

Newsletter

Regulatory Updates for Fund Management Companies



Welcome to the third quarterly newsletter of the BDO Regulatory Updates for Fund Management Companies for the Year 2021. This newsletter serves as a summary of the key regulatory developments for fund management companies or capital markets services licensees covering the period from August 2021 to October 2021.

REGULATORY DEVELOPMENTS

From August 2021 to October 2021, the authorities of Singapore have issued or updated a series of Notices, Guidelines, Advisory and Consultation Papers.

Consultation Paper on Proposed Revisions to the Guidelines on Business Continuity Management

Status	First Issue Date: 1 June 2003
	Revision Date: 21 October 2021
	Effective Date: -

- ▶ On 15 October 2021, the Monetary Authority of Singapore ("MAS") issued the 2nd consultation paper on proposed revisions to the Guidelines on Business Continuity Management ("Guidelines").
- ▶ This 2nd consultation includes revisions to address feedback and comments received from the 1st consultation published in 2019 and incorporates key learnings from the Covid-19 pandemic. Changes are proposed to further emphasize the need for financial institutions ("FIs") to take an end-to-end view in ensuring the continuous delivery of critical business services, and introduce principles and practices that FIs can implement to strengthen operational resilience. The consultation closes on 15 November 2021.
- ▶ FIs will be expected to adopt the revised Guidelines within a year following their publication. The revised Guidelines will supersede the Guidelines published in June 2003 and MAS Circular SRD BCM 01/2006 on Further Guidelines on Business Continuity Management.
- ▶ MAS also issued its Responses to feedback from the 1st consultation on 15 October 2021.
- ▶ The following are the key proposed changes to the Guidelines:

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Section	Response
Critical business services and functions	<ul style="list-style-type: none"> ▶ Proposed identification and prioritization of critical business services in addition to critical business functions: <ul style="list-style-type: none"> - FIs should identify their critical business services and functions by considering the impact of their unavailability on: <ul style="list-style-type: none"> a. FI's safety and soundness, b. the number and profile of customers affected, and c. the FI's counterparties and other participants in the financial ecosystem. - FIs should prioritize the recovery of its business services and functions based on their criticality to determine the appropriate recovery strategies and resource allocation. - MAS expects FIs to adopt an end-to-end view of the critical business services' dependencies and complete set of processes supporting the delivery of the service. - FIs should ensure clear accountability and responsibility for the overall business of each critical business service.
Service recovery time objective	<ul style="list-style-type: none"> ▶ Proposed the establishment of Service Recovery Time Objectives ("SRTO") by FIs for each critical business service, and the implementation of recovery strategies to meet the SRTOs: <ul style="list-style-type: none"> - In establishing SRTOs, FIs should consider its obligations to customers, the financial ecosystem, and its participants. - MAS expects FIs to put in place recovery strategies to achieve the established SRTOs and recover to the service levels required to meet their business obligations. For critical business services that are supported by a number of business functions, FIs must ensure that the recovery time objectives ("RTOs") of the underlying business functions and their dependencies will meet its SRTOs. - FIs should set out clear and defined thresholds for activation of business continuity plans ("BCP") in the event the performance of a critical business service is reduced or intermittent, but not to the extent that it is completely unavailable.
Mapping of interdependencies	<ol style="list-style-type: none"> 1. People, processes and technology <ul style="list-style-type: none"> - MAS proposes that FIs should identify and map the end-to-end dependencies on people, processes, and technology, including those involving third parties that support each critical business service. - FIs should use the information derived from the dependency mapping to verify that the recovery of the business functions and their dependencies will meet the established SRTOs. 2. Third party dependencies <ul style="list-style-type: none"> - FIs should perform due diligence to obtain assurance that the SRTOs of the critical business service can be met by the third parties. This assurance can be obtained through the following measures: <ul style="list-style-type: none"> a. Establish and regularly review operational level or service level agreements with third parties that set out specific and measurable recovery expectations; b. Request dedicated manpower from their third-party service providers for specialist functions that cannot be performed in-house; or c. Conduct audits, regular tests, or joint tests with third parties to ensure the third parties have the ability to support FIs even if the third parties experience disruptions. - There should also be plans and procedures in place to manage and address any unforeseen disruption, failure or termination of third-party arrangements, to minimize the impact of such adverse events. FIs should put in place mitigating measures, such as implementing redundancy or back-up arrangements, to address the interdependency risks posed by the disruption of these services.

