



## Offer of funds

Under Singapore law, there are four commonly used methods for offering funds, namely:

1. Authorised/recognised Schemes;
2. Restricted Schemes;
3. Private Placements; or
4. Separate Exemption available for Institutional Investors.

The authorised/recognised schemes are generally used for retail funds, whereas the restricted schemes are usually used for funds that are offered to high net worth persons. The third is the private placement exemption, which is used for limited offers, and the final option is an exemption for institutional investors.

For the purposes of this article we will only be looking at restricted schemes and private placements.

## Restricted Schemes

Where a Collective Investment Scheme (CIS) is a Restricted Scheme as defined under the Securities and Futures Act 2001 (SFA), the prospectus and authorisation/recognition requirements do not apply to an offer of the CIS. However, in order to be considered a Restricted Scheme, the scheme must be registered as a Restricted Scheme with the Monetary Authority of Singapore (MAS). This regime is available for both Singapore-based fund managers and foreign fund managers. However, the focus of this article will be on funds managed by Singapore-based fund managers.

If a fund manager would like to make an offer to a limited number of people, the fund manager may consider the private placement exemption instead. The private placement exemption would be discussed below. The Restricted Scheme may be used for funds that are constituted in Singapore and outside Singapore. The term Restricted Singapore Scheme (RSS) refers to funds constituted in Singapore, and Restricted Foreign Scheme (RFS) refers to funds constituted outside Singapore.

For a RSS, the fund manager must be licensed or regulated for fund management in the jurisdiction of its principal place of business (or be a public company that is exempted from the requirement to hold a CMS licence for fund management) and be fit and proper. Such schemes are not required to comply with any investment guidelines. Unlike offers to retail investors, a prospectus is not required (although an information memorandum will still be required). The Securities and Futures (Offers of Investments) (Collective Investment Schemes) (Amendment) Regulations 2013 (CIS Regulations) stipulate that a CIS that is offered to high net worth investors (whether RSS or RFS) should be accompanied by an information memorandum that contains the information specified in the CIS Regulations. This relates to disclosures with



respect to investment risks, conditions and restrictions on redemption of units, preferential treatment to certain investors, and track record of the CIS.

For a RFS, the fund manager must be licensed or regulated for fund management in the jurisdiction of its principal place of business and be fit and proper. Such schemes are not required to comply with any investment guidelines. Unlike offers to retail investors, a prospectus is not required, but an information memorandum will similarly be required under the CIS Regulations mentioned above.

### *Offered to Whom?*

Usually, a Restricted Scheme can be offered to a Relevant Person under the SFA. A Relevant Person can be an accredited investor, or a corporation, trustee of a trust etc., where the underlying investors are accredited investors. An accredited investor is usually a high net worth person. There is a separate limb where the Restricted Scheme can be offered to a person who acquires it at a consideration of no less than S\$200,000. Investors would usually be required to produce supporting documents such as their latest financial statements or bank statements as evidence of their financial worth.

### *Conditions in S305(3) SFA*

There are a number of conditions under Section 305(3) of the SFA for fund managers to fulfil before they are able to make an offer.

First, the offer must not be accompanied by an advertisement making an offer or calling attention to the offer or intended offer.

An advertisement is defined as:

- A written or printed communication;
- A communication by radio, television or other medium of communication; or
- A communication by means of a recorded telephone message;

that is published in connection with an offer of units in a CIS.

It should be noted that the information memorandum is not considered an advertisement, and hence can be provided to investors.

Second, there should be no selling or promotional expenses paid or incurred in connection with the offer other than those incurred for administrative or professional services, or by way of commission or fee for services rendered by



specified persons. Specified persons are defined as licensed or exempt persons for marketing, such as licensed placement agent that fund managers use to market the funds.

Third, there should be no prospectus in respect of any of the offers that are registered by the MAS. It should be noted that registering a prospectus with the MAS is an unusual practice for restricted schemes. But in the event that a prospectus has been registered,

- the prospectus should have expired; or
- before making the offer, the person making the offer should have:
  - informed the MAS of its intent to make the offer in reliance on the exemption under s305 SFA; and
  - taken reasonable steps to inform the person to whom the offer is made that the offer is made in reliance on the exemption under section 305 of the SFA.

### ***Notification and Disclosure Requirements***

There are two other things that fund managers should take note of. The first is that the information memorandum should comply with the disclosure requirements set out in the Sixth Schedule of the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations. Second, that a copy of the information memorandum should be submitted to the MAS for record purposes.

