Morgan Lewis

Morgan Lewis Hedge Fund University™

GOING GLOBAL: SINGAPORE

OPENING OR OPERATING AN INVESTMENT MANAGEMENT OFFICE

June 25, 2015

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SINGAPORE CORPORATE STRUCTURE

Incorporation

- Fund management companies are typically established as private companies limited by shares (**SingCo**)
- Key steps involved in incorporating a SingCo are as follows:
  - Reservation of business name with the Accounting and Regulatory Authority of Singapore (**ACRA**)
  - Upon successful reservation, lodgment of:
    - The memorandum and articles of association
    - Details of directors, company secretary, and shareholders
    - Details of SingCo's registered office
    - A return of allotment of shares
    - A statement containing details of any shares allotted other than for cash
- Submission is handled electronically. If documents are in order, SingCo is usually established within one day

Incorporation

- Establishment fees
  - Typically in range of S$3,000 and upwards
  - Include name reservation, filing fees, and costs of the company kit and seal
  - Exclude fees payable in respect of postincorporation services
    - Company secretarial services
    - Registered office address
    - Nominee shareholder
    - Nominee director
    - Bookkeeping
    - Tax agents
    - Employment pass applications
    - GST compliance

Features of SingCo

- Business purpose
  - Unlimited, able to conduct any and all types of legal business activity

- Share capital
  - May be designated in any currency
  - No minimum paid-up capital requirement and no concept of par value
  - No requirement for local shareholders and no minimum number of shareholders
  - Single corporate shareholder is permissible

- Directors
  - Minimum one director ordinarily resident in Singapore
  - Corporate directors not permitted
  - Nominee directors may be appointed

Features of SingCo

- Company secretary
  - An individual resident in Singapore
  - Appointed within six months of incorporation
  - Usually outsourced to professional corporate secretarial firms

- Company auditor
  - Appointed within three months of incorporation

- Registered office
  - SingCo must have a registered office in Singapore
  - Corporate secretarial firms can provide this service

SINGAPORE EMPLOYMENT LAW

Employment Act

- Employee-employer relationship largely regulated by employment contract

- Employment Act (**EA**) sets out minimum standards for all employees except:
  - Managers and executives who earn basic monthly salaries of more than S$4,500
  - Seafarers
  - Domestic workers
  - Statutory board and government employees

- Part IV of the EA, which provides for rest days, hours of work, and other conditions of service:
  - Applies only to workmen and employees with basic monthly salaries not exceeding $4,500 and $2,500, respectively
  - Does not apply to managers and executives

Employment Act

- Payment of Salary
  - Salary and overtime pay must be paid to employees at least once a month
    - Salary: within seven days after the end of the salary period
    - Overtime pay: within 14 days after the end of the salary period

- Working Hours
  - Contractual hours (excludes break time and overtime) of work should not be more than eight hours a day **OR** 44 hours a week

- Public Holidays
  - Employees are entitled to 11 paid public holidays per year or payment in lieu thereof or a replacement day off. If they work on a public holiday, they should be given an extra day's salary on top of that day's salary

Employment Act

- Rest Days
  - Employees are entitled to at least one rest day every week without pay. If they work, they are entitled to the following pay:

Hours Worked	Half Day or Less		More Than Half Day to Full Day	
Situation	At employer's request	At employee's request	At employer's request	At employee's request
Pay (Basic Rate)	One day's pay	Half-day's pay	Two days' pay	One day's pay

- Sick Leave
  - Employees are entitled to 14 days of paid outpatient sick leave and 60 days of hospitalization leave per year if they have
    - Been employed for at least three months
    - obtained a medical certificate from the company doctor or a government doctor, and
    - informed their employer of the sick leave within 48 hours

Employment Act

- Annual Leave
  - Employees are entitled to a minimum of seven days, paid annual leave if they have worked at least three months, with this number increasing by one every year to a cap at eight days per year

- Central Provident Fund (**CPF**) Contributions
  - Under the CPF Act, employers must pay CPF contributions for all employees who are Singapore Citizens/Singapore Permanent Residents (**SPRs**) Contribution rates are determined by:
    - Employee's age group
    - Employee's wage band
    - Employee's citizenship

Employment Act

- Noncompliance with EA
  - Fine of between $3,000 and $15,000 and/or maximum of six months in jail
  - Fine of between $6,000 and $30,000 and/or maximum of 12 months in jail for subsequent offenders

- Noncompliance with the CPF Act
  - Late payment interest charged at 18% per annum (1.5% per month)
  - Fine of up to $5,000 and no less than $1,000 per offense and/or up to six months, jail time
  - Fine of up to $10,000 and no less than $2,000 per offense and/or 12 months, jail time for subsequent offenders

Termination of Employment

- Governed by the employment contract; otherwise EA sets out minimum standards if it applies
- Termination with notice
- Termination without notice
- Termination due to misconduct
- Appeal against unfair dismissal

Termination with Notice

- If the employee or employer intends to terminate the contract, each must give notice to the other party in writing, or pay salary in lieu. Notice can be waived by mutual consent

- If no notice period was agreed upon, the following applies:

Length of service	Notice period
Less than 26 weeks	1 day
26 weeks to less than 2 years	1 week
2 years to less than 5 years	2 weeks
5 years and above	4 weeks

- The employer must make CPF contributions for any salary earned during the notice period

Termination with Notice

- Taking annual leave during notice period
  - The employer cannot force the employee to go on leave during the period of notice, unless the employee consents

- Using annual leave to offset notice
  - The employee can use his annual leave to offset the notice period in order to **bring forward his last day** of employment
    - He would only be **paid up to his last day of work**
    - The annual leave used to offset the notice will not be paid

- Taking sick leave during notice period
  - Treated as part of the notice period. The employer cannot claim for any short notice

Termination with Notice

- Going on reservist training
  - Cannot be used to offset notice period

- Starting new employment while serving notice
  - The employee serving notice is still considered an employee of his current employer
  - He cannot start work with another employer until his date of termination, unless his contract allows him to, or he has written permission from his current employer

Termination Without Notice

- Salary in lieu of notice
  - Either the employee or the employer may terminate a contract, without waiting for the notice period to end, by paying salary in lieu of notice

- Other situations
  - The employee can terminate if the employer fails to pay his salary within seven days of it being due
  - The employer can terminate if the employee is absent from work continuously for more than two working days without:
    - Approval or a good excuse
    - Informing or attempting to inform the employer of the reason

- An employer cannot reject a resignation. The employee has the right to resign at any time by serving the required notice or by compensating the employer with salary in lieu

Termination Due to Employee Misconduct

- An employer may dismiss an employee without notice if he is found guilty of misconduct

- Misconduct is the failure to fulfill the conditions of employment in the contract of service. Examples include theft, dishonesty, disorderly or immoral conduct at work, and insubordination

- However, the employer must conduct an inquiry before taking any disciplinary action

Termination Due to Employee Misconduct

- **Holding an inquiry**
  - There is no fixed procedure for an inquiry, but as a general guide:
    - The person hearing the inquiry should not be in a position that may suggest bias
    - The person being investigated for misconduct should have the opportunity to present his case

- **The employer may suspend the employee from work during an inquiry**
  - The suspension period cannot exceed one week
  - The employee should be paid at least half his salary during suspension

