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Singapore Perspective: Taxes and Washing Machines

Lionel Messi is regarded by many as one of the greatest footballers of his time; some pundits even argue that he is the greatest of all time. However, for all his wizardry and silky smooth moves on the football pitch, he and his father stand accused of evading the Spanish tax authorities (pun not intended) and are set to stand trial for alleged tax fraud. His is just one of numerous instances where taxmen around the world are tightening the noose around suspected tax offenders. Cooperation amongst tax authorities have also increased as they coordinate efforts to fight tax offenders who set up complex vehicles worldwide in an attempt to hide the extent of their wealth.

Singapore, being a world-renowned wealth management and financial center, is not far away from the action. It was recently reported in the Singapore daily, The Straits Times, that the US Internal Revenue Service is investigating into whether a Singapore asset management firm had wrongly accepted transfers from undeclared Swiss accounts closed by American taxpayers.

Tax prosecution is not the only fear for would-be take offenders. A little-appreciated fact is that parking of the proceeds of a tax offense in Singapore will now constitute money laundering under Singapore law and expose offenders to additional criminal charges.

In light of this flurry of action, it is increasingly important for individuals who “park” money in Singapore and asset management firms themselves to find out what legal obligations or risks they may be exposed to.

The Singapore Landscape

Singapore was one of the 47 countries which agreed to the Declaration on Automatic Exchange of Information in Tax Matters (the **OECD Declaration**) at the OECD’s annual Ministerial Council Meeting in Paris in May 2014. The Declaration obliges Singapore to implement a system of sharing of information annually. However, once the information is shared, what then happens if a foreign tax authority requires assistance to enforce on the ill-gotten gains?

The two main pieces of legislation in Singapore are the *Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act* (Cap. 65A) (**CDSA**) and the *Mutual Assistance in Criminal Matters Act* (Cap. 190A) (**MACMA**). Both laws were amended, effective 1 September 2014, to allow the Singapore authorities to pursue individuals or entities that have willfully intended to evade or assist another in evading a foreign tax. The wide-ranging definition of “foreign serious tax offense” in both acts is as follows.

“foreign serious tax offense” means an offense against the national law of a foreign country that consists of the doing of any of the

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following (however described) willfully with intent to evade, or to assist any other person to evade, any tax of that country:

(a) omitting from, or understating or overstating in, a return made for the purposes of that tax any information which should be included in the return;

(b) making any false statement or entry in any return, claim or application made, or any document or information required to be given, for the purposes of that tax;

(c) giving any false answer, whether verbally or in writing, to any question or request for information asked or made for the purposes of that tax;

(d) failing to inform the authority responsible for the collection of that tax, in the required manner, of any incorrect information appearing in any assessment made by that authority, when required to do so;

(e) preparing or maintaining, or authorizing the preparation or maintenance, of any false books of account or other records, or falsifying or authorizing the falsification of any books of account or records;

(f) making use of any fraud, art or contrivance, or authorizing the use of any such fraud, art or contrivance.”



Assistance to a Foreign Tax Authority

Following the MACMA amendments, Singapore can now lend assistance to foreign tax authorities even if the commission of the acts in Singapore would not have violated any local Singapore laws. Previously, the Singapore government could only lend assistance if the acts complained of also constituted an offense in Singapore. The scope of assistance includes 1) assistance in obtaining evidence for the purposes of prosecuting a tax offense, 2) enforcement of a foreign confiscation order, and 3) assistance in searching for and seizing anything that is relevant to the foreign tax offense.

In particular, it should be noted that the confiscation order not only applies to the monetary sum which the tax offender had evaded, it may also include an “instrumentality forfeiture order.” Accordingly, any property used in connection with the commission of the tax offense may be confiscated or destroyed. This would include immoveable property or valuable items that the tax offenders had used tax proceeds to pay.

The sum total of the amendments gives the foreign tax authority as much teeth to pursue a tax offender and their assets in Singapore as though the tax offender and their property were located in the foreign jurisdiction. This would render the tax offender’s complex web of corporate vehicles useless (at least with respect to his assets in Singapore).

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Breaching Singapore Money Laundering Legislations

The means in which a foreign tax offender can be pursued in Singapore do not stop at the enforcement of foreign confiscation orders or rendering assistance to tax authorities. Singapore has also recently amended the CDSA to allow the Singapore authorities to pursue the “proceeds of crime” of a foreign tax offender.

Under the amendments, a person convicted of a foreign tax offense may be liable under Section 47 read with Section 2 of the CDSA if he conceals, possesses or uses the proceeds from the tax offense in Singapore. The scope of this is not to be underestimated— opening a bank account in Singapore to hold any undeclared income would trigger the provision. This offense and corresponding punishment is distinct and on top of the foreign tax offense of which the person is already convicted.

Further, the power of the Singapore authorities is not predicated upon a final finding of guilt for a tax offense in the home jurisdiction. Under the CDSA a suspect can be deprived of using his ill-gotten gains once tax evasion proceedings have been instituted against him even though he has not been convicted yet. This can be done through an order directly restraining him from using that asset or through a charge over his property. Second, once convicted, a confiscation order can be made to directly deprive the offender of the proceeds of the tax offense. Similar to the “instrumentality forfeiture order” in the MACMA, the Singapore court can also order a “substitute property” confiscation order to confiscate any property used or intended to be used for the commission of the foreign tax offense. Third, the Singapore authorities may search premises and seize anything that they have reasonable grounds for suspecting relates to the foreign tax offense. These information-gathering powers also extend to compelling individuals and entities (financial institutions included) to produce information that may be related to the foreign tax offense.

Of particular concern to foreign individuals, who may leave the design of their web of commercial vehicles to experts without keeping tabs on the location of these assets, is Section 26 of the CDSA regarding “absconded persons.” Under Section 26, if a person cannot be “found, apprehended or extradited” six months after investigations have been commenced, he would be “deemed” convicted of the said offense. Upon this deemed conviction, the Singapore court could proceed to make confiscation orders. Section 26 would also apply if an individual passes away before criminal proceedings are instituted against him or if he passes away midway through criminal proceedings. Upon the “deemed” convicted, a confiscation order could then be made against the estate of the deceased.

