

REGULATION UPDATE

MAS UPDATES ITS REQUIREMENTS FOR EXEMPT FUND MANAGERS AND OTHER EXEMPT PERSONS

The Monetary Authority of Singapore (the “**MAS**”) has recently revised its Frequently Asked Questions (“**FAQs**”) on Exempt Persons.

“Exempt persons” in this context refers to entities exempted from the licensing and business conduct requirements under the Securities and Futures Act and the Financial Advisers Act for certain types of business activities.

The FAQs apply to the following exempt persons:-

- Persons conducting leveraged foreign exchange trading in Singapore with accredited investors only;
- Persons conducting fund management activity in Singapore on behalf of not more than 30 qualified investors;
- Persons carrying on business in Singapore in giving corporate finance advice only to accredited investors, provided such advice is not specifically given for the making of any offer of securities to the public by the accredited investor to whom the advice was given; and
- Persons providing financial advice in Singapore, either directly or through publications or writings or by issuing or promulgating research analyses or reports concerning investment products, to not more than 30 accredited investors.

They include questions on criteria for exemption, notification of commencement of business as an exempt person and ongoing compliance requirements.

The updated FAQs deal with three criteria which need to be met by an exempt person. These are that: (i) it must be a “fit and proper” person; (ii) the exempt person must be resident in Singapore; and (iii) each exempt person employs a minimum of two investment professionals.

The MAS has indicated that it expects to issue a consultation paper inviting comments and feedback on other proposed changes to the regime governing exempt persons, including a proposed change to the required paid-up capital of exempt persons. However, as at the time of writing, no definite date has been given for the issue of this consultation paper.

“Fit and proper” person

The term “fit and proper” carries with it the requirements of honesty, integrity and reputation; competence and capability; and financial soundness. These requirements have to be met on an on-going basis not just by the exempt person itself, but also its substantial shareholders, directors and representatives who carry out the regulated activity on its behalf.

In assessing honesty, integrity and reputation, the MAS takes into account (among other considerations) an exempt person's and its key persons' or representatives' disciplinary and compliance records in Singapore and other jurisdictions.

To reflect its financial soundness, the revised FAQs indicate that an exempt person is expected to maintain sufficient paid-up capital to cover its setup costs and at least six months of operational costs. It is also expected to maintain positive shareholders' equity at all times.

As for the requirement for competence and capability, the MAS will consider this together with the requirement for the exempt person to be resident in Singapore.

Resident in Singapore

The revised FAQs also elaborate on the requirement for an exempt person to be resident in Singapore. The MAS expects an exempt person to maintain its operations in Singapore and have adequate resources, including compliance arrangements, commensurate with the size of its business in Singapore.

To demonstrate that it has significant operations in Singapore and to satisfy the competence and capability requirement, an exempt person is expected to operate from an office premise in Singapore and is strongly encouraged to employ a minimum of two professionals, each with at least five years of relevant working experience in reputable jurisdictions. An exempt person should also have at least one resident chief executive officer or executive director in charge of overseeing its operations.

Minimum of two professionals

In relation to the newly-introduced requirement for each exempt person to employ a minimum of two professionals, each with at least five years of working experience, the FAQs set out further details on what sort of working experience is relevant. Relevant experience is attained if a person has previously performed similar roles or carried out activities similar to what he or she proposes to undertake on behalf of the exempt person.

The example given is that of a professional employed with an exempt fund manager. Such a professional is expected to have experience in activities that form an essential part of the fund management value chain, and would be assumed to have acquired experience in areas such as business development and marketing, portfolio construction and allocation, investment research and advisory services, trade execution, and portfolio reconciliation and valuation.

Conclusion

The FAQs emphasise that the above criteria for “exempt persons” are set out for guidance and illustration only and are not exhaustive in nature. The MAS has the discretion to impose additional requirements or safeguards in determining whether a person fulfils the criteria to be an “exempt person”.

References

Please click [here](#) to refer to the “FAQs on Exempt Persons”.

If you have any queries on this update, or wish to discuss how it may potentially affect you or your business, please feel free to contact the corporate and finance lawyers in Drew & Napier LLC (please refer to the Directors’ Profiles on our [website](#)), or any of the following lawyers:

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