- **Actions after an inquiry**
  - If the inquiry finds the employee guilty of misconduct, the employer may:
    - Terminate his service without notice
    - Instantly downgrade him
    - Instantly suspend him from work without pay, for not more than one week
  - If **no misconduct** is found, the employer must restore the full amount of any salary that was withheld during the suspension period

Appeal Against Unfair Dismissal

- If the employee feels his dismissal is unfair, he can appeal in writing to the Minister for Manpower (**MOM**)

- If it can be shown that the employee was unfairly dismissed, the MOM may consider reinstating him to his former job, or order a sum of money as compensation

Noncompete

- A restrictive covenant is not valid and will be void unless it is reasonable as a matter of both private and public interests
  - Legitimate proprietary interest of employer to be protected
  - Interest of employee to use his skills to make a living
  - Public interest in securing a competitive trade environment

- The restriction must not be wider than is reasonably necessary to protect the interest of the employer
  - Period of restraint
  - Geographical area of restraint
  - Scope of restraint

Work Pass Requirements

- Non-Singapore resident individuals are required to hold valid work passes before they can work in Singapore

- There are various work passes an individual can apply for depending on the nature of their work, including:
  - Professionals – managerial, executive, or specialised jobs
  - Employment Pass: Fixed monthly salary of at least S$3,300 and acceptable qualifications. Must be cancelled on termination of employment
  - Personalised Employment Pass: Granted to existing EP holders, granted on applicant's merit, and not tied to employer
  - EntrePass: For foreign entrepreneurs intending to start a business in Singapore

Work Pass Requirements

- Midlevel – e.g., technicians
  - S Pass: Applicable to midlevel skilled workers who earn a fixed monthly salary of at least $2,200. Applicants are assessed based on salary, education, skills, job type, and work experience

- Skilled and Semiskilled workers – workers from an approved source country/territory
  - Work Permit: Issued to foreign unskilled workers generally for two years depending on a worker's passport validity, Banker's/Insurance Guarantee, and the worker's employment period

Fair Employment Practices

- Firms submitting employment pass applications are required to advertise the job vacancies on a jobs bank administered by the Singaporean Workforce Development Agency for two weeks before opening the position up to any foreigners
  - Advertisements have to comply with the Tripartite Guidelines on Fair Employment Practices
  - Advertisements should run for at least 14 days before EP submission
  - Avoid stating a preference for age, race, language, gender, marital status, and religion

- Small firms with 25 or fewer employees and jobs that pay a fixed monthly salary of S$12,000 and above will be exempted from the advertising requirements

Fair Employment Practices

- MOM and other government agencies will identify and engage companies that have scope to improve their hiring and career development practices, including those that:
  - Have a disproportionately low concentration of Singaporeans at the professional, executive, and managerial levels compared to others in its industry
  - Have had repeated complaints of nationality-based or other discriminatory HR practices

- If firms are not responsive toward improving their recruitment and training practices, MOM may impose additional requirements such as:
  - Greater scrutiny and a longer review period for their EP applications
  - Curtailing of their work pass privileges

SINGAPORE TAX LAW

Singapore Taxation

- Corporate income tax at **17%** except where tax incentives apply

- Singapore taxation is **source based**
  - Operative words: "accruing in or derived from"
  - Chargeability of agent of nonresident person
  - Deemed-sourced provisions: income such as interest, commission, or management fees

- Common tax reliefs:
  - **New Company Tax Exemption Scheme**: full tax exemption on the first S$100,000 and 50% tax exemption on the next S$200,000 of chargeable income for each of a company's first three consecutive years of assessment
  - If a company is unable to claim the New Company Tax Exemption Scheme, it is entitled to enjoy Partial Tax Exemption: 75% tax exemption on the first S$10,000 and a further 50% tax exemption on the next S$290,000 of chargeable income from the fourth year of assessment onward

- **Capital allowances** on fixed assets such as office equipment, furniture, and fixtures that are bought and used in the trade or business

Singapore Taxation

- Withholding tax at **17%** for certain payments made to nonresident company (20% if the recipient is a nonresident individual; lower withholding tax rates for payments in certain specified cases)
- Applicable to management, technical, and other service fees paid to a nonresident company or individual
- Singapore is a signatory to the Convention on Mutual Administrative Assistance in Tax Matters and has concluded a Model 1 Agreement with the United States for the US Foreign Accounts Tax Compliance Act

Foreign-sourced Income
– Singapore Tax Perspective

- **Foreign-sourced Income Exemption Scheme** (Sections 13(7A) to 13(11) of the Income Tax Act of Singapore)

- Applicable to foreign-sourced dividend, foreign branch profits, and **foreign-sourced service income**

- Foreign-sourced service income includes income generated by a resident taxpayer for services performed or provided through **a fixed place** of operation in a foreign country

- Applicable only where the headline corporate tax rate in the foreign country from which the income is derived is **not less than** 15% and the income had already been subjected to tax in that particular country

Financial Sector Incentive Scheme

- Financial Sector Incentive (**FSI**) Scheme introduced since 2004
- FSI Scheme introduced to encourage the development of high growth and high value added financial activities in Singapore
- Fund management companies can enjoy tax incentives if they qualify for the FSI-AFM[(1)(2)] awards

Notes:

(1) FSI-AFM: FSI Scheme applicable to approved fund managers.

(2) Need to meet the Standard-Tier (**ST**) FSI qualifying activities and criteria for ST awards.

Financial Sector Incentive Scheme

- Standard-Tier (**ST**) FSI qualifying activities for ST awards:
  - Fund management: an FSI qualifying activity

- ST FSI qualifying criteria for ST awards (FSI-AFM):
  - At least three professional staff in Singapore engaged in the qualifying activity of fund management

- FSI-AFM concessionary tax rate of 10% instead of the usual 17%

- Nonresident foreign investors are exempted from tax on specified income derived from funds managed by (i) any licensed fund manager in Singapore or exempt company under the Securities and Futures Act (**SFA**); (ii) any approved start-up fund manager

SINGAPORE REGULATION

Licensing of Fund Management Companies

Section 82 of the SFA states**:**

> "No person shall…carry on business in any regulated activity* or hold himself out as carrying on such business unless he is the holder of a capital markets services license for that regulated activity"

- Violators are subject to fine not exceeding S$150,000 or to imprisonment for a term not exceeding three years or to both and, in the case of a continuing offence, to a further fine not exceeding S$15,000 for every day during which the offence continues after conviction
- Monetary Authority of Singapore (**MAS**) de facto central bank and financial institutions regulator

*Providing financial advisory services is separately regulated under the Financial Advisers Act.

Licensing of Fund Management Companies

List of Regulated Activities Under the SFA

- Dealing in securities
- Trading in futures contracts
- Leveraged foreign exchange trading
- Advising on corporate finance
- *Fund management* (covered on next page)
- Real estate investment trust management
- Securities financing
- Providing credit rating services
- Providing custodial services for securities

*Marketing of collective investment schemes

Definition of Fund Management

- Definition of "fund management":

  Undertaking on behalf of a customer (whether on a discretionary authority granted by the customer or otherwise)

  (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

- The definition of "fund management" makes no distinction between separate accounts and pooled vehicles

How Is "Fund Management" Interpreted?

