



Morgan Lewis

FINTECH IN SINGAPORE: REGULATION FOR AN EVOLVING SECTOR

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Morgan Lewis Stamford

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FINTECH REGULATORY SANDBOX

Fintech Regulatory Sandbox

1. Rationale

- Grow Singapore into a smart financial centre using innovation and technology
- Emerging financial services that utilise FinTech are becoming more sophisticated
 - uncertainty over regulatory requirements
- Sandbox encourages start-ups to test viability of innovative financial services
 - cost effective and controlled environment with appropriate safeguards to contain risks and failure
 - for a well-defined space and duration
 - Sandbox is not appropriate in certain situations
- Regulatory determines which legal and regulatory requirements to relax

Fintech Regulatory Sandbox

2. Evaluating the proposed financial services

- New or emerging tech, or uses existing tech in an innovative way
- Addresses a problem or brings benefits to consumers or the industry
- Intention and ability to deploy in Singapore on a broader scale after existing Sandbox
- Test scenarios and expected outcomes clearly defined
- Clearly defined boundary conditions
- Assess and mitigate significant risks which may arise
- Clearly defined exit and transition strategy

Fintech Regulatory Sandbox

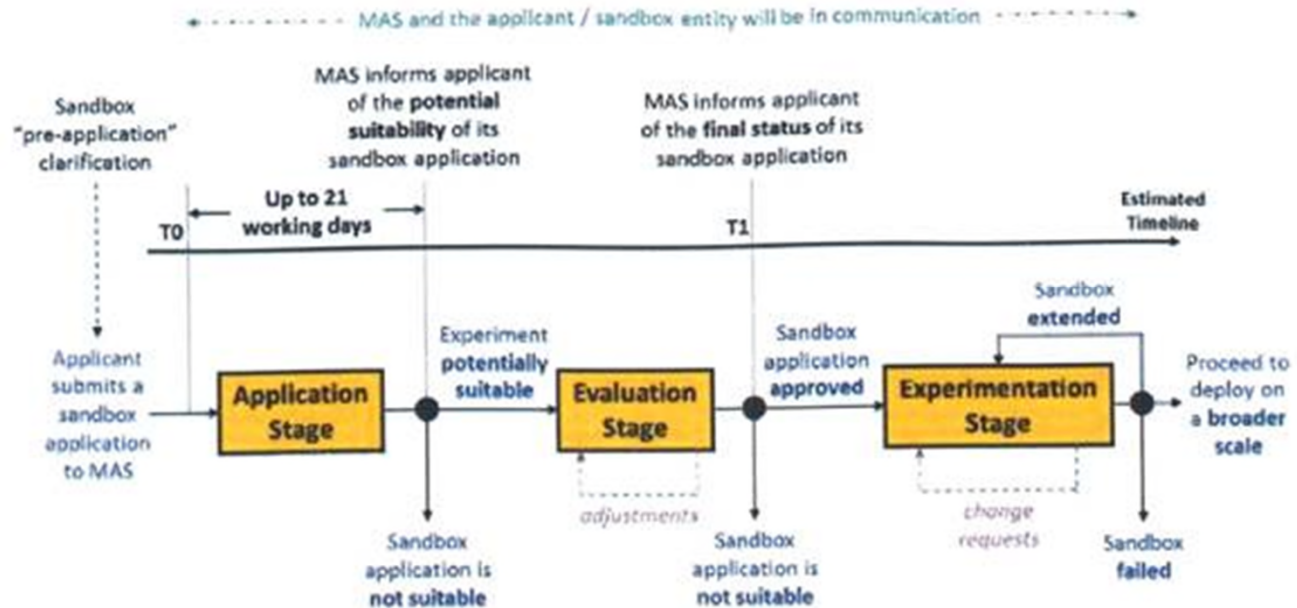
3. Extending or exiting Sandbox

- At end of Sandbox period, rules are restored and must exit Sandbox
- May apply for extension with reasons
- Upon exit applicant can proceed to deploy if able to comply with relevant rules
- Sandbox may be discontinued in certain situations

Fintech Regulatory Sandbox

4. Application and approval

- Prescribed form submitted via email to MAS
- No administrative charges for submitting application



Fintech Regulatory Sandbox

- Active Sandbox Experiments

Sandbox Entity	Start Date of the Sandbox Period	Expiry Date of the Sandbox Period
Company Name: Kristal Advisors (SG) Pte Ltd Institution Type: Fund Management	10 Aug 2017	10 Aug 2018 (extended, previously 10 May 2018)
Company: Thin Margin Pte Ltd Institution Type: Money Changer	20 Nov 2017	19 Jul 2018
Company: TransferFriend Pte Ltd Institution Type: Remittance Business	22 Jan 2018	31 May 2018

