

Financial Services Update

Licensing criteria and procedures under the new licensing regime for REIT managers

Introduction

With effect from 1 August 2008, a new licensing regime for managers of real estate investment trusts (the “**REIT managers**”) is implemented under the Securities and Futures Act (the “**SFA**”). The basic legislative changes to the SFA and its subsidiary legislation which introduce the new licensing regime were highlighted in an earlier Allen & Gledhill KnowledgeShare Alert: “New licensing regime for REIT managers effective from 1 August 2008” dated 29 July 2008. Please [click here](#) to read the KnowledgeShare Alert.

On 1 August 2008, the Monetary Authority of Singapore (the “**MAS**”) revised the following Notice and Guidelines to supplement the SFA and its subsidiary legislation:¹

- [Guidelines on Criteria for the Grant of a Capital Markets Services Licence and Representative’s Licence](#) [Guideline No. SFA04-G01] (the “**Licensing Guidelines**”);
- [Guidelines on Licence Application and Payment of Fees](#) [Guideline No. SFA04-G02] (the “**Fees Guidelines**”); and
- [Notice on Minimum Entry and Examination Requirements for Representatives of Holders of Capital Markets Services licence and Exempt Financial Institutions under the SFA](#) [Notice No. SFA 04-N06] (the “**Notice**”).

This Financial Services Update aims to provide you with an update on the licensing criteria and procedures for a REIT manager and its employees, highlighting in particular the details provided in the MAS Notice and Guidelines.

The new licensing framework

Pursuant to the new licensing regime, any person who carries on business in REIT management is required to hold a capital markets services (“**CMS**”) licence for carrying on business in such activities and each of its “professional employees” is required to hold a CMS representative’s licence.

¹ To read the relevant Notice or Guideline, please click on its title.

CMS licence

Basic licensing criteria

Only a corporation that establishes and operates out of a physical office in Singapore can apply for a CMS licence.

Criteria relating to competence and integrity

An applicant for a CMS licence for carrying on business in REIT management (the “**Applicant**”) must satisfy the following minimum licensing requirements:

- (1) it is a reputable entity that has an established track record in REIT management to be conducted in Singapore or in a related field, for at least the past five years;
- (2) itself, its holding company or related corporation, where applicable, has good ranking in its home country; and
- (3) where applicable, it is subject to proper supervision by its home regulatory authority.

An Applicant which does not meet the above requirements should:

- (1) have at least five years of experience in managing property funds;
- (2) appoint with the approval of the trustee of the REIT, an adviser who has at least five years of experience in, or five years of advising on, real estate; or
- (3) employ directors, Chief Executive Officer (“**CEO**”) or representatives who have at least five years of experience in investing in, or advising on real estate.

Apart from the above, the MAS must be satisfied that the Applicant will discharge its duties efficiently, honestly and fairly. The Applicant must be “fit and proper” as required under the [Guidelines on Fit and Proper Criteria](#) [Guideline No. FSG-G01] issued by the MAS.

Criteria relating to scope of business

In this respect, an Applicant must demonstrate that:

- (1) it is primarily engaged in the business of conducting REIT management;
- (2) it conducts the following activities, in relation to the management of the REIT, in Singapore:
 - a. accounting;
 - b. compliance; and
 - c. investor relations; and
- (3) its Singapore operations have a meaningful role in the management of the REIT, relative to any other related entities or branch offices, as the case may be, which may also have responsibility for the management of the REIT.²

² The MAS will take into account the following non-exhaustive factors in assessing the role of the Singapore operations in the management of the REIT:

- (1) the composition and mandates of the Applicant’s board of directors and management committees; and
- (2) the extent to which the CEO and directors who are resident in Singapore participate in the formulation of investment strategies and financing activities of the Applicant.

Criteria relating to CEO, directors, substantial shareholders and representatives

The Applicant is required to have:

- (1) a board of directors that comprises a minimum of two members, at least one of whom is resident in Singapore;
- (2) a CEO resident in Singapore; and
- (3) at least two full time individuals in respect of REIT management and who each holds a CMS representative's licence for REIT management.

Prior MAS approval is required for the appointment of an Applicant's:

- (1) CEO;
- (2) director who resides or is to reside in Singapore; or
- (3) director who is directly responsible for its business in Singapore.

All officers, employees and substantial shareholders of an Applicant must fulfill the "fit and proper" criteria set out in the MAS [Guidelines on Fit and Proper Criteria](#).

Base capital requirements

The Applicant should satisfy the base capital requirements for REIT management that are set at S\$1 million. Details on the calculation of the base capital of an Applicant are set out in the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations.

Conduct of business requirements

In assessing an application for a CMS licence for REIT management, the MAS will expect the Applicant to:

- (1) abide by the Code on Collective Investment Schemes; and
- (2) take necessary steps to avoid conflicts of interest, and resolve them fairly and equitably should such conflicts arise. The MAS will take into account the following non-exhaustive factors to assess the handling of conflicts of interest issues by the Applicant:
 - a. roles of the CEO and executive directors in the Applicant and entities related to the sponsor of the REIT;
 - b. the nature of corporate governance arrangements in the Applicant, including the role of board committees and chairpersons of these committees;
 - c. the adequacy of proposed mitigating measures to be instituted by the Applicant; and
 - d. the disclosures made of these measures to investors.