- Term is interpreted broadly

- Investment advisors, subadvisors, or persons providing research to investment managers (whether based in Singapore or overseas) could potentially be deemed to be conducting fund management business in Singapore if such person is *able to exercise direct or indirect control over management of the investment portfolio*
  - Is person involved in investment portfolio construction?
  - Does person have knowledge of, or access to, nonpublicly available information of the portfolio holdings?
  - Is the person named, or referred to, in the prospectus, offering, or marketing documents?

Extra-Territorial Effect

- The licensing requirements apply whether or not the acts constituting "fund management" are carried out physically in Singapore or otherwise

- An act is deemed done in Singapore if the act:

  (a) is done partly in and partly outside Singapore;

  (b) is done outside Singapore but has a substantial and reasonably foreseeable effect in Singapore. Relevant factors considered here include:

  - number of persons in Singapore approached
  - any significant or adverse impact on the soundness, stability, and safety of Singapore financial system, or on public/investor confidence
  - any advertisement or published information targeted at persons in Singapore
  - you have entered into contracts with persons in Singapore to offer the services
  - whether the offer is priced in Singapore dollars

- Genuine "reverse solicitation" is exempted

Exemptions from Licensing

Three classes of exemptions:

- Institutions already regulated by MAS
  - Banks, insurance companies, securities exchanges, clearinghouses
- Entities where conduct of regulated activities is ancillary to main business
  - Licensed trust companies, law firms, accounting firms, liquidators, foreign company operating under an approved "Paragraph 9" arrangement
- Specific exemptions:
  - Proprietary fund management for group companies
  - Licensed financial advisers where fund management is in connection with advice given concerning units in an unlisted Collective Investment Scheme (**CIS**)
  - Pure real estate play managers on behalf of qualified investors
  - A Registered Fund Management Company (**RFMC**)

Types of Approvals

1. Licensed Retail FMC:

- FMCs who are licensed to serve retail investors

2. Licensed Accredited/Institutional FMC (**Licensed A/I FMC**)

- Licensed to serve only accredited and/or institutional investors
- No limit as to number of investors or assets under management

3. RFMC:

- Permitted to serve no more than 30 "qualified investors" of which not more than 15 are CIS, closed-ended funds or limited partnerships
- Aggregate AUM does not exceed S$250 million

Criteria for Licensed A/I FMC

Key criteria:

- Singapore-incorporated company with permanent physical office in Singapore
- Personnel requirements:
  - Two directors with minimum five years, relevant experience; one executive director ordinarily resident in Singapore
  - CEO with at least five years, relevant experience
  - Two Representatives residing in Singapore
  - Two relevant professionals residing in Singapore with minimum five years, relevant experience

* Requirements are cumulative: same individuals may fulfill multiple criteria

- Fit and Proper:
  - Applicant, substantial shareholders, directors, CEO, Representatives, and employees to comply with MAS's Guidelines on Fit and Proper Criteria

Criteria for Licensed A/I FMC

- Capital maintenance requirements
  - Base capital of S$250,000
    - MAS recommends maintaining an additional buffer, having made a reasonable assessment of the amount of such buffer FMC may need, considering its scale and scope of operations
  - Risk based capital
    - Ensure that financial resources do not fall below Total Risk Requirements and are at least 120% of Operational Risk Requirements

- Internal Audit
  - May be performed internally, by head office or outsourced

- Independent annual audits
  - P&L and balance sheet lodged with MAS, together with auditor's report and certificate

Criteria for Licensed A/I FMC

- Professional indemnity insurance (**PII**)
  - Strongly encouraged but not required to maintain PII
  - Disclose to all customers FMC's PII arrangements (or absence)
  - If PII is procured, deductible should not exceed 20% of base capital

- Representatives
  - Individuals are required to be notified to the MAS and placed on a Register
  - Hold certain academic qualifications
  - Appointed Reps, Provisional Reps, Temporary Reps
  - Fulfill Fit and Proper requirements (honesty, integrity, and reputation; competence and capability; financial soundness)
  - Continuing training
  - FMC to regularly conduct due diligence checks on its Representatives

Criteria for Licensed A/I FMC Compliance

- Compliance arrangements
  - Implement compliance arrangements commensurate with nature, scale, and complexity of business. MAS expects effective written policies on all operational areas
  - Specify roles and responsibilities of officers and employees and set out limits of discretionary powers to commit the FMC to financial undertakings or to expose the FMC to any business risk
  - Identify, address, and monitor risks
  - Provide adequate internal audit procedures
  - Keep a written record of steps taken to monitor compliance with policies and procedures
  - Ensure accuracy, correctness, and completeness of reports, books, or statements submitted to head office or to the MAS
  - Implement effective controls and segregation of duties to mitigate potential conflicts

Criteria for Licensed A/I FMC Compliance

- For Licensed A/I FMC with AUM exceeding S$1 billion:
  - Independent and dedicated compliance function *in Singapore* with staff who are suitably qualified and independent from the front office
  - Compliance staff may perform other nonconflicting and complementary roles
  - If the FMC is only performing research and advisory activities, may obtain compliance support from an independent and dedicated compliance team at holding company or overseas affiliate
- For Licensed A/I FMC with AUM under S$1 billion:
  - Independent function with suitably qualified and independent staff; no requirement that such function sits in Singapore
  - Either designate a senior staff member as compliance officer or demonstrate adequate compliance oversight/support from an independent and dedicated team at holding company or overseas affiliate
  - May outsource compliance to external service providers who are able to provide meaningful onsite presence at the FMC

Criteria for Licensed A/I FMC – Risk Management

- Implement risk management framework to identify, address, and monitor risks associated with customer assets
- Guidelines offer flexibility: framework dependent on nature and size of operations and nature of assets under management
- Framework should deal with:
  - Governance, independence, and competency of risk management function
  - Identification and measurement of risks associated with customer assets
  - Internal controls
  - Board and senior management
  - Business continuity management
  - Market risk, liquidity risk, and credit risk
  - Timely monitoring and reporting of risks to management
  - Documentation of risk management policies, procedures, and reports

Criteria for Licensed A/I FMC – Other Factors

- Track record of the applicant, its holding company, or affiliates
- Whether the applicant, its holding company, or affiliates are subject to proper supervision by another competent regulatory authority
- Commitment of the applicant's holding company to the applicant's operations in Singapore (letter of support)
- Commitment from the applicant's shareholders, as demonstrated through seed investments in funds managed by the applicant

Business Conduct Requirements

- Assets subject to independent custody
- Assets subject to independent valuation and customer reporting
- Effective measures to mitigate and/or disclose all conflicts of interest (actual or potential)
- Adequate disclosures to clients in respect of each fund or account under management
- Compliance with AML/CFT (Countering Financing of Terrorism) rules
- Reporting of misconduct of Representatives

Applying to Be a Licensed A/I FMC

- Submission to MAS of Form 1A together with supporting documents including:
  - A business profile search result
  - Complete group shareholding chart
  - Proposed business plan
  - Applicant's organizational chart with reporting lines and description of job functions
  - Applicant's financial statements for last three years
  - Policies and procedures regarding handling of customer monies, employee competency, risk management, and AML/CFT compliance
  - Any other supplementary information deemed necessary
  - Form 11: details of CEO
  - Form 3A: appointment of Representatives
- Nonrefundable application fee: S$1,000
- Annual licence fee: S$4,000
- Time frame: generally from three to six months

Applying to Be a Licensed A/I FMC

- Other steps leading up to the application:
  - Incorporating the FMC entity
  - Hiring of Representatives and staff
  - Leasing of office premises