As for how the law stands now, a foreign tax offender, who is focusing his efforts on fighting tax prosecution within his home jurisdiction, could find himself hit with a confiscation order because his advisors had failed to inform him of CDSA proceedings in Singapore— a jurisdiction totally unrelated to the



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tax prosecution. Another situation could be that the beneficiaries of a deceased estate are unaware as to the deceased's tax offenses or extent of the estate's assets, only to discover that the estate is slapped with a confiscation order when they finally get around to administering the estate's assets in Singapore.

Third Parties Beware

Asset managers and bankers who assist in the holding or moving of assets also face exposure. First, they could potentially be guilty of an offense under Section 44 of the CDSA if they had reasonable grounds to believe that they were assisting the tax offender in retention or control of the proceeds of the foreign tax evasion. The offense carries a maximum fine of S\$500,000 and/or a maximum imprisonment term of 10 years (an organization, on the other hand, is held liable for a maximum fine of S\$1 million). Furthermore, they can be held liable even if only part of the assets they managed directly or indirectly represented the proceeds of the foreign tax evasion.

Second, the CDSA (and industry regulations) imposes a duty to disclose suspicious transactions in connection with foreign tax offenses. Failing which, they would be held liable for a maximum fine of S\$20,000.

Conclusion

The OECD Declaration assists in the detection of tax offenses. However, one must not lose sight of the enforcement mechanisms and legislations available in financial hubs like Singapore. In light of the wide-ranging powers under the MACMA and CDSA, individuals and corporations alike should be put on high alert of any potential legal liability. There are several important takeaways:

- Offenses under the MACMA and CDSA are extremely serious and carry penal consequences of a high quantum fine and/or imprisonment.
- Individuals and corporations should seek legal advice on whether their corporate structures comply with their relevant tax laws and codes.
- Individuals and corporations should constantly be aware of and monitor the distribution of their assets through any corporate vehicles they may utilize.

Singapore's football team may be ranked 150th in the world, but even the world's best players might find it a little hard to give the new Singapore legislations the runaround.



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China's Qualified Domestic Institutional Investor Program

The Qualified Domestic Institutional Investor (**QDII**) program is, as the name indicates, an overseas investment program under which qualified domestic entities are allowed to market foreign fund products to domestic institutional and individual investors while the capital accounts are not fully open in China.

The QDII program was first introduced in the People's Republic of China (**PRC**) in 2004 to allow domestic insurance companies¹ to invest overseas with a specified product scope, and was subsequently expanded in 2006 to allow domestic banks to also invest overseas.² In 2007, the regulatory authorities issued further regulations to permit domestic trusts, securities companies, and fund managers to invest overseas,³ and in recent years the program entered a stage of rapid growth. There are five types of domestic QDIIs: insurance companies, banks, trusts, securities companies, and fund managers, all of which are subject to supervision by different regulatory authorities. As of August 28, 2015, the total foreign exchange investment quota granted under the QDII program was US\$89.993 billion.⁴

This article intends to provide an overview of the program as currently implemented in the PRC⁵ as well as high-level guidance on the marketing and distribution in the PRC of products offered by foreign fund managers.⁶

An Overview of the QDII Program

The QDII program is the national program⁷ that allows foreign fund managers to have indirect access to institutional and/or individual investors within the PRC for overseas investment (including, subject to detailed requirements, money market products, bonds, shares, funds, structured products, and financial derivatives). QDIIs must be licensed by the China Securities Regulatory Commission (**CSRC**) and granted a foreign exchange quota by the State Administration of Foreign Exchange (**SAFE**) before they can invest overseas. Unless a foreign fund manager can qualify as a QDII by establishing a joint-venture fund management company or otherwise, it usually has to work with an existing domestic QDII, relying on the latter's QDII license, foreign exchange quota as well as distribution channels. Under this circumstance, it may serve as an advisor or subadvisor to the QDII.

The applicable regulations and principal regulators are different, depending on the categories of the QDIIs concerned. In respect of domestic securities and fund managers who intend to qualify as QDIIs (**Securities and Fund QDIIs**), the CSRC is the principal regulator under the *Pilot Measures for the Administration of Overseas Securities Investment by Qualified Domestic Institutional Investors* (effective as of July 5, 2007). For banks (**Bank QDIIs**) and trust companies who want to qualify as QDIIs (**Trust QDIIs**), the China Banking Regulatory Commission (**CBRC**) acts as the principal regulator under the *Interim Administrative Measures for Overseas Wealth Management by Commercial Banks on Behalf of Their Customers* (effective as of April 17, 2006)

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and the *Interim Measures for Entrusted Overseas Financial Management Business of Trust Companies* (effective as of March 12, 2007), respectively. In respect of insurance companies who need to qualify as QDIIs (**Insurance QDIIs**), the China Insurance Regulatory Commission (**CIRC**) is the principal regulator under the *Interim Measures for the Administration of Overseas Investment with Insurance Funds* (effective as of June 28, 2007). For each type of QDII, a set of ancillary regulations has been issued by the principal regulators as well as by other relevant regulators such as SAFE.


