

Fund regulation – Cayman Islands v Singapore

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Cayman Islands



Singapore

vs

Regulatory body	Cayman Islands Monetary Authority ("CIMA")	Monetary Authority of Singapore ("MAS")
Regulation	Mutual Funds Law (2009) Revision, The Mutual Funds (Amendment) Law, 2011 (together, the "Law")	Securities and Futures Act (Cap. 289) Part XIII Offers of Investments – Division 2 Collective Investment Schemes ("SFA") – Statutory. The Code on Collective Investment Schemes (the "Code") – Non Statutory, but its guidance is highly recommended.
Set up requirements	Mutual Fund Licence ("MFL") required (ie filing of the offering document and appointment and due diligence of service providers).	No person shall make an offer of units in a CIS if it has not been authorised under section 286 or recognised under section 287 of the SFA (ie completion of appropriate due diligence).
Types of funds	1. Registered Mutual Fund 2. Administered Mutual Fund – must have a CIMA-licensed mutual fund administrator providing its principal office. 3. Licensed Mutual Fund – all funds except; administered mutual funds, funds that meet the criteria set out in section 4(3) of the Law or exempt funds.	1. Authorised Schemes (constituted in Singapore) 2. Recognised Schemes (constituted outside Singapore), the laws and practices of the jurisdictions under which the CIS is constituted and regulated affords to investors in Singapore protection at least equivalent to that provided to them by or under the SFA. Also a Singapore representative is required.
Exemptions	1. The equity interests are held by not more than 15 investors; or 2. It is a fund, not incorporated or established in the Cayman Islands, which makes an invitation to the public to subscribe for its equity interests by or through a person who is the holder of a licence under the Securities Investment Business Law and those interests are listed on a stock exchange or the fund is regulated by an overseas regulatory authority.	1. The issue or transfer of equity interest for no consideration 2. Small offers (\$5m or less over a 12 month period) 3. Private placement (no more than 50 persons within a 12 month period) 4. Offers to institutional investors 5. Offers to accredited investors/ other relevant persons
Name of the fund	Certain restrictions on what may constitute the name of a fund, eg CIMA may refuse to grant a MFL if a name is identical to that of another company, if it suggests a false connection to another person or authority or falsely suggests the fund has a special status with the Government.	The name of the scheme should; (i) be appropriate, (ii) not be undesirable and (iii) not be misleading (all per the Code).
Prospectus requirements	Offering document (current and updated) to be filed with CIMA	Prospectus or profile statement to be lodged and registered by MAS. The prospectus needs to be registered every 12 months.
Other licences required	Mutual Fund Administrators Licence required.	The CIS manager must hold a capital markets services licence for fund management and trustees must be approved (Authorised Schemes).
Audit	Annual audit required by a Cayman Islands auditor, approved by CIMA. The fund annual return and audited accounts to be filed with CIMA within six months of year end. The accounting standards to be used are those documented in the offering document and consent letter. The majority of funds utilise US GAAP and IFRS.	Participants in an Authorised Scheme should receive: (i) the semi-annual accounts and semi-annual report within two months from the period end and (ii) the audited annual accounts, and annual report within three months from the financial year end. Specific requirements to be included in the reports are described below. Authorised schemes use Singapore FRS (substantially equivalent to IFRS) with further guidance prescribed in "Recommended Accounting Practice 7: Reporting Framework for Unit Trusts".
Inspection	Whenever CIMA considers it necessary, it can examine, by way of scrutiny of prescribed regular returns, on-site inspections or auditors' reports or in such other manner as CIMA may determine, the affairs or business of any regulated mutual fund or licensee for the purpose of a general review or for the purpose of satisfying itself that the Law and any regulations made under the Law or under the Proceeds of Crime Law, 2008 are being complied with.	MAS may from time to time inspect the books of an approved trustee. The trustee under inspection must give access to and produce its books and give such information and facilities as may be required to conduct the inspection or as MAS may otherwise require.
Fines	Various fines for breaches of the Law present.	Various fines and the possibility of imprisonment for breaches of the SFA present.

With the current economic environment still heavily focused on regulation, PKF (Cayman) Ltd and PKF-CAP LLP in Singapore have prepared this summary comparison of the fund regulations in two of the major global jurisdictions. Funds are defined in the Cayman Islands regulations as mutual funds (funds) and the Singapore regulations as collective investment schemes (CIS).