Overview of Singapore's Adviser Regulations

- Exemptions to licensing requirement:
  - Section 23(1) FAA: licensed banks, licensed finance companies, licensed merchant banks *and holders of CMSL*
    - A Licensed A/I FMC is thus exempted from having to apply for an FA license to market CIS
  - First Schedule of FAA: Certain persons whose carrying-on of the business of providing any financial advisory service is solely incidental to their own regulated business or status
  - Regulation 27(1) of the Financial Advisers Regulations (**FAR**) sets out specific exemptions, including:
    - Corporations providing financial advisory services to related corporation or connected persons
    - A person providing financial advisory service to an institutional investor
    - An RFMC marketing CIS managed by it in the course of carrying on a business in fund management for accredited investors or institutional investors

Overview of Singapore's Adviser Regulations (Applying to Be a Licensed FA)

- Singapore-incorporated company or Singapore branch of foreign company
- Submission of Form 1 together with relevant annex and information to MAS:
  - Most recent audited accounts, information on shareholders, proposed business plan, staffing projections, key internal control procedures (e.g. compliance)
  - Form 11: Approval for appointment of CEO/director
  - Form 13: Notice of Place at which register of interests in securities will be kept
  - Form 3A: Appointment of Representatives
- Non-refundable application fee: S$500
- Annual license fee: S$2000
- Time frame: generally from three to six months

Singapore Law Governing "Dual-Hatting"

- Paragraph 9 arrangement
- Allows a foreign entity to carry on fund management in Singapore by way of an MAS-approved arrangement between the foreign entity and its related corporation licensed under the SFA (or exempted under section 99(1)(a) to (d))
- Any person who acts as a representative of the foreign entity is exempted from the RNF. He or she will, however, need to comply with the conditions/restrictions imposed pursuant to the MAS approval
- MAS will not approve arrangements involving shell companies, or marketing entities with minimal business presence or market conduct that could undermine regulatory integrity or pose a risk to financial stability and market confidence
- MAS will give favourable consideration to arrangements where key processes are undertaken or controlled by the Singapore entity (e.g. KYC procedures)

Singapore Law Governing "Dual-Hatting"

- Foreign-related corporation should meet the following criteria:
  - Maintained a track record of at least the last three years in fund management
  - Competence in the specific area of business proposed to be affected under the arrangement
  - Discharges functions in an efficient, honest, and fair manner
  - Maintains a good ranking in its home country
  - Is subject to proper supervision by its home regulatory authority for activities to be carried out under the arrangement

- Paragraph 9 application can be submitted together with the CMSL application
- Application will need to set out certain prescribed information including information on the legal procedures and contractual relationships derived from the arrangement

PRODUCT DISTRIBUTION

Offering Rules

- Generally, offering of securities in Singapore has to be accompanied by a prospectus that is prepared and registered with the MAS and that conforms to the "prospectus" requirements under the SFA
- Usual "safe harbours" to marketing of securities are available. Most commonly used are:
  - Offers to institutional investors
  - Offers to accredited investors
  - Private placements

Safe Harbours

Relevant Safe Harbour	Elements
Offers to Institutional Investors	Institutional Investors
Offers to Accredited Investors	• Not accompanied by an advertisement making an offer or calling attention to the offer or intended offer • No selling or promotional expenses other than administrative or professional services, or commission or prescribed fees
Private Placement	• No more than 50 persons within any rolling 12-month period • Not accompanied by an advertisement making an offer or calling attention to the offer or intended offer • No selling or promotional expenses other than administrative or professional services, or commission or prescribed fees

Private Placement

Calculation of 50-person threshold:

- If an offeree is formed for the primary purpose of acquiring securities, count all underlying owners
- If an offer is made to an offeree with a view to another person acquiring the securities, only the latter person is counted
- If an offer is made with a view to a resale, then if the subsequent resale is not made pursuant to any other safe harbour, both persons will be counted

"Closely related offers"

- An offer made or sponsored by a person is a closely related offer of another offer that is made or sponsored by the same person or by such person's affiliate
- Count offerees in all closely related offers within the same 12-month window

Fund Registration

- Where the underlying fund is or is deemed to be a CIS, securities may only be offered in Singapore under the "accredited investor" safe harbour if the fund is notified to the MAS prior to any offer being made
- MAS will, upon receipt of the notification, enter the fund into the list of Restricted Schemes
- The notification must be accompanied by an information memorandum that complies with certain prescribed SEC requirements relating to disclosures
- Managers of Restricted Schemes must be:
  - Licensed to carry out fund management in the jurisdiction of their principal place of business
  - Fit and proper persons

US REGULATION

US Law Governing "Dual-Hatting"

- Section 203(a) of Investment Advisers Act of 1940 (**Advisers Act**) prohibits an investment adviser from operating an investment advisory business unless the adviser is registered with the US Securities and Exchange Commission (**SEC**) or qualifies for an exemption from registration
  - Historically, the SEC applied the regulations of the Advisers Act expansively
  - The most widely used exemption from registration was the "Private Adviser Exemption"
    - The Private Adviser Exemption was repealed by Dodd-Frank as part of a program to regulate advisers of private funds to register
    - The Private Adviser Exemption was replaced with a much more limited series of exemptions, applicable only to advisers with AUM in the United States of less than $150M who only advise private funds or certain very small foreign private advisers (fewer than 15 clients and investors in the United States and less than $25M AUM attributable to those clients and investors)
- Alternatively, a non-registered adviser's activity may be exempt under certain SEC guidance pertaining to "Dual-Hatting"
  - "Dual-Hatting" refers to a situation where a person is employed by one adviser entity but may participate in the provision of advisory services to the client of another related advisory entity
    - Arrangements, generally do not contemplate dual employment
    - Typically, pursuant to contractual agreement between the affiliated entities (delegation agreement)

US Law Governing "Dual-Hatting"

- Historically, the SEC took the position that, once registered, domestic and foreign advisers are subject to all the substantive provisions of the Advisers Act *with respect to both their US and non-US clients*
- In 1992 the SEC acknowledged its shift away from extraterritorial application of the Advisers Act in favor of an approach that emphasized "conduct and effects" *
- Under the SEC's "conduct and effects" approach, activity that took place outside of the US would be regulated if the activity:
    1. Produced substantial and foreseeable effects in the US or
    2. Involved conduct occurring in the US, regardless of whether the conduct has an effect on US persons or markets
- A Series of no-action letters from 1992 to 1998 (collectively, the **Unibanco Letters**) provide relief to US-registered advisers and their affiliated holding companies to allow them to **make use of personnel and other resources** of affiliated but nonregistered advisers in the course of providing discretionary advisory services to US clients through a US-registered adviser

  The determination of whether an adviser's involvement in the provision of investment advice requires registration is highly fact-sensitive

  "Unibanco Analysis" is not a determination of whether an isolated business activity triggers a registration requirement – it is determining where on the "Unibanco spectrum" the adviser's delivery of investment services, taking into consideration any dual-hatting arrangements, falls

* SEC Division of Investment Management, *Protecting Investors: A Half Century of Investment Company Regulation* (May 1992) at 228-29.