Eligible Products

Provided below are the eligible products for QDIIs to invest overseas:

- 1) For Securities and Fund QDIIs:
 - (i) publicly offered funds (including publically offered money market funds⁸) registered with the securities regulatory authorities of countries or regions⁹ that have signed memoranda of understanding with the CSRC regarding bilateral regulatory cooperation.
- 2) For Trust QDIIs:
 - (i) publically offered funds approved by or registered with relevant regulatory authorities of countries or regions¹⁰ that have signed memoranda of understanding with the CBRC regarding regulatory cooperation in respect of foreign wealth management business on behalf of clients; and
 - (ii) money market funds with a credit rating of "investment grade" (or higher)¹¹ granted by internationally recognized rating agencies.
- 3) For Bank QDIIs:
 - (i) publicly offered funds¹² approved by, recognized by or registered with relevant regulatory authorities of countries or regions¹³ that have signed memoranda of understanding with the CBRC regarding regulatory cooperation in respect of foreign wealth management business on behalf of clients; and
 - (ii) subject to further consultation with relevant authorities, money market funds.¹⁴
- 4) For Insurance QDIIs:
 - (i) securities investment funds recognized by or registered with the securities regulatory authorities in the designated countries or regions,¹⁵ including money market funds with a rating of at least AAA (or its equivalent);



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- (ii) equity investment funds¹⁶ (a) which may only invest in designated countries or regions¹⁷ or which alternatively may only invest in target investments meeting certain specified criteria set forth under the Insurance QDII program, (b) with committed capital not less than US\$300 million, and (c) whose management and operations are not controlled, and whose general partnership interest is not held, by a financial institution (directly or through its subsidiaries);
 - (iii) funds of funds which invest in equity investment funds meeting the criteria set forth in clause (ii) above which have a simple and clear structure and do not invest in other funds of funds; and
 - (iv) real estate investment trusts (**REITs**) listed and traded on stock exchanges in designated countries or regions,¹⁸ provided the relevant funds and their managers meet other detailed eligibility requirements.

Marketing and Distribution of Foreign Fund Products Under PRC Law

1) Business Activities Prohibited

Subject to certain limited exceptions expressly set forth under the PRC laws, foreign fund managers and/or their PRC representative offices are not allowed to conduct “business activities” within the PRC.

There is no definition of “business activities” under PRC law. The CSRC has issued very few guidelines (formally or otherwise) clarifying the details of “business activities” that may not be undertaken by PRC representative offices of foreign fund managers in the PRC. Local practitioners rely on the *Administrative Measures on Representative Offices of Foreign Securities Organizations Stationed in China* as a reference for “business activities” that foreign fund managers may not undertake; these include:

- (i) entering into agreements (that may generate income for such representative offices or relevant foreign securities-related companies);
- (ii) opening of offshore securities accounts on behalf of their clients; or
- (iii) dealing with matters related to trading offshore securities on behalf of their clients.

Even though the above criteria serves as useful guidance, in practice, the CSRC retains considerable flexibility in deciding whether specific activities will constitute “business activities.”

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In addition to the above restrictions, it is generally understood that representative offices of foreign fund managers may not enter into any agreements with, or issue other documents (e.g., offering memoranda) to, PRC counterparties that could result in the generation of income for themselves, their affiliates or the funds managed by their affiliated fund managers. Similarly, the natural person representatives of foreign fund managers should not enter into any such agreements or issue other documents (e.g., offering memorandum) on behalf of the foreign fund managers while they are physically within the PRC.

Although the above-described activities are more relevant to entering into/performing foreign fund products/services-related transactions rather than to marketing or distribution activities, it is generally understood that a foreign fund manager or its representative office should not provide details related to specific foreign fund products or services from within the PRC to prospective investors, unless specifically permitted by the CSRC (as further described below).

2) Liaison Activities Permitted

PRC representative offices of foreign fund managers are expressly allowed under PRC law to conduct "liaison" activities. Furthermore, while it is not expressly permitted under PRC law, it is generally understood that foreign fund managers are permitted to travel to the PRC to meet institutional investors for the purpose of "liaison" activities. While the precise scope of such permitted activities is unclear, the regulatory authorities are aware that many foreign fund managers travel to the PRC to meet prospective Chinese clients for the purpose of providing general information regarding their business, expertise, and experience.

3) Permitted Activities under the QDII Program

Under the Securities and Fund QDII program, the CSRC allows foreign fund managers¹⁹ to provide various support services within the PRC. Such services may include providing information on foreign funds to domestic Securities and Fund QDIIs and training the staff of the domestic QDIIs. However, the activities may not include public promotion of the foreign fund manager's products, services, and brands.

While we are not aware of other regulatory authorities adopting a similar approach for the other QDII programs, it would be reasonable to expect that a similar approach would likely be undertaken by the CBRC and CIRC as the CSRC is the primary regulator of the PRC securities industry.



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Conclusion

The QDII program has been active for almost a decade; its mechanisms and rules are relatively well understood. There are foreign fund managers who have established joint ventures to qualify as domestic QDIIs. At the same time, there are many foreign fund managers that work closely with the domestic QDIIs to access the PRC market.