VENTURE CAPITAL FUND MANAGER REGIME

VCFM Regime

1. Licensing regime

- Licensed Retail FMC
- Licensed Accredited / Institutional FMC
 - No limit on assets managed
 - Restricted to AIs and IIs
- Registered FMC
 - S\$250 million in assets managed
 - Not more than 30 'qualified investors'

VCFM Regime

2. Licensing criteria

- Competency of key individuals
- Fit and proper shareholders, directors, representatives and employees
- Base capital of S\$250,000
- Compliance arrangements commensurate with nature, scale and complexity
- Risk management framework
- Internal audit and independence annual audits
- Professional indemnity insurance recommended but not mandatory

VCFM Regime

3. Key ongoing requirements

- Risk-based capital of at least 120% of operational risk requirement
- Independent custody of assets
- Independent valuation and customer reporting
- Measures to mitigate conflicts of interests
- Adequate disclosure to customers
- AML/CFT requirements
- Reporting of Misconduct

VCFM Regime

4. Rationale for relaxed VCFM regime

- VC managers play important role in VC ecosystem
- Appropriate to simplify and shorten authorisation process:
 - VC investors typically highly sophisticated and negotiate stringent contractual safeguards
 - VC investments do not involve public markets and being closed-end, reduce operational and conduct risks
 - decreased risks and improve access to funds for local start-ups

VCFM Regime

5. Fund Eligibility

- Manage funds that meet the following characteristics:
 - Invest in business ventures that are not listed on a securities exchange
 - Invest at least 80% of committed capital in securities that are directly issued by start-ups that are no more than 10 years old
 - Must not be continuously available for subscription
 - Must not be redeemable at discretion of investor
 - Offered only to AIs and IIs

*Existing Licensed A/I FMC and RFMCs may transition to VCFM

VCFM Regime

6. Admission and ongoing requirements

- Fit and proper
- Singapore incorporated company with physical office in Singapore
- Disclose to investors you are not subject to all regulatory requirements imposed on other FMCs
- Comply with AML/CFT
- Submit periodic returns
- No need for:
 - directors and representatives with requisite competency requirements
 - capital requirements and other financial and business conduct rules

INITIAL COIN OFFERINGS

MAS's approach to FinTech

- **Risk-based approach to FinTech innovation in the unregulated sector.** “Regulation must not front-run innovation. Introducing regulation prematurely may stifle innovation and potentially derail the adoption of useful technology...”
- **“FIs do not have to seek MAS’ permission to try new things... MAS will therefore introduce a “regulatory sandbox” approach that aims to give FIs more confidence to experiment and launch their innovative products or services within controlled boundaries.”**

"FinTech – Harnessing its Power, Managing its Risks" – Panel Remarks by Mr Ravi Menon, Managing Director, Monetary Authority of Singapore, at Singapore Forum on 2 April 2016

Singapore ICOs so far



- Kyber – instant decentralised cryptocurrency exchange – raised ~USD 60 million in few hours – **Singapore issuer**



- Electrify– Retail energy blockchain marketplace – raised USD 30 million – **Singapore issuer**



- Telegram – Instant messaging service – raised USD 850 million



TenX

- TenX – solution for spending cryptocurrencies in real world – raised USD 34 million in 7 minutes, closed at USD 83 million – **Singapore issuer**



- Brave – web browser – raised USD 35 million in **24 seconds**

ICOs – Pros (or Cons?)

Pros

- Unregulated and cost-efficient process
- No detailed preparation and paperwork
- Lightning-fast fundraising
- Secure (anonymous) payment for tokens with cryptocurrency
- Rapid (in thousands per cent.) token value growth
- Issuers have no constraints imposed by investors

Cons

- No protection against fraudulent issuers
- Risks have to be assessed by investors
- One may be too late
- Necessity to acquire cryptocurrency in advance
- Risks of market overheat
- No shareholder control over the company

Challenges to integrity and credibility of ICOs

- Not all coin issuers are able to provide investors with a justified white paper outlining project prospects
- Unregulated process - no legal protection for investors' rights
- No guarantee against fraud or guaranteed return of investment
- Coin issuers / investors could remain unknown - AML issues
- No control over the target company (coin issuer)



Overview of approach to ICOs in Singapore

- Overlap with MAS' FinTech regulatory sandbox policy
- MAS would regulate an offer or issue of tokens in Singapore only if such tokens fall within the definition of "securities" under the Securities and Futures Act (SFA)
- Similar to the Howey test in the USA
- Singapore an ICO hotspot – 3 ICOs in Singapore alone in Q1 2018 alone