US Law Governing "Dual-Hatting" The First Unibanco Letter (1992)

ISSUE #1

- In the first Unibanco Letter,* a Brazilian banking organization (Unibanco) requested assurance that the SEC would not seek enforcement action if the Brazilian banking organization did not register under the Advisers Act, notwithstanding that its Brazilian subsidiary, an SEC-registered investment adviser, provided investment advice to US clients
  - The registered subsidiary sought to use research from Unibanco and share certain key personnel, some of whom would be involved in providing investment advice to the registered subsidiary's US clients

CONDITIONS OF RELIEF

- The SEC said that it will recognize separateness and not require Unibanco to register if:
  1. The affiliated companies are separately organized
  2. **The registered entity is staffed with personnel (whether physically located in the US or abroad) who are capable of providing investment advice**
  3. All persons involved in the US advisory activities are deemed "associated persons" of the registrant
  4. The SEC has adequate access to trading and other records of each affiliate involved in US advisory activities, and to its personnel, as necessary

Prior to the first Unibanco Letter, the SEC only permitted a foreign adviser to avoid subjecting all of its operations to the Advisers Act if it formed a **separate and independent** subsidiary to provide advice to United States clients. A "buffer" between the unregistered subsidiary's personnel and the parent and no overlap in duties between persons providing investment advisory services were key elements of the earlier approach – requirements that have become impractical as the business of investment management has become global

The SEC's reasoning was that these conditions ensured that the parent company was not indirectly engaged in activities that would require it to register under the Advisers Act

*Uniao de Bancos de Brasileiros, Securities and Exchange Commission (July 28, 1992).

US Law Governing "Dual-Hatting" The First Unibanco Letter (1992)

ISSUE #2

- In the first Unibanco Letter, Unibanco also requested assurance that the SEC would not recommend enforcement action if Unibanco's US-registered subsidiary provided investment advisory services to non-US clients solely in accordance with non-US laws*

CONDITIONS OF RELIEF

- The SEC conditioned its relief with respect to a SEC-registered foreign adviser providing investment advice to non-US clients otherwise than in accordance with the rules of the Advisers Act on:
    1. The registered foreign adviser keeping certain records
    2. The registered foreign adviser designating an agent for service of process
    3. The foreign registered adviser providing the SEC with access to foreign personnel

A fundamental principle of the SEC's decision to move away from its extraterritorial approach to the application of the Advisers Act, was that "**non-United States clients would not expect the Advisers Act to govern their relationship with a non-United States adviser**"

Therefore, when determining where on the "Unibanco Spectrum" an advisory business falls, a key consideration is whether the client being provided investment advice would expect to receive the protections of the Advisers Act

*Uniao de Bancos de Brasileiros, Securities and Exchange Commission (July 28, 1992).

US Law Governing "Dual-Hatting" The Second Unibanco Letter (1993)

In 1993, the SEC expanded the Dual-Hatting relief it would provide to non-US entities

ISSUE #1:

- In the second Unibanco Letter,* Mercury Asset Management (MAM), a UK corporation, requested that the SEC not recommend enforcement action if MAM registered under the Advisers Act but complied with the Advisers Act only with respect to clients who are US persons

CONDITIONS OF RELIEF:

- With respect to MAM's first request, the SEC conditioned its relief in the second Unibanco Letter on:
    1. MAM complying with all requirements of the Advisers Act with respect to US clients
    2. MAM complying with all recordkeeping requirements of the Advisers Act with respect to all of its clients
    3. MAM promptly providing the SEC, upon request, all books and records that Rule 204-2 requires it to keep
    4. MAM making available all personnel to the SEC
    5. MAM making certain disclosures in Form ADV
    6. MAM not holding itself out to non-US clients as being registered under the Advisers Act

*Mercury Asset Management, plc, Securities and Exchange Commission (Apr. 16, 1993).

US Law Governing "Dual-Hatting" The Second Unibanco Letter (1993)

ISSUE #2:

- Whether the SEC staff would recommend enforcement action if certain affiliated entities of MAM and of MAM's subsidiary (Warburg, itself a registered investment adviser) do not register under the Advisers Act, but provide investment advice to US persons through MAM or Warburg

MAM's proposal, therefore, sought to use unregistered **participating affiliates** to ***deliver investment advice*** to US clients

Absent relief, by providing investment advice to United States clients through MAM or Warburg, the Participating Affiliates would have had to register under the Advisers Act

CONDITIONS OF RELIEF:

- With respect to MAM's second request, the SEC conditioned its relief in the second Unibanco Letter on:
    1. The Participating Affiliates being disclosed in MAM and Warburg's ADV forms
    2. The Participating Affiliates being deemed "associated persons"
    3. Each Participating Affiliate submitting to the jurisdiction of US courts in connection with investment advisory activities for US clients of MAM and Warburg

US Law Governing "Dual-Hatting" The Final Unibanco Letter (1998)

- In the last Unibanco Letter,* Royal Bank of Canada (RBC) requested relief for a separate subsidiary formed to advise US clients that utilized personnel and resources of the non-US parent. RBC requested that:
    1. The SEC-registered adviser's affiliates be permitted to participate in the US investment management business of the registered adviser without the affiliates themselves registering as investment advisers;
    2. The SEC-registered and nonregistered affiliates be able to communicate with one another in the process of rendering investment advice to US clients of the registered adviser;
    3. The entities be permitted to share personnel; and
    4. The SEC-registered adviser be permitted to act as an investment adviser to non-US clients solely in accordance with applicable non-US law, effectively permitting the registered adviser to turn on and off its registered status

*Royal Bank of Canada, Securities and Exchange Commission (June 3, 1998).

US Law Governing "Dual-Hatting" The Final Unibanco Letter (1998)

CONDITIONS OF RELIEF

- The SEC granted the relief on the condition that, among other things:
    1. The SEC-registered adviser will comply in all respects with all the requirements of the Advisers Act with respect to the *United States clients*
    2. The SEC-registered adviser will maintain all books and records in accordance with Rule 204-2 under the Advisers Act with respect to *foreign clients*
    3. Upon request, the SEC-registered adviser will promptly provide any and all books and records undertaken to be kept herein and those required by foreign law to be kept
    4. The SEC-registered adviser will not hold itself out to *foreign clients* as being registered under the Advisers Act. When communications are sent to both *United States clients* and *foreign clients*, (i) separate communications will be sent, (ii) references to the registered adviser's registration under the Advisers Act will be deleted in communications with *foreign clients*, or (iii) the communication with *foreign clients* will make clear that the registered adviser will be complying with the Advisers Act only with respect to *United States clients*
    5. **The SEC-registered adviser will deem as an "associated person" each Participating Affiliate and each employee of the Participating Affiliate, including research analysts, whose functions or duties relate to the determination and recommendations that the registered adviser makes to its *United States clients*, or who has access to any information concerning which securities are being recommended to *United States clients* prior to the effective dissemination of the recommendations (including dealing room personnel, if trades for *United States clients* are placed for execution with any affiliate of the registered adviser)**
    6. (i) The SEC-registered adviser will make clear in any communications between the Dual Employees and its *United States clients* that the communications are from the registered adviser, not any Participating Affiliate; (ii) when dealing with *United States clients* or potential *United States clients* of the registered adviser, the Dual Employees will make clear that they are acting in their capacity as personnel of the registered adviser, not a Participating Affiliate; and (iii) the registered adviser will disclose to its *United States clients* in its Form ADV and any brochure provided to *United States clients* pursuant to Rule 204-3 under the Advisers Act that Participating Affiliates may recommend to their clients, or invest on behalf of their clients in, securities that are the subject of recommendations to, or discretionary trading on behalf of, the registered adviser's *United States clients*

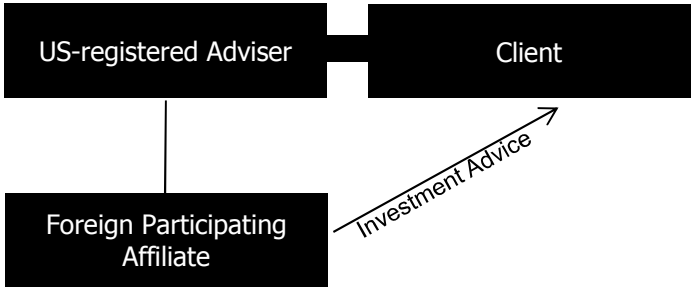
*Mercury Asset Management, plc, Securities and Exchange Commission (Apr. 16, 1993).