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- 1 In 2004, the China Insurance Regulatory Commission together with the People's Bank of China issued Interim Measures for the Control of Overseas Use of Insurance-Related Foreign Exchange Fund to permit insurance asset managers to invest insurance foreign exchange in offshore bank deposits, debentures, notes and other financial instruments, and, shortly thereafter, insurance asset managers were further allowed to invest in the overseas stocks of Chinese enterprises.
 - 2 Please refer to second paragraph under An Overview of the QDII Program.
 - 3 Please refer to second paragraph under An Overview of the QDII Program.
 - 4 http://www.safe.gov.cn/resources/wcmpages/wps/wcm/connect/safe_web_store/safe_web/gbxx/hqjnjgtzzmd/node_gbxx_jnjg_store/c84f5d004ce4176e89b78dfd3fd7c3dc/
 - 5 In March 2013, the China Securities Regulatory Commission issued draft regulations (for comments) which, if adopted, would have (i) expanded eligibility to domestic small-and medium-sized securities companies and fund managers by scrapping, among other things, capital and AUM requirements; and (ii) expanded the scope of permitted investments, for example, allowing investment in privately placed funds that were registered with securities regulators in specified jurisdictions. However, final regulations have not been issued to date.
 - 6 This article does not constitute exhaustive guidance in relation to the issues discussed, nor does it address any other financial services products or any other aspect of financial services regulation in the PRC. We are not licensed to practice PRC law. The information provided in this article should not be relied upon for purposes of any specific transaction or activity. A foreign fund manager should seek specific advice before it engages in any specific transaction or activity.
 - 7 There are certain local programs that allow foreign fund managers to establish local fund management company for investment overseas. For instance, Shanghai, in April 2012, started a pilot qualified domestic limited partnership (QDLP) program under which internationally recognized fund managers are allowed to set up a joint-venture fund management company to raise capital locally for investment in overseas securities (other than newly issued securities). Under the pilot QDLP program, only a small number of the largest global hedge funds have received licenses. Recently in December 2014, Qianhai, Shenzhen has also promoted a Qualified Domestic Institutional Enterprise (QDIE) program to allow foreign fund managers to establish wholly foreign owned asset management companies. This article, however, does not intend to elaborate on the QDLP or the QDIE program.
 - 8 Under the current regime, it is not clear whether Securities and Fund QDIIs can invest in money market funds that do not qualify as publicly offered funds.
 - 9 These countries and regions include popular fund jurisdictions such as the United States, Luxembourg, UK and Hong Kong, among others.
 - 10 These countries and regions include the United States, Luxembourg, UK and Hong Kong, among others.
 - 11 Investment grade (or higher) credit rating usually refers to a BBB or higher rating in practice, but the regulations do not expressly clarify the scope of investment grade.
 - 12 Bank QDIIs are expressly prohibited from investing in hedge funds.
 - 13 See footnote 10.
 - 14 Although no rules expressly address investments by Bank QDIIs in money market funds, it is not unusual for Bank QDIIs to purchase money market funds in practice. Due to the lack of specific regulations, it is unclear what minimum credit rating is applicable. Since Bank QDIIs are not allowed to purchase securities with a rating lower than BBB, it would be logical to conclude that the credit rating of eligible money market funds should be no lower than BBB.
 - 15 See footnote 9.
 - 16 There is no legal definition for such two types of funds for the purpose of QDII program. In the PRC, equity investment funds usually refer to funds primarily investing in ownership interests of non-listed enterprises, while securities investment funds usually refer to funds primarily investing in traded or listed securities (e.g., stocks, funds, bonds).
 - 17 See footnote 9.
 - 18 See footnote 9.
 - 19 Under relevant Securities and Fund QDII regulations, an "overseas investment advisor" is an overseas financial institution that provides securities trading consultancy or investment portfolio management services to domestic Securities and Fund QDIIs. In practice, overseas investment advisors are either large foreign fund managers or overseas subsidiaries of domestic Securities and Fund Company QDIIs due to the various eligibility requirements imposed (e.g., the requirement to have securities assets under management in the preceding fiscal year of no less than US\$10 billion). There is a distinction between an overseas investment advisor which is permitted to provide QDII-related support activities and the investment manager of a fund offered under the QDII program.

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To Be or Not to Be . . . Accredited, That Is

Existing Regime

Presently, an investor who meets one of the following criteria is *automatically* classified as an “accredited investor” (**AI**):

- (a) an individual whose net personal assets exceeds S\$2 million or whose income in the preceding 12 months is not less than S\$300,000;
- (b) a corporation with net assets exceeding S\$10 million or whose sole business is to hold investments and the entire share capital of which is owned by one or more persons each of whom is an AI;
- (c) the trustee of a trust of which all property and rights held on trust for the beneficiaries exceeds S\$10 million;
- (d) an entity (other than a corporation) with net assets exceeding S\$10 million; or
- (e) a partnership (other than a limited liability partnership) in which each partner is an AI.

As AIs, offerors of investments and financial institutions (**FIs**) who deal with them are able to rely on various exemptions under the Securities and Futures Act (**SFA**) and the Financial Advisors Act (**FAA**).

Proposed Opt-in Regime

In July 2014, the Monetary Authority of Singapore (**MAS**) issued a consultation paper setting out a slew of proposals to enhance regulatory safeguards for investors in the capital markets. These measures include a proposal that all investors (other than Institutional Investors) should, as a starting point, be treated as retail investors, thereby according them with greater regulatory protection.¹ If an investor qualifies as an AI, he would be required to “opt-in” to such classification, giving such investors the ability to choose the investor classification and associated level of regulatory protection that best accords with their individual circumstances, risk profile, and investment needs.²

The “opt-in” regime will apply to all new AI-eligible investors following the implementation date of the “opt-in” regime and may be worked into offering and accounting opening processes. Either the FI or the client can initiate the “opt-in” process, which is envisaged to be as follows:

- (a) FIs provide clients assessed as AI-eligible with a written notification setting out their right to “opt-in” to AI status, with a clear description and warning of the regulatory safeguards that will henceforth dis-apply to them; and

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- (b) the client must confirm in writing to the FI (in a separate document) a decision to “opt-in”, acknowledging that he understands and accepts the consequent reduction in the regulatory safeguards that he is entitled to.

Industry feedback has largely been positive although respondents did raise various policy and operational concerns. In MAS's Response to Feedback Received released in September 2015 (the **Response**), the regulator clarified and refined the proposed “opt-in” regime.

Status of Existing AI Clients

Recognizing the operational difficulties in applying the “opt-in” regime to existing AI clients, MAS will permit an “opt-out” approach whereby FIs need to notify their existing AI clients that:

- (a) the client has been assessed to meet prescribed wealth thresholds and is hence considered an AI;
- (b) the client has a right to “opt-out” of AI status;
- (c) if the client decides not to “opt-out,” the FI is exempt from complying with certain regulatory requirements when dealing with him; and
- (d) if the client “opts-out” thereby preventing the FI from retaining him as a client, the client’s existing investments will not be affected.

Loss of Business for FIs Who Are Only Permitted to Service AI Clients

Some FIs are prohibited by the regulatory approvals they hold to service only AIs; Registered Fund Management Companies (**RFMC**) and Licensed Accredited/Institutional Fund Management Companies (**Licensed A/I FMC**) fall in this group (together **Restricted FMs**). The “opt-in” regime represents a potential loss of business for these managers if the investors in funds managed by them choose not to “opt-in.” MAS's view is that empirical evidence³ does not support any potentially impactful loss of business and, in any case, it remains for these FIs to convince their clients of their value proposition.