ICO regulation around the region

Country	Status of Cryptocurrencies	Status of ICOs as fundraising mechanism
Singapore	Legal, with regulatory sandbox	Allowed
China	Legal to hold	Banned
Hong Kong SAR	Legal	Banned
Japan	Legal	Allowed
South Korea	Legal	Banned
Indonesia	Legal to hold, but illegal as payment tool	Still being considered by regulators (Source: http://www.allenoverly.com/publications/en-gb/lrrfs/cross-border/Pages/Initial-Coin-Offerings-%E2%80%93-increasing-regulatory-risk.aspx)
Vietnam	Legal to hold, but illegal as payment tool.	Still being considered by regulators (Source: https://ibcgroup.io/vietnam/)

Regulatory status of Cryptocurrencies and ICOs

- **Cryptocurrencies:**

- According to the Minister of Finance in Parliament on February 2018, there is no strong case for banning cryptocurrency trading in Singapore.
- However, those involved as intermediaries will be subject to anti-money laundering regulations.
- The MAS has also issued advisories to warn members of the public of the risks of investing in cryptocurrencies. (<http://www.mas.gov.sg/News-and-Publications/Parliamentary-Replies/2018/Reply-to-Parliamentary-Question-on-banning-the-trading-of-bitcoin-currency-or-cryptocurrency.aspx>)

- **ICOs:** The MAS clarified in August 2017 that the offer or issue of digital tokens in Singapore will be regulated by MAS if the digital tokens constitute products regulated under Singapore's securities law. (<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-clarifies-regulatory-position-on-the-offer-of-digital-tokens-in-Singapore.aspx>)

How lawyers can help

- Participate in work on shaping regulatory framework for ICOs
- Opining on the nature of tokens within an ICO (whether within the ambit of securities regulations)
- Assisting coin issuers with white papers and associated risks
- Protection of investors' rights
- Due diligence on coin issuers

**DIGITAL ADVISORY
SERVICES
(‘ROBO-ADVISORS’)**

MAS's June 2017 Consultation Paper

- *"The Monetary Authority of Singapore ("MAS") welcomes the offering of digital advisory services to complement the existing suite of advisory channels as it has the potential to improve consumers' access to low-cost investment advice."*
- *"The type of licensing depends on the operating model of the digital adviser. The licensing and business conduct rules under the Securities and Futures Act...and Financial Advisers Act...can accommodate digital advisory services. That said, MAS recognises the need to review the current regulatory framework to ensure that the existing safeguards in the legislation continue to be relevant for the provision of digital advisory services."*

Investor safeguards

- Ensure methodology of algorithm behind client-facing tools are robust
- Must have policies, procedures and controls to test algorithms
- Disclose to clients conflicts, reasons for selectivity, limitations of recommendations
- Board and senior management oversight and governance

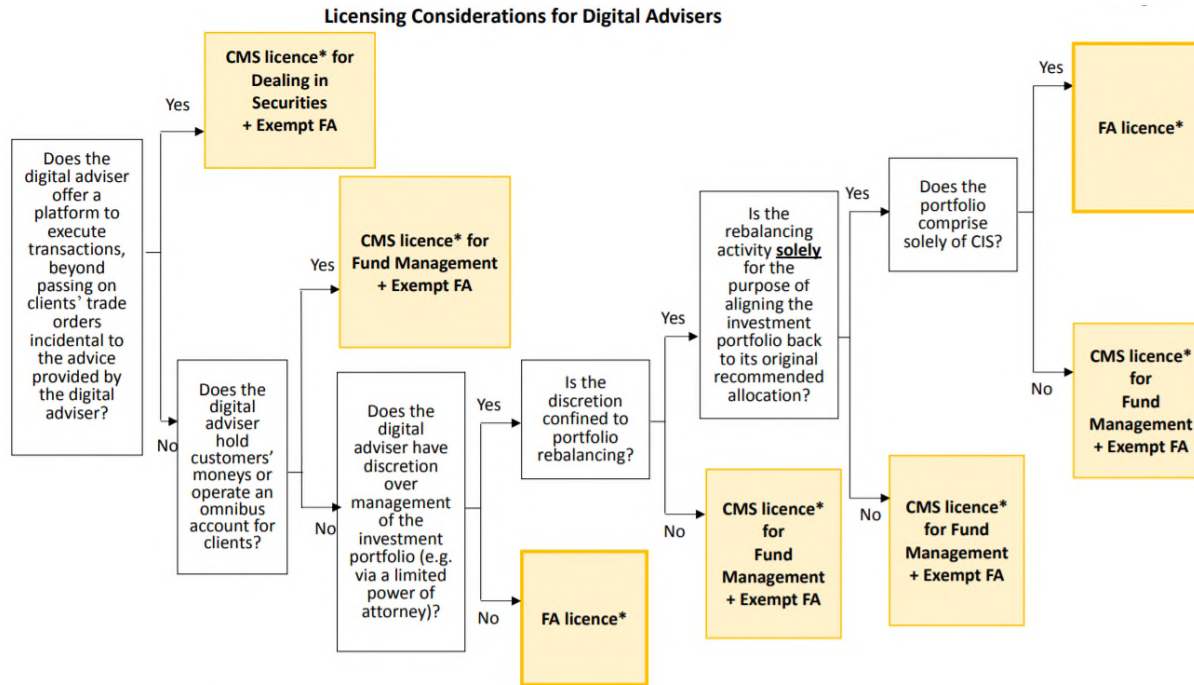
Exemptions being considered

- Exemption from full information collection requirement
- Exemption from track record and AUM requirements
- Exemption for advisors licensed under FAA from CMS licence requirement under SFA

