder to carry out or cease certain activities or, in the worst case scenario, revoke the licence granted to the CMSL holder; and

b various quarterly and annual financial filings with the MAS will now need to be carried out by such CMSL holders.

To facilitate the transition process, certain categories of CMSL holders (including retail LFMCs and A/I LFMCs) will be granted a 24-month transition period to comply with these new requirements.

III COMMON ASSET MANAGEMENT STRUCTURES

A range of asset management structures are commonly used in Singapore, some of which are dependent on the exact type of asset management in question, including:

a REITs, which are structured as trusts as required under Singapore law;
b hedge funds – these will be structured as open-ended funds or collective investment schemes. Traditionally, these are often domiciled offshore in tax-neutral jurisdictions such as the Cayman Islands or the British Virgin Islands; and

c private equity funds – private equity funds managed by Singapore asset managers will also often be domiciled offshore in tax-neutral jurisdictions like the Cayman Islands or the British Virgin Islands, and are often set up as limited partnerships.

However, there is growing acceptance of the setting up of a Singapore-domiciled structure in recent years to take advantage of certain tax incentives granted by the Singapore government, the double taxation treaties that Singapore has signed with various jurisdictions as well as the introduction of the limited partnership concept in Singapore (which is most generally understood by private equity investors). Corporate or trust structures are also used, but these tend to be less common in the private equity context.

IV MAIN SOURCES OF INVESTMENT

The MAS’s 2013 Singapore Asset Management Industry Survey indicates that around 77 per cent of the total AUM in Singapore was sourced outside of Singapore, a slight decrease from 80 per cent in 2012.³ The three main geographic regions where AUM was sourced were the Asia-Pacific (56 per cent), Europe (21 per cent) and the US (10 per cent). This illustrates Singapore’s continued desirability as a hub for regional and institutional investors.

In terms of the allocation of assets, around 47 per cent of AUM are invested in equities, 23 per cent in bonds, 8 per cent in cash or money markets, 14 per cent in alternative products and 9 per cent in collective investment schemes. This is largely similar to the manner in which assets were allocated in 2012.

The key investment destination for asset managers in Singapore remains the Asia-Pacific region, which decreased slightly from 70 per cent of AUM in 2012 to 67 per cent of AUM in 2013, largely because of funds flow into the US and EU.⁴ This is consistent with the increasing focus on the Asia-Pacific region in recent years for investment purposes but it is also a sign of how investors and asset managers are beginning to see value in developed markets as their economies recover.

V KEY TRENDS

Singapore’s asset management industry continues to grow. The total assets managed by Singapore-based asset managers increased from S$1.62 trillion in 2012 to S$1.82 trillion in 2013. This represents a year-on-year growth of approximately 11.8 per cent. While still substantial, it is a drop from the previous year’s growth of 21.5 per cent.

⁴ The other significant investment destinations are Europe (10 per cent of AUM) and the United States (9 per cent of AUM).
It is anticipated that growth in the industry is likely to continue, with some speculation that Singapore could overtake Switzerland as the world’s leader in wealth management in the future. As such, Singapore fund managers are well placed to take advantage of the growth in the Asia-Pacific region.

In line with a preference among Asian investors for increasing yield rather than wealth creation, asset managers in Singapore are expected to create more interesting and complex products rather than rely on more traditional and conservative products. This appears to have been successful as traditional asset managers continue to develop innovative products (such as specialised fixed income strategies for their clients) and AUM for such asset managers saw growth in 2013.

The hedge fund and private equity sectors also grew substantially, with the AUM by hedge fund managers based in Singapore increasing to S$88.8 billion at the end of 2013, representing a 20.9 per cent per cent increase over 2012. Private equity asset managers also saw AUM grow to S$74.7 billion, a growth of 33.6 per cent over 2012.

The challenges that the asset management industry in Singapore faces remains largely unchanged and the biggest remains regulatory oversight. More stringent requirements in the regulatory regimes of established jurisdictions (such as the US and UK) will impose greater regulatory costs on asset managers based in Singapore if they have investors from such jurisdictions or invest into such jurisdictions. Muted capital markets activity may also result in asset managers being less able to achieve or sustain the level of performance witnessed in previous years. From a more positive perspective, M&A activity has seen substantial increase and this is an indicator that funds are being deployed once more.