“Opt-in” Documentation

An FI’s “opt-in” notification and the investors “opt-in” confirmation can be combined into a single document to reduce paperwork provided a copy of the notification is otherwise made available to the investor. In addition, MAS will allow for verbal and email confirmations provided these are appropriately recorded and documented. The “opt-in” documentation must, however, be kept separate from accounting opening paperwork although both may be presented to the client at the same time during the account opening process.

MAS has also declined to prescribe standard-form “opt-in” documentation. FIs



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will have to develop their own forms, taking into account their dealing with AI clients, the consequences of “opting-in” with that FI, and the FI’s procedures for processing a change in investor classification.

In particular, MAS will require that descriptions of the regulatory safeguards that an investor is giving up by “opting-in” be made in plain, practical language. Clients need to know that once they “opt-in” to AI status with a particular FI, these regulatory safeguards will cease to apply in respect of all accounts with that FI or, in the case of Restricted FMs, that they can no longer be serviced by these Restricted FMs.

AI Status on a Per-FI basis

MAS envisions that investors will be able to “opt-in” to AI status on a per-FI basis. In other words, an AI-eligible investor may elect to obtain AI status with one FI but remain a retail investor with another FI.⁴ This will allow AI-eligible investors to consider their comfort level with each FI as well as their intended investment with that FI. For instance, an investor could elect AI-status with a FI for ordinary securities trading yet elect non-AI status with another FI for riskier derivative products. That said, investors will not be able to exercise their AI election in respect of different product and markets within an FI.

Change in Investor Classification

An investor determines his classification at the point he enters into an investment transaction with an FI but will be able to move between AI and non-AI classification at any time and without limit, in accordance with the relevant FI’s internal procedures. Any move from AI to non-AI status will not, however, require the FI to accord the investor with retrospective non-AI benefits in respect of past transactions conducted while the investor was an AI.

FIs will have to ensure that their systems and infrastructure are capable of monitoring and recording each investor’s status when transactions are effected, to process any investor request for change in classification and, in respect of Restricted FMs, termination of the FI’s business dealing with an investor who has elected non-AI status. FIs will have the flexibility to draw up their internal processes in dealing with an investor’s change in classification but must do so within a reasonable time and communicate these internal procedures clearly to their clients.

When Are Dealings Considered Part of One Transaction?

For fund investors who make their commitments at the point of subscribing into a fund, subsequent drawdowns of capital will be treated as part of the same transaction. If, however, an investor receives dividends on an existing investment and subsequently decides to re-invest the same (for example, by purchasing additional securities), the re-investment will be treated as a separate transaction and the applicable investor classification determined at the point of re-investment.



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Looking Ahead

Legislative changes to implement the “opt-in” regime are expected to be finalized in 2016. The previously proposed two-year transition period to allow existing AI investors to “opt-in” will no longer be necessary considering the proposal to allow for their “opt-out” (as described above). Further, Restricted FMs will be permitted to continue providing service to existing AI clients who no longer qualify as such but only in respect of existing funds managed by these Restricted FMs.

Do note that the July 2014 consultation paper also proposed refining the AI-eligibility criteria. For individuals, the most significant change will be that the net equity of an individual’s primary residence will only be permitted to contribute up to S\$1 million as part of the S\$2 million required in the net personal assets test. In addition, a “net financial asset test”⁵ will be introduced as an alternative to the net personal assets test.

One can choose to view an investor’s ability to “opt-in” and “opt-out” as an operational hassle. In reality, while the proposal will certainly increase the compliance and monitoring workload of affected FIs in the near future, its operational impact will, over time, diminish as the measures put in place to implement the regime become par for the course. From the FIs’ perspective, presumably an investor’s proactive election to “opt-in” will strengthen the assertion that the FI is dealing with a sophisticated investor who understands and can bear the investment risks associated with products marketed to this class of investors.



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- 1 For example, FIs who sell or distribute complex investment products to retail investors are required to assess the investors’ relevant investment knowledge and experience and to provide them with suitable advice.
 - 2 Do note that the July 2014 consultation paper concurrently proposed refining the AI-eligibility criteria. For individuals, the most significant change will be that the net equity of an individual’s primary residence will only be permitted to contribute up to S\$1 million as part of the S\$2 million required in the net personal assets test.
 - 3 Gleaned from experience in other jurisdictions which have implemented a similar ‘opt-in’ regime such as Hong Kong and Europe.
 - 4 For these purposes, different business segments within the same legal FI entity will be considered as one FI.
 - 5 S\$1 million in financial assets excluding related liabilities (to avoid investors borrowing to meet the financial assets threshold).

NEWS

Morgan Lewis Lawyers Recognized by Leading Legal Publication

The *IFLR1000 Financial and Corporate 2016* has recognised 26 Morgan Lewis lawyers as the highest ranking “Leading Lawyers.” The IFLR1000—part of the Euromoney group—is the guide to the world’s leading financial law firms and lawyers, covering more than 120 jurisdictions worldwide. In addition to 26 Leading Lawyers, the guide has recognised another 20 Morgan Lewis lawyers under the “Rising Star” category, with a total of 46 Morgan Lewis lawyers being ranked for their experience and market-leading legal advisory.

We are pleased to announce that among the 26 Leading Lawyers recognised in Asia were Suet-Fern Lee, Joo Khin Ng, Wai Ming Yap, and Sin Teck Lim in Singapore, along with Fred Chang in Beijing. Other Leading Lawyers and Rising Stars recognised are located in a number of global Morgan Lewis offices, including Russia, the United Arab Emirates, the United Kingdom, and the United States.

Singapore Lawyers Speak at SIAS 6th Corporate Governance Week 2015

The Securities Investors Association (Singapore) (**SIAS**) hosted its sixth Corporate Governance Week 2015 from October 12 - 16. SIAS is the largest organized investor group in Asia, with almost 71,000 retail investors as members. The organization promotes investor education, corporate governance, and transparency, and is widely known as an advocate for investor’s rights in Singapore.

The theme for this year’s conference was *Boards and Shareholders — Partners or Adversaries?*, with Singapore Managing Partner Suet-Fern Lee, sitting as a panelist in a discussion on “Role of Shareholders, Boards and Management,” and partner Elizabeth Kong taking part in a panel on “Corporate Governance of SMEs.”