Audit	<ul style="list-style-type: none"> ▶ FI should ensure its audit programme adequately covers the assessment of business continuity management ("BCM") preparedness based on the level of operational risks that it is exposed to. ▶ The scope and frequency of BCM audits should be commensurate with the criticality of the business services and functions and should be conducted by a qualified independent party (e.g. qualified internal or external auditor). An FI can leverage their internal audit plan, audit methodology and audit cycle to determine the scope and frequency of BCM audit. ▶ The FI should establish processes to track and monitor the implementation of remedial actions in response to the audit findings. Significant audit findings on lapses that may have severe impact on the FI's BCM should be escalated to the Board and senior management. Upon request, the FI should submit the BCM audit reports to MAS.
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ACRA Proposes Changes to Limited Partnership Act to Introduce Specific Provisions for Fund Limited Partnerships and Update Other Provisions for All Limited Partnerships

Status	First Issue Date: 27 October 2021 Effective Date: 27 October 2021
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- ▶ On 4 October 2021, the Accounting and Corporate Regulatory Authority ("ACRA") issued a consultation paper to seek feedback on proposed amendments to the Limited Partnerships Act ("LP Act") to make Singapore limited partnership ("LP") vehicle more attractive to funds structures as limited partnerships ("Fund LPs"), and to update existing provisions in the LP Act for all types of LPs.
- ▶ The consultation ends on 1 November 2021.
- ▶ Proposed amendments are below:

		Amendments
1.	Specific to Fund LPs	<ul style="list-style-type: none"> ▶ It is proposed to introduce a specific definition of "fund limited partnership" and to apply certain provisions of the LP Act only to Fund LPs, including: <ul style="list-style-type: none"> a. Giving greater certainty and flexibility to general partners in respect of the transfer of a limited partner's interest by providing that the transfer of a limited partner's interest, with the general partner's consent, results in the admission of a replacement limited partner and not a dissolution of the LP; b. Providing that the restrictions on partners in the Partnership Act relating to competing businesses do not apply to limited partners of Fund LPs; and c. Providing that limited partners of Fund LPs do not owe fiduciary duties to other partners or the Fund LP. ▶ The above approvals are subject to the LP agreement which may set out alternative positions.
2.	Applicable to all LPs	<ul style="list-style-type: none"> ▶ It is proposed to update and clarify provisions in the LP Act applicable to all LPs, including: <ul style="list-style-type: none"> a. Expanding the types of legal forms that a general or limited partner can take to include Singapore registered LPs, and foreign LPs with or without a legal personality; b. Expressly providing that a general or limited partner can be acting in the capacity of a trustee or in a representative capacity; c. Providing certainty as to when an assignment of a partnership interest can be made; and d. Allowing limited partners to appoint a third party to wind up the LP if the general partner is unable to do so, subject to the agreement of all partners. ▶ The above proposals are subject to the LP agreement which may set out alternative positions.
3.	First Schedule to LP Act	<ul style="list-style-type: none"> ▶ The First Schedule to the LP Act sets out the activities which, if undertaken by a limited partner, would not in and of itself result in the limited partner being regarded as taking part in the management of the LP which would cause it to lose its limited liability status. ACRA proposes to amend the First Schedule to the LP Act by expanding and clarifying the list of activities limited partners of Fund LPs can engage in without losing their limited liability status.