Applicant who does not satisfy all licensing criteria

The MAS may still grant a CMS licence to an Applicant which does not satisfy the licensing criteria stated herein at the time of application, subject to such additional conditions imposed by the MAS. For instance, the MAS may require the Applicant to procure:

- (1) a banker's guarantee;
- (2) professional indemnity insurance that complies with the requirements set out in Annex 2 of the Licensing Guidelines;
- (3) a letter of undertaking setting out the maximum liability of the Applicant's parent in support of any liquidity shortfall or other financial obligations; or
- (4) a letter of responsibility setting out a commitment from the Applicant's parent company that it will maintain adequate oversight over the Applicant's operations, financial position, compliance with laws, management and other relevant issues.

Managers commencing REIT management after 1 August 2008

A REIT manager must apply for a CMS licence before commencing to carry on business in REIT management by submitting a CMS licence application form ([Form 1](#)) together with the form for the appointment of its CEO or director ([Form 11](#)). As a guidance, the MAS would require the application for a CMS licence to be submitted to the MAS before or at the same time as the application of the REIT to the Singapore Exchange Securities Trading Limited for listing eligibility.³

Existing managers conducting REIT management on or before 1 August 2008

Managers of REITs which are already listed on or before 1 August 2008 (the “**existing REITs managers**”) are exempted from holding a CMS licence to carry on business in REIT management for a period of six months from 1 August 2008.

However, based on a literal reading of the provisions in the Securities and Futures (Licensing and Business Conduct) Regulations, the existing REIT managers must ensure that they meet the licensing criteria and apply for a CMS licence by submitting a CMS licence application form ([Form 1](#)) together with the form for the appointment of its CEO or director ([Form 11](#)) by 31 January 2009 (within six months from 1 August 2008).

The MAS has indicated that the existing REITs managers will be “migrated” to the new licensing regime.⁴ Therefore, it is not clear whether an application for a new CMS licence by an existing REIT manager would invariably be approved by the MAS as a matter of principle unless there is gross non-compliance with the licensing criteria by the Applicant.⁵

CMS representative's licence

Any individual who carries out REIT management on behalf of a REIT manager holding a CMS licence must hold a CMS representative's licence for REIT management.

According to the MAS, only the CEO and professional employees of a REIT manager who engage in investment and asset management, financing, and investor relations are subject to

³ [MAS Response to Feedback Received - Enhancement to the Regulatory Regime Governing REITs](#) issued by the MAS on 28 September 2007.

⁴ [Consultation Paper on Enhancement to the Regulatory Regime Governing REITs](#) issued by the MAS in March 2007.

⁵ The MAS has previously indicated that they intend to conduct a briefing on the licensing and transitional arrangements for REIT managers in August 2008. More information on the MAS briefing will be provided by the MAS in due course.

the licensing requirements. The MAS does not intend to subject employees responsible only for the maintenance of properties to the licensing requirements.⁶ Despite this general clarification, there are still uncertainties as to which employees of a REIT manager are subject to the licensing requirements. For example, would an employee of a related company of a REIT who occasionally assists with managing the assets of the REIT or would employees of all levels of seniority dealing with asset management, financing, and investor relations be subject to the same licensing requirements?

Representatives commencing REIT management after 1 August 2008

An applicant for a CMS representative's licence (the "**Individual Applicant**") should:

- (1) be at least 21 years old;
- (2) possess at least four credits in the GCE "O" level Examination (or its equivalent);⁷
- (3) pass Module 10 of the Capital Markets and Financial Advisory Services Examination (the "**CMFAS Exam**"); and
- (4) satisfy the MAS that he is a "fit and proper" person in accordance with the criteria set out in the MAS [Guidelines on Fit and Proper Criteria](#).

The Individual Applicant may apply for a CMS representative's licence by submitting a representative's licence application form ([Form 3](#)).

Existing representatives conducting REIT management on or before 1 August 2008

The Individual Applicant who has been conducting REIT management as at 1 August 2008 is also required to fulfill the above criteria except the requirement to pass Module 10 of the CMFAS Exam. Instead, he is required to:

- (1) complete a non-examinable course, conducted by the Institute of Banking and Finance (the "**IBF**") on the relevant rules and regulations applicable to REIT management, within six months from 1 August 2008; or
- (2) attend an in-house course conducted by his principal which meets the following conditions:
 - a. each course must be based on the contents of the IBF study guides/textbooks for the relevant rules and regulations; and
 - b. the person conducting the training course must be proficient in the subject-matter, namely, he must have passed the examination of Module 10 administered by the IBF, or otherwise possesses the relevant expertise and experience in relation to REIT management.

The Notice provides that an Individual Applicant should complete the non-examinable course within six months from 1 August 2008 but the SFA or its subsidiary legislation do not specify if the Individual Applicant is required to apply for a CMS representative's licence by submitting a representative's licence application form ([Form 3](#)) before 31 January 2009.

⁶ [MAS Response to Feedback Received - Enhancement to the Regulatory Regime Governing REITs](#) issued by the MAS on 28 September 2007.

⁷ In the case of the Individual Applicant who sat for GCE "O" Level Examinations before or in the year 1980:
(i) qualifications higher than or equal to at least four GCE "O" Level credit passes; or
(ii) qualifications higher than or equal to at least two GCE "O" Level credit passes and at least three years of relevant and continuous working experience over the past five years in respect of REIT management.

Further information

If you have any general queries regarding the impact of these developments on your business or require any further information, please do not hesitate to contact:

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