On 15 October, the Singapore office led a workshop titled “Of Mice and Men: The Interplay Between Board and Shareholders.” The panel, moderated by partner Bernard Lui with partners Joo Khin Ng and Timothy Cooke and associate Arnaud Bourrut-Lacouture as panelists, focused on the interplay between boards and shareholders amid the challenging climate led by the dampened appetite in the global capital market. Topics included the minimum trading price requirement, fund raising, and key global examples of where shareholders control the board.

Below from left: Bernard Lui, Joo Khin Ng, Timothy Cooke, and Arnaud Bourrut-Lacouture



NEWS

Morgan Lewis and NIKKEI to Co-sponsor Event: J-REIT CEO Roundtable in New York

On 11 November 2015, Morgan Lewis will co-host a roundtable with NIKKEI to provide a comprehensive overview of Japan's J-REIT industry and its impact on the broader Japanese real estate market. Top analyst Hiroshi Torii of SMBC Nikko and three leading CEOs representing Japanese and overseas strategic and financial sponsors, will present their views in a panel discussion moderated by Morgan Lewis partner Bradley Edmister. The event will be held at the Asia Society Auditorium in New York. If you are interested in attending, please contact Aisha Khan at akhan@morganlewis.com.

Morgan Lewis Stamford Hosts International Arbitration seminar

The international arbitration seminar "Getting More Than You Bargained For: How to Maximize the Benefits of Arbitrating International Commercial Disputes" was held in the Morgan Lewis Stamford Singapore office on October 1. London partner David Waldron and Singapore partner Timothy Cooke presented during the seminar, which focused on realizing the full potential of arbitration and maximizing the chances of a successful outcome in commercial disputes. Topics included drafting effective arbitration clauses, how to select an arbitral tribunal, and formulating the best arbitral procedure to suit a dispute. For information on future seminars in Singapore, please contact Tammy Baker at tammy.baker@stamfordlaw.com.sg.

Below from left: David Waldron, London partner; and Timothy Cooke, Singapore partner



Morgan Lewis Tokyo Office Contributes to Successful 10th Annual AIMA Japan Hedge Fund Forum

Morgan Lewis was a Gold sponsor of this year's Alternative Investment Management Association (**AIMA**) Japan Hedge Fund Forum 2015. AIMA is the global hedge fund industry association with more than 1,500 corporate members in 50-plus countries. The Japan chapter of AIMA held the forum, its 10th, in the Tokyo Stock Exchange Hall on June 10.

On the eve of the forum, four educational sessions were offered at the Tokyo American Club, attracting more than 80 attendees who were signed up for the AIMA forum the following day. Tokyo Investment Management of counsel Koji Yamamoto spoke to more than 30 attendees presenting in Japanese on "Review of the AIMA Due Diligence Questionnaire." The next day, at the forum itself, Tokyo Investment Management partner Christopher Wells, who is also the vice-chairman of AIMA Japan, discussed Japan's new corporate governance code in the presentation, "Japan's New Corporate Governance Code—Is It State of the Art?" He also later delivered the forum's closing remarks.

NEWS

Tokyo Office Joins Volunteer Efforts in Fukushima

A group from our Tokyo office, including Corporate partner Benjamin Lang and translator Justin Boley, joined the effort to clear debris in the city of Minamisoma in Fukushima prefecture on August 1. Struggling to recover four years after the earthquake, tsunami, and nuclear meltdown, Minamisoma is located just 20 kilometers from the Fukushima Daiichi nuclear power plant.

Our group joined other volunteers at the Minamisoma Disaster Recovery Volunteer Center, a local government office which coordinates the ongoing volunteer effort. Although more than one-third of the city was forcibly evacuated in the immediate aftermath of the meltdown, decontamination work has brought radiation down to safe levels in almost the entire city. Residents who do return, however, confront mounds of debris and years of overgrowth surrounding dilapidated homes. The volunteer center dispatches workers to assist in the heavy labor of making these houses habitable again. Working in two sites in the sweltering August heat, our group helped cut and clear fallen lumber and bamboo for local residents.

Below from left: Benjamin Lang (in white T-shirt and hat) with other volunteers; and Tokyo office interns along with Benjamin cutting bamboo.



Training Intellectual Property Officers From Across China

On September 8, Beijing Intellectual Property associate Alex Liang, presented at the State Intellectual Property Training Center in Beijing to an audience of 100 IP officers from across China on "A Comparison Between IP Services in China and Overseas." The Chinese government has been actively promoting the development of intellectual property services to improve Chinese companies' domestic innovation, research and development and brand protection. Provincial IP officers in China are responsible for providing IP services to companies in their respective province. Alex was invited by the State IP Training Center to educate Chinese provincial IP officers on how to improve IP services by utilizing private agencies such as local and international law firms.

HEADLINE DEALS

Land Transport Authority of Singapore: S\$5 Billion Note Program

Morgan Lewis Stamford acted as sole transaction counsel on a S\$5 billion (US\$3.6 billion) multi-currency medium term note program established by the Land Transport Authority of Singapore (**LTA**) and the issuance of an aggregate principal amount of S\$2.5 billion (US\$1.8 billion) in notes. The notes comprised four series:

- Series 1, S\$600 million (US\$421 million), 2.57%, due 2022;
- Series 2, S\$600 million, 3.09%, due 2027;
- Series 3, S\$650 million (US\$456 million), 2.73%, due 2020; and
- Series 4, S\$650 million, 3.51%, due 2030.

The LTA is a statutory board established under the Land Transport Authority of Singapore Act, Chapter 158A. Its scope of activities includes the formulation of land transport policies, the regulation of public transport services, and the regulation of private transport ownership and usage. The program and notes are listed on the Singapore Exchange (**SGX-ST**). The DBS Bank Ltd. was the sole arranger and dealer for the program and dealer for the Series 1, 2, and 3 notes; Oversea-Chinese Banking Corporation Limited was the dealer for the Series 4 notes.