The other unexpected set of factors which may affect asset managers in 2014 are the global events which have occurred and could potentially weaken investor confidence in global markets. These range from the conflict in the Ukraine to the recent coup in Thailand.

However, barring any unforeseen circumstances or drastic events, Singapore’s asset management industry should continue to see growth in the future.

VI SECTORAL REGULATION

i Insurance

Asset management activities by insurance companies are regulated under the SFA, although the licensing regime for insurance activities is governed by the Singapore Insurance Act.

ii Pensions

Pension fund management activities are regulated under the SFA.

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iii Real property
Real property fund management activities (other than REITs) are regulated under the SFA. REIT trustee-managers, who are also governed by the SFA, would generally be licensed as a CMSL-holder for REITs activities rather than as an RFMC or licensed fund management company.

iv Hedge funds
Hedge fund management activities are regulated under the SFA. As hedge fund structures are sometimes set up in a way that falls under the definition of collective investment schemes in the SFA, foreign hedge funds now must be aware that they may need to lodge more information with the MAS for the purpose of registration in Singapore before an offer of units is made.

v Private equity
Private equity fund management activities are regulated under the SFA. In addition, foreign private equity funds may now be required to register with the MAS before they can be offered in Singapore, which is a significant departure from the previous regime (which did not require any such registration of foreign private equity funds before an offer was made).

VII TAX LAW

i General
Singapore is widely regarded as an ideal location for foreign investors to set up their operations, and key drivers are Singapore's attractive tax rates (both at personal and corporate levels), the absence of capital gains taxes and a wide tax treaty network. Singapore's current tax treaty network includes 71 double taxation treaties, seven limited treaties, one exchange of information treaty, and another 12 treaties that have been signed but not ratified.

Generally speaking, there is a wide range of tax incentives available in Singapore. The financial sector (including fund management) is viewed as being important for the Singapore economy, and concessionary tax rates of between 5 per cent to 12 per cent can be available to players in this sector.

ii Tax relating to asset management
An asset manager based in Singapore will be treated as a taxable person under Singapore tax laws, regardless of whether the fund is based in Singapore or offshore (as is commonly the case). However, there are certain safe-harbour provisions that relate to asset management, as set out below.

The offshore fund regime
An offshore fund that is managed by a Singapore-based fund manager will be exempt from tax on its income from designated investments if the fund falls within the definition of a prescribed person.
A prescribed person is defined in the Income Tax (Exemption of Income of Non-residents Arising from Funds Managed by Fund Manager in Singapore) Regulations 2010 as:

(a) [...] an individual who is neither a Singapore citizen nor resident in Singapore, and who is the beneficial owner of the funds managed by any fund manager in Singapore; or
(b) [...] a company which —
   (i) is not resident in Singapore;
   (ii) does not have a permanent establishment in Singapore (other than a fund manager);
   (iii) does not carry on a business in Singapore;
   (iv) at all times has less than 100 per cent of the value of its issued securities beneficially owned, directly or indirectly, by Singapore persons collectively; and
   (v) is not a company the income of which is derived from investments which have been transferred (other than by way of a sale on market terms and conditions) 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.

Typically, a fund will be considered a prescribed person if it is not deemed to be a Singapore resident and is not entirely owned by Singapore-resident investors.

The other important requirement for the purpose of qualifying for this exemption is that each and every investor in the fund needs to fall within the definition of relevant owner. If this is not satisfied, a portion of the income derived by the qualifying foreign fund and attributable to the investors that are not relevant owners may be subject to tax in the hands of such non-relevant owners.

A relevant owner is:

a an individual investor;

b a bona fide entity not tax-resident in Singapore that either does not have a permanent establishment in Singapore (other than a fund manager) and does not carry on any business operations in Singapore, or 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 qualifying fund are not obtained from such operation;

c certain designated government entities (including the MAS and the Government of Singapore Investment Corporation Pte Ltd); or

d generally any other entity other than those set out in (a) to (c) that owns not more than 30 per cent or 50 per cent (depending on the number of investors a qualifying fund has) of the qualifying fund.

This tax exemption covers all income and gains relating to the qualifying designated investments, unless such investments fall within a specific exclusion list. Most investments would generally fall within the definition of designated investments. However, immoveable property in Singapore falls within the exclusion list, and asset managers should therefore be aware that the tax exemption would not be available for such investments.
Singapore

Singapore-resident fund scheme
The key reason for the introduction of the Singapore-resident fund scheme in 2006 was to encourage fund managers to base their funds in Singapore. Essentially, a fund that qualifies for resident fund status has its specified income derived from designated investments exempted from Singapore income tax. This allows such resident funds to be treated in a similar fashion to offshore funds under the offshore fund regime.