Dispensation being considered

- Digital advisers who are engaged solely in portfolio rebalancing activities for portfolios that comprise solely of listed and unlisted CIS to be exempted from the CMS licence requirement

Visualisation of proposed regime



* Unless otherwise exempted

Next steps for Robo-Advisers

- Consultation ended in July 2017
- No further announcement from MAS, so watch this space...

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This year is our 8th Annual Tech May-rathon and we are offering over 30 in-person and virtual events on topics of importance to our clients including privacy and cybersecurity, new developments in immigration, employment and tax law, fintech, telecom, disruptive technologies, issues in global tech and more.

A full listing and of our tech May-rathon programs can be found at <https://www.morganlewis.com/topics/technology-may-rathon>

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Q&A



Thank you for running in the 2018 Technology May-rathon with us.

We would be pleased to answer your questions.

The Q&A tab is located on the bottom right hand side of your screen. Please type your questions in the space provided and click Send.

Biography



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Daniel Yong specialises in investment funds and cross-border private equity and mergers and acquisitions transactions. He represents sovereign wealth funds, private equity managers, and corporate clients in the financial services, real estate, telecommunications, and energy industries. Fund managers, capital markets service providers, and clearing houses often seek Daniel's advice regarding the licensing requirements under Singapore's Securities and Futures Act. He routinely manages complex transactional matters in the Asia- Pacific region, including India.

Biography



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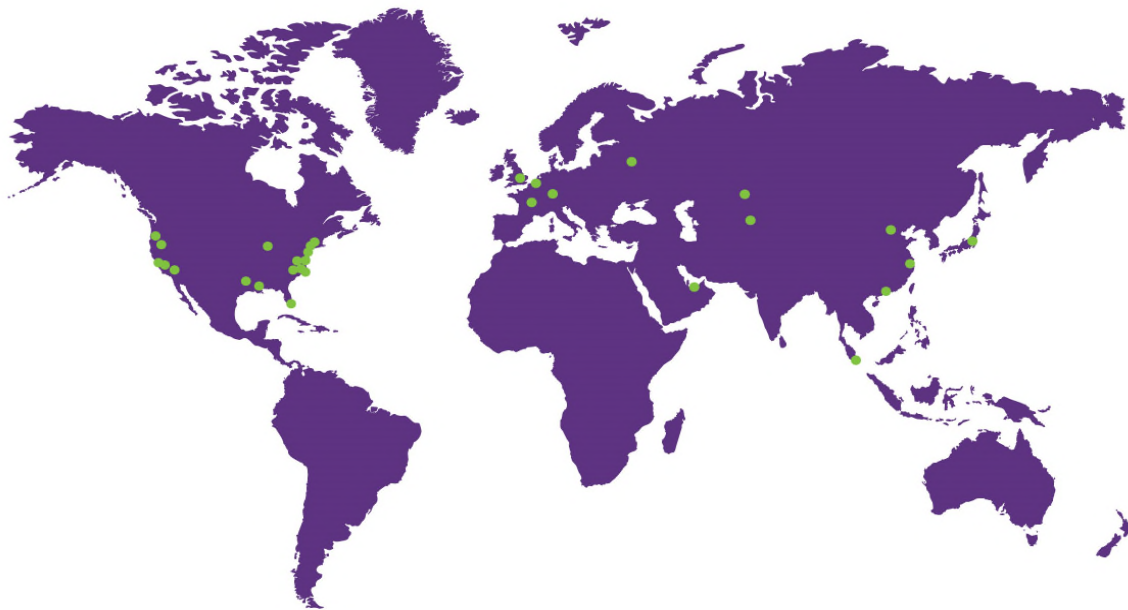
Edward Bennett counsels on a wide range of corporate and business transactional matters, including private equity, mergers and acquisitions, capital markets, secondary buyout, and refinancing. Ed's experience includes advising on the formation of private equity buyout, infrastructure and debt funds, secondary transfers of fund interests, as well as subsequent closings and the structuring of a number of carried interest schemes. He works with fund managers and institutional investors across the globe on the structuring, establishment, and commitments to these funds. He is a Registered Foreign Lawyer in Singapore.

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