Acquisition of 4chan

We recently represented a Japanese buyer group in its acquisition of 4chan, an online forum for sharing anonymous posts with much of it dedicated to Japanese comics and anime. The transaction was announced on September 21. 4chan is among the world's largest online forums, serving about 680 million page views to more than 22 million people monthly. Financial details of the acquisition were not disclosed. Led by Tokyo partner Tsugumichi Watanabe and New York partner Satoru Murase. Assisted by our offices in Washington, DC, Silicon Valley, and San Francisco.

CEFC International Limited: S\$246.9 Million Private Placement

We represented CEFC International Limited, a petrochemical and fuel trader listed on the Mainboard of the Singapore Exchange, on a proposed private placement to raise gross proceeds of up to approximately S\$246.9 million (\$174.4 million). CEFC International intends to use these net placement proceeds, among others, to expand its trading business, including commodity and derivative trading. CEFC International was taken over by a PRC group in 2012 and is now embarking on an expansion plan to increase its commodity trading business. The Singapore Exchange approved the placement in principle on September 2.

The team was led by Singapore partners Suet-Fern Lee and Wai Ming Yap, with associates Gina Ng and Yingjie "Jenny" Wang.



HEADLINE DEALS

Skymark Airlines: 2015's Largest Japanese Corporate Restructuring

We represented aircraft lessor Intrepid Aviation, the largest creditor in the civil rehabilitation proceeding of Japanese low-cost carrier Skymark Airlines. As part of a high-profile battle between Intrepid and Skymark, Intrepid filed a creditors' rehabilitation plan to rival the plan filed by Skymark. Intrepid had claims arising from the rejection by Skymark of seven factory-new Airbus A330 aircraft leased by Intrepid to Skymark. The proceeding was both the largest restructuring proceeding in Japan and the largest airline restructuring globally. In a highly unusual decision, the Tokyo District Court approved both plans for voting by creditors. Ultimately, Skymark's rehabilitation plan with ANA Airlines as the operational sponsor was approved by creditors. The matter was led by New York/ Tokyo Finance partner Lisa Valentovish.

Singapore Court Overturns Controversial Sale Order

In a significant victory, the Singapore Court of Appeal on October 2 reversed a Singapore High Court decision that would have forced our clients out of their homes. Our clients, the Lims and Kohs, were owners of units in Gilstead Court, a condominium development located in a prime residential area of Singapore. Their neighbors mounted an attempt to force our clients to sell their homes under Singapore's collective sale legislation. Collective sales of old condos by majority consent are a unique and controversial law in land-scarce Singapore.

The suit came after a prominent developer offered \$150 million for Gilstead Court. While the majority of the condo owners accepted, our clients objected on the grounds that the collective sale breached good-faith requirements under the law. Their point was that they did not want to leave their homes. In any event, the provisions in the collective sale contract discriminated against them. In February, the High Court gave the collective sale the green light, but amended and struck out some of the discriminatory clauses.

Our clients appealed the High Court's decision. Our team successfully persuaded the Court of Appeal to reverse the compulsory sale order. The Court of Appeal issued a lengthy landmark judgment setting out guidance on this controversial legislation.

The team was led by Singapore Litigation partner Adrian Tan with Litigation associates Kenneth Chua and Siok Khoon Lim.



COFFEE WITH ...

In this inaugural issue of the Morgan Lewis Asia Chronicle, we took the opportunity to catch up with the managing partners of the Singapore, Tokyo, and Beijing offices as they share with us some stories from their years of practice.

Suet-Fern Lee

Suet-Fern is the managing partner of the Singapore office.



"Many assume that since I have practised law with considerable gusto and a little success for almost three and a half decades, that it must somehow have been my calling and my passion. Indeed, only the latter is true, and that was purely happenstance.

Certainly it was not the result of my having been inspired by television court room dramas. My own limited television watching ended some time in 1963 when, after too many episodes of an old series called 'The Twilight Zone' gave me nightly nightmares of ghosts and ghouls hiding behind my bedroom curtains, I decided to stop television viewership. Good friends have over the years tried to seduce me back to the pleasures of watching television by informing me that color television has been introduced in these intervening years. My one foray into watching an inflight (color) screen many years ago was the Russell Crowe movie 'Gladiator', where the violence had me retching into air-sickness bags. My love affair with the written word has therefore remained faithful.

So why did I read law? Simply because my father said so. My brother, who was barely a year younger, and I, had been brought up on the understanding that one of us had to be a doctor and the other a lawyer. And in those days, children listened to their parents. When we both were in our final years of high school, we realized that we were both sitting in the 'pre-medicine' classes with A-levels in Biology and Chemistry. Who was going to be the lawyer for Dad? My brother was insistent that he wanted to be a doctor, so, not wanting to disappoint Dad, I applied for law. It was fortunate that the university entrance examinations for law (whilst recommending an O level in Latin, which I did not have) allowed me to choose the subjects I wanted to sit, so I gained my place to read law on the back of an outstanding knowledge of biology and practical skills in dissecting rabbits, guinea pigs, mice, and other small mammals.

In passing, I would like to mourn the passing of the era when children listened to their parents. Mine, at least, have remained determined to be contrarians, excelling in driving their parents crazy and working hard to be adverse to any parental aspirations. One of my sons, a keen debater, flirted with wanting to become a barrister in his teens, but eventually concluded to his father that firstly, he wanted a life, and secondly, he thought it would be impossible to keep up with his mother, hence law was not for him. Both reasons were of course completely groundless and without any basis whatsoever.

So what do I like about being a lawyer? Given that no one listens to me at home, it allows me to go to work every day and feel extremely good that our clients are ready to pay money to share their problems with me and then some more money to hear and heed my advice. This is simply extraordinary! Work is the one place where someone takes me seriously and listens to what I have to say. (This applies to our clients, but probably not my partners, who do their best to ignore me.) That there are people who will give me the time of day, and pay for it to boot is why I get out of bed and go to work every day. I try very hard not to let any client know that I would have paid them for this privilege and pleasure.