Summary of "Unibanco Arrangements"

"Classic" Unibanco Arrangement:

- Adviser is organized in the US
- Adviser is registered under Advisers Act
- Adviser is the "contracting" entity with clients
- Foreign Participating Affiliate assists in providing investment advice to the registered adviser's clients

Question: Must the foreign Participating Affiliate be registered under the Advisers Act?

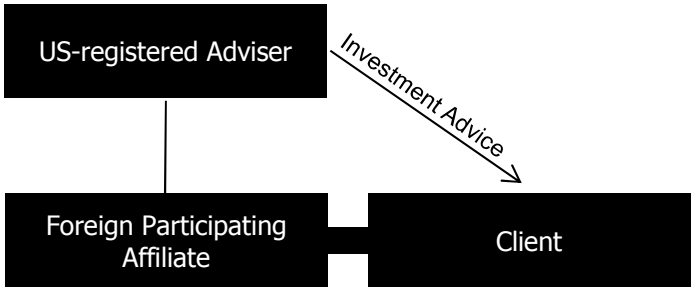


Summary of "Unibanco Arrangements"

"Reverse" Unibanco Arrangement:

- Adviser is organized in the US
- Adviser is registered under Advisers Act
- Foreign affiliate is the "contracting" entity with non-US clients
- Foreign affiliate may or may not be registered under the Advisers Act
- US adviser assists in providing investment advice to the foreign affiliate's non-US clients

Question: Must the foreign affiliate comply with US law when managing accounts of non-US clients?



Summary of "Unibanco Arrangements"

Key Considerations under the Unibanco Letters:

- Whether the registered entity is staffed with personnel (whether physically located in the United States or abroad) who are capable of providing investment advice. *i.e.*, that the adviser making use of the Participating Affiliate's personnel is not trying to avoid registration and compliance (*e.g.*, simply by interpositioning a shell entity)
- Whether the Participating Affiliate is exercising investment discretion
- Whether the client receiving investment advice would expect the Advisers Act to govern its relationship with a non-United States adviser

Additional Considerations Pertaining to Dual-Hatting Arrangements:

- Attention should be paid to the local adviser regulation and local tax implications of dual-hatting personnel in a given country
  - The presence of dual-hatted personnel in a country may raise (1) permanent establishment tax issues for the US Registered Investment Adviser (**RIA**) and (2) questions about whether the US RIA has to be authorized in the foreign jurisdiction

UK REGULATION

UK Law: Licensing of Fund Management Companies

Section 19 of the Financial Services and Markets Act 2000 (the **FSMA**):

"No person may carry on a regulated activity [by way of business] in the UK or purport to do so unless he is an authorized person or an exempt person" (the **General Prohibition**)

An "authorized person" is typically an entity authorized by the Financial Conduct Authority (the **FCA**)

Banks, investment banks, and insurers are authorised by the Prudential Regulation Authority and regulated by it and the FCA

UK Law: Licensing of Fund Management Companies

Contravention of the General Prohibition is a criminal offence

It is a defence for a person to prove that he exercised due diligence and took all reasonable precautions to avoid committing the offence

Violators subject to:

- If convicted on indictment, imprisonment up to two years or an unlimited fine, or both
- On summary conviction, imprisonment up to six months or a fine up to £5,000, or both

UK Law: Licensing of Fund Management Companies

Civil law consequences include:

- An agreement made by an unauthorized person in breach of the General Prohibition will generally be unenforceable against the customer. The customer can still recover any money paid or property transferred and obtain compensation for any loss
- Agreements made by authorised persons may also be unenforceable if agreement is entered into as a result of a third party's unauthorised regulated activity

UK Law: Licensing of Fund Management Companies

List of regulated activities under FSMA include:

- Arranging deals in investments
- Advising on investments
- Dealing in investments as principal or agent
- Discretionary investment management of assets belonging to another person (both separate accounts and pooled vehicles)
- Managing an alternative investment fund (**AIF**) or UCITS fund
- Acting as trustee or depositary of an AIF or UCITS fund
- Operating a collective investment scheme
- Safeguarding and administering investments

UK Law: Licensing of Fund Management Companies

List of specified investments under FSMA include:

- Shares
- Debt instruments
- Options
- Futures
- Contracts for differences
- Units in a collective investment scheme

UK Law: Territorial Scope of the General Prohibition

Only regulated activities carried on in the UK fall within the territorial scope of FSMA

Outward

Section 418 of FSMA extends its territorial scope outward only, whereby persons based in the UK who carry on regulated activities overseas need to be regulated in UK, by deeming activities that would otherwise be carried on outside the UK to be carried on in the UK. Three cases are relevant:

- Day-to-day management in the UK: all persons who have their head or registered office in the UK but who only carry on regulated activities in non-EEA countries will need to be authorised if they direct the day-to-day management of the activities from UK establishment

UK Law: Territorial Scope of the General Prohibition

- Establishment maintained in the UK: even if a person does not have a head or registered office in the UK and is not dealing with UK customers, he will still need to be authorised if the activity is carried on from an establishment maintained by it in the UK
- Managing an AIF: where the person is managing an AIF and:
  - The AIF has its registered office in EEA, or the AIF (wherever domiciled) is marketed in UK/EEA
  - The person's registered office is in UK or its head office is in UK
  - The activity is carried on from an establishment maintained in a non-EEA country

UK Law: Territorial Scope of the General Prohibition

Inward

The "inward" scope of FSMA is implicit in the terms of ection 19 (which deploys the term "in the UK") and therefore captures non-UK based persons doing business in the UK but can be elaborated on by secondary legislation (e.g., the UK carve-out for overseas persons)

Guidance on where certain activities are carried on

Where business has a cross-border element, e.g., where a client is based outside UK or elements of the activity occur outside UK, it is challenging to determine where the activity is conducted

UK Law: Territorial Scope of the General Prohibition

It is commonly considered:

- Dealing in investments will be carried on at the place where acceptance of the offer is received by the offeror, where a communication of an acceptance is instantaneous
- Where a communication of an acceptance is delayed, dealing in investments will be carried on at the place where the communication was posted
- Arranging deals is normally carried on at the place where the arranger is when the arrangements are made
- Discretionary investment management is carried on at the place where the investment manager reviews portfolios and makes investment decisions

UK Law: Territorial Scope of the General Prohibition

- Investment advice is given at the place where it is received
- A person in the UK who is safeguarding and administering investments will be carrying on that activity in the UK even though client is overseas

UK Law: The Overseas Persons Carve-Out

Overseas persons carve-out can be relied on by third-country firms (**TCFs**):