There is a prescribed list of specific matters that must be disclosed in the information memorandum. Amongst the matters which must be disclosed include the fund's investment objectives and focus; the manager's investment approach; the risks of subscribing for or purchasing units in the Restricted Scheme; the conditions, limits and gating structures for redemption of the units (where applicable); the past performance of the Restricted Scheme (where applicable); details of where the accounts of the Restricted Scheme may be obtained; and the fees and charges payable by the investors and by the Restricted Scheme.

Further, the MAS's Guidelines on Licensing, Regulation and Conduct of Business for Fund Management Companies also set out matters to be disclosed to investors. These include the disclosure of counterparties; brokers and prime brokers used by the fund; disclosure of custodians, trustee, fund administrators and/or auditors used by the fund; disclosure of valuation policy and performance measurement standards; disclosure of professional indemnity insurance arrangements or the absence of such arrangements; and disclosure on the use of leverage and the extent to which it is permitted.

In practice, even for funds that are not offered under the exemption in Section 305 of the SFA, it is common or customary to see almost all of the aforementioned matters disclosed in the information memorandum.



### ***Licensing for the Act of Marketing***

The act of marketing should be distinguished from the Restricted Scheme regime. It should be noted that Singapore fund managers can rely on an exemption for marketing their own CISs (i.e., the funds managed by the Singapore fund management company). However, foreign fund managers can only work with existing licensed or exempt persons in Singapore.

### ***Reselling Restrictions***

Another point fund managers should note is that there are reselling restrictions where units in a Restricted Scheme are acquired pursuant to an offer made relying on an exemption under Section 305 of the SFA, especially if the units are first sold to any person other than an institutional investor, a relevant person or any person pursuant to an offer referred to in section 205(2) SFA. In the event that it is not first sold to any person listed above, the prospectus and authorisation/recognition requirements shall apply to the offer resulting in that sale.

It should be noted that the restrictions on sale of shares/interests in vehicles apply to those that have acquired units in funds by relying on the exemption.

## **Private Placements**

The Private Placement Exemption is set out in Section 302C of the SFA. If the Private Placement Exemption applies to an offer of a foreign or Singapore-based CIS (which can be taken to mean an investment fund), the offer of the CIS is not required to be notified to MAS, and the prospectus requirements set out in the SFA will not apply.

### ***Conditions***

Similar to Restricted Schemes, the Private Placement Exemption also has a few conditions to be satisfied.

First, the offer should not be made to more than 50 persons within any 12-month period. It should be noted that every offer that is counted for the 50 person limit need not be accepted. This means that once the fund manager makes an offer to an investor, it is considered as an offer made regardless of whether the investor accepts this offer, and it count towards the total 50 person limit.

The 12-month period starts from the day an offer to the first investor. For example, if the units in a CIS are offered to the first investor in Singapore on 1 January 2023, the fund manager would be allowed to make 49 more offers until 31 December 2023. The fund manager may then make a further 50 offers from 1 January 2024 to 31 December 2024 by relying on the Private Placement Exemption. It should be noted that this is a self-monitoring exemption, and it is recommended that fund managers keep a record of the number of offers made. If there are multiple investment funds managed by the same fund management company that rely on the private placement exemption, then there would be



a need to aggregate all the offers made by the same fund management company for the purpose of the limit of 50 mentioned above.

Second, the offers should not be accompanied by an advertisement making the offer or calling attention to the offer or intended offer. The definition of the advertisement has already been mentioned [above](#). And similar to Restricted Schemes, the private placement memorandum is not considered an advertisement.

Third, there should be no selling or promotional expenses paid or incurred in connection with the offers other than for administrative or professional services or by way of commission or fee for services rendered by specified persons. Specified persons are licensed or exempt persons for marketing.

Fourth, there should be no prospectus in respect of any offer. However, in the event that there is a prospectus that has been registered by the MAS, it should have expired. Alternatively before making the offer, the person making the offer should have (1) informed the MAS of its intent to make the offer in reliance on the Private Placement Exemption; and (2) taken reasonable steps to inform the person to whom the offer is made that the offer is made in reliance on the Private Placement Exemption.

### ***Licensing for the Act of Marketing***

The exemption for making an offer should not be confused with marketing a CIS. It should be noted that a licensed Singapore fund manager or a registered fund management company should not be too concerned about the restrictions because once the fund manager has a CMS licence or is a Registered Fund Management Company, the fund manager is allowed to market investment funds which are under their management. However, foreign fund managers can only work with existing licensed or exempt persons in Singapore.

***Note: The information in this publication is intended to provide a brief overview of the fund offering options in Singapore. It is not intended to provide legal advice on the subject matter.***