In addition we would like to draw the reader's attention to some of the other requirements of the Code. The Code sets out best practices on management, operation and marketing of schemes that managers and approved trustees are expected to observe:

- **For Authorised Schemes** – there are requirements on the name of the scheme, filing of reports, the function and responsibilities of investment managers, the structure of performance fees, requirements of the trustee on termination of the scheme, restrictions on trading activities, limitation on participants liability to their investment in the scheme and guidelines on dealing and valuation of the scheme's units and valuation of the scheme's assets.
- **For Recognised Schemes** – in addition to the legal requirements set out in the SFA, a manager of a scheme (together with its related corporations) should be managing at least S\$500 million of discretionary funds in Singapore. This requirement does not apply where any of the units in the scheme has been approved for listing for quotation on a securities exchange and will be traded on the securities exchange.
- **For Recognised and Authorised Schemes** – which feed into an underlying scheme and there is the intention to use or invest in financial derivatives or their NAV is likely to have a high volatility due to its investment policies or portfolio management techniques, there needs to be a prominent statement in the scheme's marketing material drawing attention to this.
- **The appendices to the Code** – also contain additional requirements depending on the strategy of the CIS, (ie, money market funds, hedge funds (quarterly reports, semi-annual accounts and reports and annual audited accounts and reports, with certain exceptions to the items listed below), capital guarantee funds, index funds and property funds).

The following are the requirements which the semi-annual and annual reports should contain;

- investments at market value and as a percentage of the scheme's NAV as at the end of the period under review classified by:
 - country;
 - industry;
 - asset class; and
 - credit rating;
- the top 10 holdings at market value and as a percentage of the scheme's NAV as at the end of the period under review and a year ago;
- exposure to financial derivatives:
 - market value of financial derivative contracts and as a percentage of the scheme's NAV as at the end of the period under review; ii) net gains or losses on financial derivative contracts realised during the period under review; and
 - net gains or losses on outstanding financial derivative contracts marked to market as at the end of the period under review;
- amount and percentage of the scheme's NAV invested in other schemes as at the end of the period under review;
- amount and percentage of borrowings to the scheme's NAV at the end of the period under review;
- amount of redemptions and subscriptions for the period under review;
- amount of related-party transactions for the period under review;
- the performance of the scheme and where applicable, the performance of the benchmark, in a consistent format, covering the following periods of time: 3-month, 6-month, 1-year, 3-year, 5-year, 10-year and since inception of the scheme;
 - expense ratios for the period under review and a year ago. A footnote should state that the expense ratio does not include (where applicable) brokerage and other transaction costs, performance fee, foreign exchange gains or losses, front or back end loads arising from the purchase or sale of other schemes and tax deducted at source or arising out of income received;
 - turnover ratios for the period under review and a year ago;
 - any material information that will adversely impact the valuation of the scheme such as contingent liabilities of open contracts;
- where the manager invests 30 per cent or more of the scheme's NAV in another scheme, the following key information on the underlying scheme should be disclosed:
 - top 10 holdings at market value and as a percentage of the scheme's NAV as at the end of the period under review and a year ago;
 - expense ratios for the period under review and a year ago (see guidance above); and
 - turnover ratios for the period under review and a year ago;
- a statement describing the soft dollars received from each broker which executed transactions for the scheme. If the broker also executed trades for other schemes managed by the manager, a statement to that effect may be included; and
- where the scheme offers pre-determined payouts, an explanation on the calculation of the actual payouts received by participants and any significant deviation from the pre-determined payouts.

There has been significant growth in the asset management industry in Singapore which has led to opportunities for collaboration for example with global PKF offices and this trend is expected to continue. As can be seen the regulations for the two jurisdictions are similar, however, with different areas of focus (ie requirements being enacted into law as opposed to a non-statutory code). Also regulations are more focused on mutual fund administrators in Cayman as opposed to managers and trustees in Singapore. Both jurisdictions have responded to the global demands for more regulatory oversight with the Code being updated in October 2011 and The Mutual Funds (Amendment) Law, 2011 being passed in December 2011. It is our view that both the Cayman Islands and Singapore will continue to monitor the evolving demands of the industry and adapt their regulatory frameworks to meet or exceed those demands.

BIO: AT A GLANCE

Sajjad was formerly a senior partner of Arthur Andersen, Singapore having worked in the firm for 27 years. He has extensive experience in assurance, business valuations, corporate restructuring, financial advisory and claims and disputes consulting including testifying in court as expert witness.

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