- Who do not maintain a permanent place of business in the UK
- Who carry on certain activities that would otherwise be regulated (and require them to become authorised) either:
  - With or through an authorised (or exempt) person; or
  - As a result of a "legitimate approach," which is either an approach to, by, or on behalf of an overseas person, which is in compliance with the UK financial promotion regime or an unsolicited approach

UK Law: The Overseas Persons Carve-Out

Interaction between section 418 FSMA and the overseas persons carve-out

If the overseas person exclusion applies, the activity will not be a regulated activity and the section 418 outward scope provisions will not apply. For example, an overseas investment adviser giving advice to UK clients may have concluded he is deemed to be carrying on that activity in the UK under section 418. However, if he can fall within the overseas person exclusion the activity will not be a regulated activity in the first place and accordingly section 418 will not apply

UK Law: The Overseas Persons Carve-Out

Current UK access regime for TCFs

TCFs can navigate the general prohibition:

- By establishing a UK subsidiary that obtains authorisation and can exercise passport rights EEA-wide
- By establishing a permanent place of business – a UK branch – that obtains authorisation. The branch will not benefit from passporting rights EEA-wide
- For cross-border business in the UK with UK clients and counterparties without any authorisation, by reliance on the overseas persons carve-out for particular services/activities carried on in the context of a "legitimate approach" or carried on "with or through" an authorised (or exempt) person

UK Law: What's Next? – MIFID 2 – New TCF Regime

MIFID 2 – new TCF access regime

- MIFID 2 prescribes harmonised requirements regarding the ability of TCFs to access EEA markets and will change the structure of regulation re TCFs
- MIFID 2 deals separately with (a) per se professional clients and eligible counterparties ("wholesale") and (b) retail and elective professional clients
- EEA countries have some discretion relating to access by TCFs to retail and elective professional clients

<u>Wholesale</u>

National third country regimes will continue until a positive decision by European Commission re equivalence of the relevant third-country standards to EEA prudential and business conduct standards

Transitional period of three years following a positive equivalence decision – Existing national regime continues to run

UK Law: What's Next? – MIFID 2 – New TCF Regime

A TCF registered with ESMA from an equivalent third country may provide investment services cross-border to wholesale clients EEA-wide without being required to establish a branch anywhere in EEA

If negative decision – existing national regime, whether liberal or restrictive, continues to run until a positive decision by Commission

- ESMA must register a TCF that has applied only where the following conditions are met:
  - The Commission has adopted an equivalence decision re that third country (focusing on prudential and business conduct requirements) and the third country must also provide reciprocal access to its market
  - The TCF is authorised in the jurisdiction where its head office is established to provide the investment services to be provided in the EEA and it is subject to effective supervision and enforcement ensuring full compliance with the requirements applicable in that third country

UK Law: What's Next? – MIFID 2 – New TCF Regime

- Cooperation arrangements have been established between ESMA and the relevant regulator covering exchange of information and access to information regarding TCFs, notification by third-country regulators to ESMA that a TCF is in breach of licensing conditions and coordination of supervisory activities including on-site inspections

Retail and elective professional clients

A member state may decide between continuing its own national regime (which may or may not require a local branch) and the MIFID 2 branch regime under which a branch must be established in relevant EEA country, which would need local authorisation and supervision including prudential requirements

UK Law: What's Next? – MIFID 2 – New TCF Regime

For all client types, MIFID 2 does not restrict the provision of investment services to EEA clients by TCFs cross-border where this is at the client's "own exclusive initiative" and to that extent allows reverse solicitation by a TCF without authorisation or registration

Proposed UK approach to exercising MIFID 2 discretion

UK government is not minded to apply the branch requirement regime for retail and elective professional client business

Consequently:

- The UK overseas persons carve-out will not need to be abrogated and substituted with narrower "own exclusive initiative" concept – good news for TCFs wishing to access UK
- UK retail client base will not be protected by MIFID 2 branch regime

UK Law: What's Next? – MIFID 2 – New TCF Regime

- TCFs from equivalent jurisdictions who establish branches in UK will not be able to passport their wholesale business across Europe. However, TCFs can instead establish a subsidiary in UK with appropriate authorisations in order to obtain the passport

UK Law: Delegation by UK Authorised Firms to Overseas Firms

General

When there is a delegation, a UK firm should assess whether the recipient is suitable to carry out the delegated task

The extent and limits of any delegation should be made clear to those concerned

There should be arrangements to supervise the delegation and monitor the discharge of delegate's functions/tasks and obtain sufficient information from delegate

UK Law: Delegation by UK Authorised Firms to Overseas Firms

Outsourcing "critical" functions

More detailed regime requiring a firm so outsourcing to take reasonable steps to avoid undue additional operational risk, avoid any adverse effect arising on the quality of its internal control and FCA's ability to monitor the firm's compliance with its regulatory obligations

A firm must exercise due skill and care and diligence when entering into, managing, or terminating any arrangement for the outsourcing to a delegate of critical or important operational functions or of any relevant services and activities

A firm must ensure that the respective rights and obligations of the firm and of the delegate are clearly allocated and set out in a written agreement

UK Law: Delegation by UK Authorised Firms to Overseas Firms

A firm must ensure that the following conditions are satisfied:

- The delegate must have the ability, capacity, and any authorisation required to perform the outsourced functions, services, or activities reliably and professionally
- The delegate must carry out the outsourced services effectively, so the firm must establish methods for assessing the standard of performance of the delegate
- The delegate must properly supervise the outsourced functions and adequately manage the risks associated with the outsourcing

UK Law: Delegation by UK Authorised Firms to Overseas Firms

- Appropriate action must be taken if it appears that the delegate may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements
- The firm must retain the necessary expertise to supervise the outsourced functions effectively and to manage the risks associated with the outsourcing and must supervise those functions and manage those risks
- The delegate must disclose to the firm any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements

UK Law: Delegation by UK Authorised Firms to Overseas Firms

- The firm must be able to terminate the arrangement for the outsourcing where necessary without detriment to the continuity and quality of its provision of services to clients
- The delegate must cooperate with the FCA and any other relevant competent authority in connection with the outsourced activities
- The firm, its auditors, the FCA, and any other relevant competent authority must have effective access to data related to the outsourced activities, as well as to the business premises of the delegate; and the FCA and any other relevant competent authority must be able to exercise those rights of access

UK Law: Delegation by UK Authorised Firms to Overseas Firms

- The delegate must protect any confidential information relating to the firm and its clients
- The firm and the delegate must establish, implement, and maintain a contingency plan for disaster recovery and periodic testing of backup facilities where that is necessary having regard to the outsourced function, service, or activity

UK Law: Delegation by UK Authorised Firms to Overseas Firms

If a firm and the delegate are members of the same group, the firm may take into account the extent to which it controls the delegate or may influence its actions

A firm must make available on request to the FCA and any other relevant competent authority all information necessary to enable it to supervise the compliance of the performance of the outsourced activities with the regulatory system

UK Law: Delegation by UK Authorised Firms to Overseas Firms

Delegation by a UK FCA-authorised manager of an alternative investment fund

An AIFM must not delegate its functions to the extent that it can no longer be considered to be the AIFM of the AIF and to the extent that it becomes a letter-box entity

An AIFM must ensure the following conditions are met when a delegate carries out any function on its behalf:

- AIFM has notified the FCA of the delegation before the delegation arrangements become effective and
  - The AIFM is able to justify its entire delegation structure with objective reasons

UK Law: Delegation by UK Authorised Firms to Overseas Firms

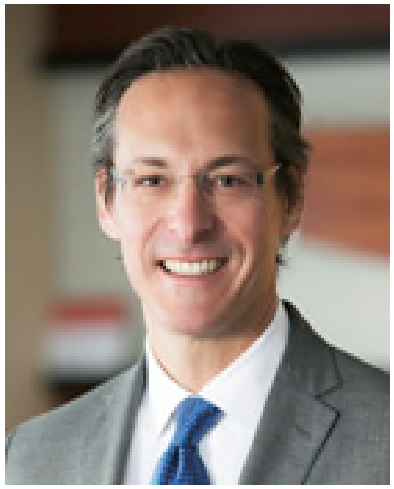
- The delegate has sufficient resources to perform the respective activity and the persons who effectively conduct the business of the delegate are of sufficiently good repute and experience
- The delegation of AIFM investment management functions is conferred only on a delegate that is authorised or registered for the purpose of asset management and subject to supervision (exceptions possible)
- Where the delegation of AIFM investment management functions is conferred on a third-country delegate, cooperation between the FCA and the regulator of the delegate is ensured (FCA has entered into agreements with MAS and each of the US regulators)
- The delegation does not prevent the FCA from supervising the AIFM effectively and, in particular, does not prevent the AIFM from acting, or the AIF from being managed, in the best interests of its investors

UK Law: Delegation by UK Authorised Firms to Overseas Firms

- The AIFM is able to demonstrate that:
  - The delegate is qualified and capable of undertaking the functions in question
  - It was selected with all due care
  - The AIFM can monitor the delegated activity effectively at any time, give further instructions to the delegate at any time, and withdraw the delegation with immediate effect in the interests of investors

QUESTIONS

Biography



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With a focus on investment advisers and other financial services firms, Timothy W. Levin counsels clients on the design, development, and management of pooled investment vehicles and investment advisory programs. He also advises fund managers in connection with organization, registration, and ongoing regulatory compliance. Additionally, he represents managers and sponsors of unregistered pooled investment vehicles. He is the managing partner of Morgan Lewis's Philadelphia office.

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Joo Khin Ng counsels capital markets and corporate finance clients. Clients seek his commercial skills and ability to bring transactions to the market. Over the past two decades, he has worked on all forms of equity and debt capital-raising transactions as well as pre-listing private equity and strategic investments. He also provides counsel for real estate investment trusts (REIT) and business trust initial public offerings (IPOs). Joo Khin is fluent in Mandarin.

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Wai Ming Yap counsels corporate clients on merger and acquisition transactions, project finance, and equity and debt capital markets (including Islamic finance), as well as gaming and leisure. Wai Ming's experience spans more than 25 years of managing sophisticated corporate transactions in Singapore and Malaysia. He also acts as a sponsor to issuers on Catalist, the sponsor-supervised board of The Singapore Exchange (SGX).

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Daniel Yong specializes 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 clearinghouses 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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William Yonge specializes in UK and European financial services regulatory advice in the private investment funds and financial institutions sectors. Clients include hedge, private equity, and other fund managers, and banks, broker-dealers, corporate finance firms, institutional investors, insurers, other financial institutions, and market associations. William frequently handles regulatory matters that arise during fund formations, mergers and acquisitions, and investment management business creations, and advises on agreements with customers and service providers.

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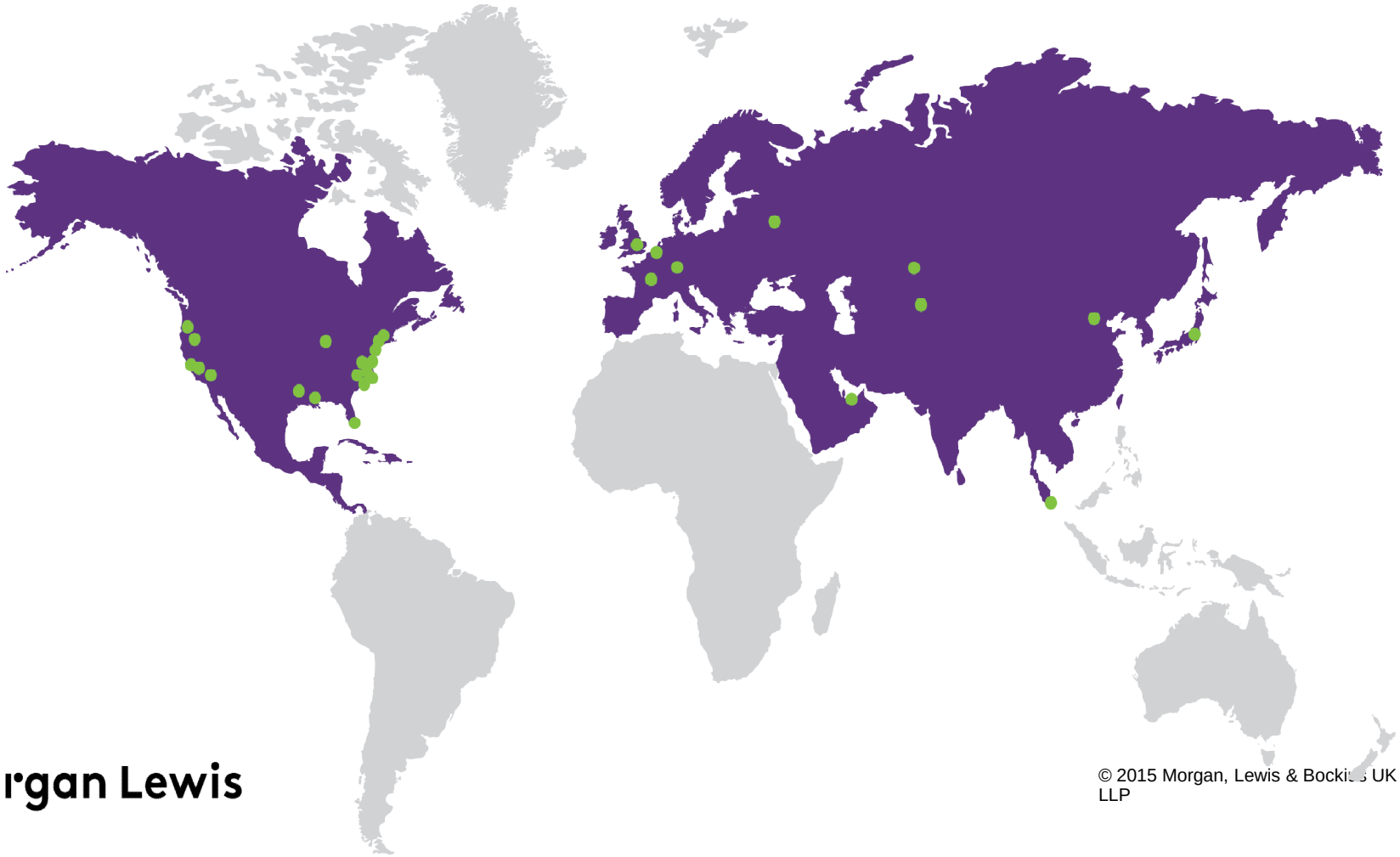

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THANK YOU