In addition, a Singapore-resident fund is able to utilise Singapore’s tax treaty network, and advantages including the prevention of double taxation and a reduction in or exemption from tax for certain types of income (although the availability of such reductions or exemptions depends on the terms of the treaty in question).

To qualify as a resident fund, the restrictions applicable to the offshore fund regime are applicable, as well as the following conditions:

a the resident fund has to be established as a company (i.e., no limited partnerships or limited liability partnerships);

b be incorporated in Singapore only;

c have its fund administration functions performed locally (which is even more relevant now with the new fund management regime); and

d seek prior approval from the MAS.

Enhanced-tier fund scheme
The enhanced-tier fund scheme also provides an exemption for income and gains on designated investments. This scheme applies to both offshore funds and resident funds, and the key advantage is that there is no restriction on the Singapore-resident investors that invest in the fund, thereby removing the restriction that both offshore and resident funds face in falling under the definition of prescribed person for the two schemes set out above.

There are certain additional requirements for funds that wish to qualify as an enhanced-tier fund, including:

a a minimum fund size of S$50 million;

b prior approval of the MAS is required and, once obtained, the investment strategy of the fund cannot be changed;

c the enhanced-tier fund scheme cannot be relied on if the fund is using other tax incentive schemes; and

d certain administrative requirements (such as a minimum amount of local business spending and the use of a Singapore-based fund administrator in certain circumstances).

Fund management incentive
The fund management incentive was established to promote fund management activities in Singapore. This provides a concessionary tax rate of 10 per cent for income derived from fund management and investment advisory activities, provided certain conditions are met by the fund manager, including:

a none of the investors must be a non-relevant owner (see ‘The offshore fund regime’, supra);
the fund manager must either hold a CMSL or be exempted from holding the relevant CMSL or, in the context of the new fund management regime, be an RFMC (at a minimum);

c the fund manager must be a company; and

d the fund manager must have at least three professional staff on its payroll whose role or function is focused substantially on fund management or investment advisory activities.

The MAS will also have discretion to consider other factors when deciding the eligibility of a fund manager for the fund management incentive, including the fund manager's growth targets and total headcount in Singapore. This is similar to some other tax incentives in Singapore where the regulatory authority considers the applicant's future plans and activities in Singapore when deciding whether to grant an incentive or exemption.

VIII OUTLOOK

The asset management industry will likely be subject to continued change in relation to the regulatory requirements imposed on fund managers in the near future. Fund managers have already had to adjust to comply with requirements imposed under the UK Anti Bribery Act and the US FATCA but hopefully these will represent the tail end of the regulatory changes. Globally and regionally, events may continue to weaken investor confidence and market sentiment, which are undesirable for the asset management industry. As an indication, through the midway point of 2014, capital markets activity in Singapore is experiencing a significant downturn compared to 2013 and this can be partly attributed to weakened market sentiment.

However, Singapore will continue to be an important centre for asset and wealth management, which should result in increased AUM and the possibility of even more asset managers setting up here. This will be driven in part by the continued importance of Asia in relation to the global economy and Singapore’s macroeconomic advantages in the context of the region.
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Stefanie Yuen Thio is the joint managing director of TSMP Law Corporation (having helped to set up the firm in 1998) and also heads its transactional practice. Her areas of expertise include mergers and acquisitions, equity capital markets, corporate transactions and regulatory advice.

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Dayne Ho is a director in TSMP’s corporate department. He heads the firm’s private equity practice and also co-heads its equity capital markets practice. His asset management clients include venture capitalists, banks, private equity fund managers, hedge fund managers and sophisticated investors.

Mr Ho has experience in both onshore and offshore fund formation of varying sizes. In addition, his varied experience in mergers and acquisitions, corporate finance and financial services regulatory work allows him to advise clients in many aspects during the term of a fund. This can range from the initial structuring of the fund, assisting with compliance with the Singapore regulatory regime for asset managers, handling the acquisitions and divestments of the fund as well as leading a potential IPO for a fund’s assets as an exit strategy.
Prior to joining TSMP Law Corporation, Mr Ho was with another leading Singapore law firm as well as an American international firm that is one of the largest in the world.

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