MAS Consults on Proposed Digital Platform for FIs to Share Information to Counter Money Laundering, Terrorism Financing and Proliferation Financing

Status	First Issue Date: 14 October 2021
	Effective Date: 14 October 2021

- ▶ On 1 October 2021, the Monetary Authority of Singapore ("MAS") announced that it will introduce a digital platform and regulatory framework for financial institutions ("FIs") to share information with each other on customers and transactions to prevent money laundering ("ML"), terrorism financing ("TF") and proliferation financing ("PF").
- ▶ MAS has issued a consultation paper to seek feedback on the introduction of the proposed regulatory framework for information sharing and the platform to be named the Collaborative Sharing of ML/TF Information & Cases ("COSMIC").
- ▶ The COSMIC platform will enable FIs to securely share information on customers or transactions, where they cross material risk thresholds. Such information sharing will help FIs identify and disrupt illicit networks, thus helping to safeguard the Singapore financial centre.
- ▶ It is proposed that information to be shared include information relating to, or particulars of, a customer (e.g. the beneficial owners and authorised signatories of a customer) and transactions, the high risk behaviour exhibited, and risk observations or analysis that are relevant to the account or customer ("risk information").
- ▶ COSMIC participants will be required to implement robust measures to safeguard against unauthorised use and disclosure of COSMIC information.
- ▶ MAS will supervise FIs for compliance with these requirements and take actions against errant FIs.
- ▶ MAS plans to launch COSMIC platform in the first half of 2023. COSMIC will initially focus on three key financial crime risks in commercial banking, namely, abuse of shell companies, misuse of trade fiancé for illicit purposes and PF. The six banks involved in COSMIC's development, which are leading players in commercial banking, will participate and be permitted to share information in COSMIC during this initial phase. MAS plans to progressively extend COSMIC's coverage to more FIs and focus areas and make some aspects of sharing mandatory.

MAS Implements Exemption Frameworks for Cross-border Business Arrangements of Capital Markets Intermediaries Involving Foreign Related Corporations and Foreign Offices

Status	First Issue Date: 9 October 2021
	Effective Date: 9 October 2021

- ▶ On 9 October 2021, the exemption framework for cross-border business arrangements of capital market intermediaries involving foreign related corporations ("FRCs") ("FRC Framework") and foreign head offices/branches ("Foreign Offices") ("Branch Framework") came into effect.
- ▶ With the implementation of the FRC Framework, the Monetary Authority of Singapore ("MAS") has streamlined the exemption framework for cross-border business arrangements between financial institutions ("FIs") in Singapore and their FRCs ("FRC Arrangements"), replacing the previous ex-ante approval approach with an ex-post notification approach.
- ▶ Similarly, under the Branch Framework, Foreign Offices are exempt from the applicable business conduct requirements under the Securities and Futures Act ("SFA") and/or the Financial Advisers Act ("FAA") when they conduct regulated activities under an arrangement with their Singapore branch or head office ("Singapore Office") ("Branch Arrangement") which is notified to MAS. The Branch Framework applies where the representative is acting on behalf of the Foreign Office. There is no change to the requirement for individuals who are based overseas and act on behalf of the Singapore Office to be appointed as overseas-based representatives and comply with the relevant requirements.
- ▶ On 8 October 2021, MAS issued its response to feedback from the 15 March Consultation and 12 May 2021 Consultation. Highlights from the Response are set out below:

<p>Applicability of Branch Framework</p>	<ul style="list-style-type: none"> ▶ There is no change to the extra-territorial application of the SFA and FAA. ▶ The Branch or FRC Framework is relevant where the activities conducted by the Foreign Office/FRC and its representatives are: <ul style="list-style-type: none"> a. Regulated under the SFA and/or FAA b. Not otherwise exempted, and; c. Where the extra-territoriality of the Act applies. ▶ When assessing whether an individual based overseas is acting on behalf of the Singapore Office or the Foreign Office, FIs should consider: <ul style="list-style-type: none"> a. which office is responsible for the individual's conduct of regulated activities in Singapore, b. which office the individual represents to the customer that he/she is acting for in his/her dealings with the customer, and; c. which office the customer is contracted with.
<p>AML Notices</p>	<ul style="list-style-type: none"> ▶ MAS has amended the definition of "customer" in the AML Notices, to exclude persons that invest into certain investment vehicles to which the Singapore FI provides the regulated activity of fund management. ▶ In respect of cross-border arrangements involving the regulated activity of fund management, the Exemption Frameworks are only applicable if the FRC/Foreign Office intends to manage segregated mandates for Singapore customers.
<p>Notification and Reporting Requirements</p>	<ul style="list-style-type: none"> ▶ Notification forms for commencement and changes to arrangements <ul style="list-style-type: none"> - MAS has refined the declaration for conflicts of interest within the notification forms for commencement and changes to arrangements, requiring the Singapore FI to declare if it has assessed there to be any conflicts of interest at that juncture, and that it will implement conflicts mitigating measures on an ongoing basis. ▶ Annual reporting form <ul style="list-style-type: none"> - MAS has updated the annual reporting form to allow reporting to be done on a consolidated basis at the arrangement level. - As the annual reporting process under the Exemption Frameworks involves new pieces of information, MAS will defer the due date of the 1st round of annual reporting to 2023. ▶ Signatory for notification and reporting forms <ul style="list-style-type: none"> - The declaration must be made by the directors. However, MAS will allow the declaration for such forms to be made by the Singapore branch's chief executive officer since the Singapore FI is a branch. ▶ Other boundary conditions <ul style="list-style-type: none"> - The Singapore FIs/FRCs will be given 2 years from the effective date of the Exemption Frameworks, i.e. by 9 October 2023, to obtain the opt-ins. From 9 October 2023, FIs would need to ensure customers served under the Exemption Framework meet the eligibility criteria of "accredited investor" under section 4A(1) of the SFA.
<p>Treatment of existing arrangements</p>	<ul style="list-style-type: none"> ▶ MAS has extended the transition period to 12 months for Foreign Offices dealing or advising in specified contracts under an arrangement with the Singapore Office, and relying on the transitional arrangement under regulation 60 or 61 of the SF(LCB)R and/or regulation 40BB or 40BC of the Financial Advisers Regulations ("FAR") which ended on 8 October 2021. ▶ MAS has also extended the transition period to 12 months for existing approved arrangements under paragraph 9 of the Third Schedule to the SFA and paragraph 11 of the First Schedule to the FAA, and arrangements involving FRCs exempted under regulations 65 of the SF (LCB) R and regulation 32CA of the FAR. Singapore FI will have 12 months to comply with the boundary conditions and submit notifications on such arrangements under the FRC Framework.

Regulations and Advisory Guidelines under Personal Data Protection Act 2012 Amended to Provide for How Business Contact Information of Data Protection Officers May be Set Out

Status	First Issue Date: 27 October 2021 Effective Date: 27 October 2021
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- ▶ On 1 October 2021, the Personal Data Protection (Notification of Data Breaches) Regulations 2021 and the Personal Data Protection Regulations 2021 were amended to include the following:
 1. Organisations may provide the business contact information of their data protection officers on:
 - i. BizFile+ for companies that are registered with the Accounting and Corporate Regulatory Authority or
 - ii. In a readily accessible part of the organisation's official website such that it can be easily found.
 2. Defences for egregious mishandling of personal data to cover situations where consent has been provided by the individual to whom the personal data relates.
 3. Minor clarifications on what constitutes significant harm for mandatory data breach reporting in relation to the identification of vulnerable individuals.
- ▶ The Personal Data Protection Commission ("PDPC") also updated the Advisory Guidelines on Key Concepts in the Personal Data Protection Act to provide clarity on these amendments.

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