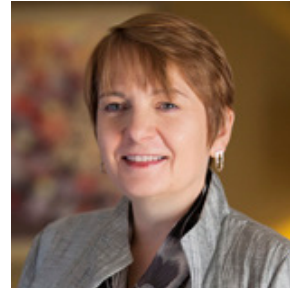
As for my skills in cutting up and then sewing things together again, I eventually found an alternative outlet which did not involve any small or large mammals—cutting up perfectly good fabric and sewing the pieces together again to make quilts."

COFFEE WITH . . .

Lisa Yano

Lisa is the managing partner of the Tokyo office.

"I often get asked how I started working in Japan. Although I had always had a vague interest in doing something 'international,' in fact, it was actually really coincidental that I ended up in Japan. I met my Japanese husband as a graduate student in Rochester, New York. He is an academic economist, and I moved to Japan as a still very junior associate when he was offered a position at Yokohama National University.



The timing proved to be very fortuitous, as Japanese law was about to change in a way that enabled foreign law firms to enter the country for the first time.

Working in Japan, I believe that I have worked on a broader range of matters than if I had spent my career in the United States. While it's important to have real depth in at least one core field, I enjoy the fact that my work often pushes me out into new and different areas. This gives me the opportunity to work with colleagues in different practice areas and different countries, and I find that the things I learn in one area almost always turn out to have value and relevance to my work more broadly.

A common misconception that I face is that it must be very difficult to be a female lawyer in Japan. For me, it has been a wonderful place to work and build a practice. Although many women do face challenges in the workplace in Japan, those issues are much more complex than is often portrayed in the Western media. As long as I have lived in Japan, there have been prominent Japanese women lawyers, including leaders in fields like tax and securities law. More recently, women have also moved up into senior positions in the legal departments of many leading Japanese companies. The legal field has really been at the forefront on these issues.

I was fortunate in having had the opportunity to spend my first year in Japan on secondment, first to a leading Japanese bank and then to a major Japanese trading company. From that experience, I gained insight into both Japanese business practices and Japanese culture that has helped me immeasurably throughout my career. The kindness and generosity of my colleagues at both institutions also helped me to feel at home and enabled me to get my career in Japan off to a good start. However, one of the most challenging aspects of being a US lawyer in Japan is helping our clients, both Japanese clients and overseas clients deal with differences in the law and business culture. Sometimes, what we recommend to our clients may strike them as counterintuitive and they may feel they are taking a leap of faith in following our advice. What is most rewarding is when the client gets a good result and can see the value we bring. It's a lot of fun to work with clients who have developed confidence in our judgment through working together over time.

Looking forward, I expect we will continue to see substantial inbound and outbound M&A activity in Japan, as Japanese companies restructure themselves through both expansion and divestiture. Our firm has recently experienced substantial growth in Asia through our combination with Singapore firm, Stamford Law Corporation, and I believe this will create many interesting opportunities to assist Japanese companies with their investments in Asia as well as in the United States."

COFFEE WITH ...

Xiaowei Ye

Xiaowei is the managing partner of the Beijing office.

"I grew up in Beijing and went to Georgetown University for college and law school. It has now been 20 years since I first came back to work in Hong Kong and Beijing. In those 20 years, I have witnessed many changes that have taken place in China and adapted my practices accordingly.



As a young lawyer, I had the pleasure to work at a major US firm with a partner who later became the longest-serving US ambassador to China. When I first came back, we worked on the creation of many joint ventures and wholly foreign-owned enterprises, representing US and European companies. We also had the opportunity to represent China's first joint venture investment bank - China International Capital Corporation (CICC)—between China Construction Bank and Morgan Stanley. As a result of our working relationship with CICC, we were well positioned to represent some of the largest public offerings and listings of China's state-owned enterprises in United States and/or in Hong Kong, such as China Mobile, PetroChina, Bank of China, and Chalco, among others.

We also rode through the downturn of the Chinese economy during the Asian financial crisis starting in 1997. In late 1998, we were engaged by the Guangdong Government as its counsel in the restructuring of Guangdong Enterprises, the government window company in Hong Kong. We worked closely with Goldman Sachs who acted as the financial advisor to the Guangdong Government. The significance of the Guangdong Enterprises restructuring lies in the decision made by the Guangdong Government to save Guangdong Enterprises by injecting Dong Shen Water (that supplies 75% of Hong Kong's water) into Guangdong Enterprises while letting Guangdong International Invest & Trust go bankrupt. In doing so, the Guangdong Government set two precedents: allowing one state-owned company to successfully restructure at the expense of another becoming insolvent.

In the last three years, I have also begun to follow closely the legal development of the asset management industry in China. We have worked with the firm's existing fund managers on various aspects of China's existing programs for international funds, such as, the qualified foreign institutional investors (QFII), qualified domestic institutional investors (QDII), and other local government programs like Shanghai's Qualified Domestic Limited Partnership (QDLP) and Qianhai Qualified Domestic Investment Enterprise (QDIE).

*Lastly, I would like to mention Morgan Lewis Consulting's China subsidiary, Morgan Lewis Consulting (Beijing), Ltd. (**Morgan Lewis Beijing**). Morgan Lewis Beijing has represented multinational companies in regulatory compliance, approvals, and investigations as well as in crisis management situations. We have served clients in developing their market entry strategy and assisting them with national security review of acquisitions, anti-monopoly investigations, and merger filings."*



THE LAST WORD

The Last Word is a regular segment allowing you a tongue-in-cheek insight into the personalities in Morgan Lewis.

"It is a sign of a truly global firm when we can work together—lots of emails, planning calls, etc.—to put together an Asia-focused newsletter, and yet, we have never met in person! We feel privileged to work with so many different offices across the Morgan Lewis international network, and we hope you enjoy this inaugural issue of the Morgan Lewis Asia Chronicle. Keep your eye out for future issues as we will have the opportunity to speak with different partners across our many offices, sharing various interesting insights and experiences in Asia."



Tammy Baker
Singapore



Makiko Hata
Tokyo



Meixian Li
Beijing

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