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# MAS Imposes Business Conduct Requirements for Corporate Finance Advisers, with Effect from 1 October 2023

## Introduction

On 23 February 2023, the Monetary Authority of Singapore ("**MAS**") issued a new Notice SFA-04-N21 on "[Business Conduct Requirements for Corporate Finance Advisers](#)" ("**Notice**"). The Notice imposes a mandatory baseline standard of conduct for corporate finance advisers (as elaborated below). MAS views this exercise to be important for enhancing the overall quality of the corporate finance industry, strengthening public confidence and promoting informed decision making by investors via quality disclosures.

## Background

The Notice follows from an earlier consultation exercise conducted by MAS, from 15 December 2021 to 15 February 2022, seeking public comments on the requirements set out in the "[Consultation Paper on Introduction of Due Diligence Requirements for Corporate Finance Advisers](#)" ("**Consultation Paper**"). For a summary of the Consultation Paper, please click [here](#) for our Client Update titled "MAS Consults on Proposed Due Diligence Requirements for Corporate Finance Advisers". On 23 February 2023, MAS issued its Response to the feedback received pursuant to the Consultation Paper ("**MAS Response**"). Please click [here](#) to view the MAS Response.

## Who Needs to Comply?

The Notice applies to holders of a capital markets services licence to advise on corporate finance, and persons who are exempted from holding a capital markets services licence under Section 99(1)(a), (b) or (c) of the Securities and Futures Act 2001 of Singapore ("**SFA**") in respect of advising on corporate finance, which include banks, merchant banks, and finance companies (each a "**CF Adviser**") and their representatives in respect of advising on corporate finance (each a "**CFA Representative**").

## Effective Date and Implementation

The Notice comes into effect on **1 October 2023** and applies to all engagements to advise on corporate finance entered into by a CF Adviser on or after **1 October 2023**. Nonetheless, CF Advisers are encouraged to start applying the requirements in the interim, particularly when advising on IPOs and RTOs (each as defined herein).

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A CF Adviser must develop, implement, monitor, periodically evaluate and enhance policies, procedures and controls (collectively, "**Policies**") to meet all the requirements of the Notice. The MAS Response clarifies that the Policies should be commensurate with the scope and scale of the CF Adviser's business and cater for the different roles undertaken by the CF Adviser. Further, a CF Adviser must prepare and maintain records of all data, documents and information that are necessary to meet the Notice requirements and retain such records for five years.<sup>1</sup>

## Salient Requirements in the Notice

This Update provides a summary of the salient requirements in the Notice, which are set out in two parts, namely (1) general requirements, and (2) due diligence requirements.

### Part 1 – General Requirements

Part 1 of the Notice applies when a CF Adviser advises on corporate finance and pertains to: (1) identifying and mitigating any potential or actual material conflict between the CF Adviser's interests and the interests of the customer and disclosing, to the extent appropriate, any such conflict to the customer; and (2) ensuring proper governance and supervision of the CF Adviser's business.

The below table briefly highlights the steps to be taken by CF Advisers to comply with the requirements in Part 1 of the Notice, with reference to the MAS Response.

Overview of Requirements in the Notice	Steps to be taken
<b>Managing Conflicts of Interest ("COIs")</b>	
Identify and mitigate any potential or actual <b>material</b> COIs between CF Adviser's interests <sup>2</sup> and its customers' interests.	<ul style="list-style-type: none"> <li>Assess COIs arising from both contractual and non-contractual relationships with a customer, including those arising when the CF Adviser's related corporations or controlling shareholders provide services such as legal, compliance, audit or assurance to the same customer or subscribe to an offer that the CF Adviser is advising the customer on, and those arising from connected persons relationships (i.e. spouse, children, parents and siblings) of its CFA Representatives, relevant directors and specified personnel<sup>3</sup>.</li> </ul>

<sup>1</sup> Where records relate to a transaction, the records must be retained for a period of five years from the date the transaction was completed, terminated or otherwise concluded.

<sup>2</sup> A reference to the CF Adviser's interests includes any interest arising from an existing relationship between its customer and any of the following persons: (a) the CF Adviser, (b) its related corporation, (c) a person who alone or together with any connected person holds or controls, directly or indirectly, 20% or more of its issued share capital or voting power ("**controlling shareholder**"), (d) a director who exercises supervisory oversight over its business in advising on corporate finance ("**relevant director**"), a CFA Representative or a specified personnel or (e) a connected person of an individual mentioned in (d).

<sup>3</sup> The Notice defines "specified personnel" as a corporate finance adviser employee (other than a CFA Representative) who carries out activities connected with advising on corporate finance for a transaction.

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Overview of Requirements in the Notice	Steps to be taken
	<ul style="list-style-type: none"> <li>• Identify and mitigate potential or actual COIs arising from its involvement in other activities in relation to the offering process or the capital markets products offered (for example, allocation of the product offered or issuance of research report on the product offered) and its business in advising on corporate finance.</li> <li>• Develop and implement Policies to:               <ul style="list-style-type: none"> <li>○ safeguard the confidentiality of confidential or price sensitive information received by its CFA Representatives as well as its relevant directors and specified personnel ("<b>CF Team</b>") and experts and third party service providers engaged by it for any transaction which it is advising on; and</li> <li>○ restrict and monitor dealing in capital markets products by the CF Team, where:                   <ul style="list-style-type: none"> <li>(a) the CF Team possesses price sensitive or other confidential information relating to such capital markets products arising from their giving of advice on corporate finance to a customer or carrying out activities connected with advising on corporate finance for a transaction; or</li> <li>(b) such dealing is in conflict with the giving of advice on corporate finance by the CF Adviser to a customer.</li> </ul> </li> </ul> </li> <li>• Collect background information on the CF Team to avoid putting such persons in positions of COI.</li> <li>• Conduct a more detailed COI assessment on the CF Team prior to their involvement in a specific corporate finance transaction.</li> </ul>
<p>Disclose, to the extent appropriate, the COIs to the customer.</p>	<ul style="list-style-type: none"> <li>• Disclosure of COIs may be made without disclosing the identity of any non-public or price sensitive information that may impact other customers.</li> <li>• Disclosures to or waivers from customers are not considered as being adequate in mitigating the relevant COIs.</li> </ul>
<p>Not act on a transaction where the CF Adviser is not reasonably satisfied that it is able to mitigate any material COIs.</p>	<ul style="list-style-type: none"> <li>• Decline to accept the engagement for a new engagement.</li> <li>• Cease to give advice on corporate finance for a transaction for which it is already engaged.</li> </ul>
<p><b>Governance and Supervision</b></p>	
<p>Ensure adequate oversight by its senior management<sup>4</sup> of</p>	<ul style="list-style-type: none"> <li>• Senior management must exercise adequate oversight over the acceptance of an engagement to act as a corporate finance</li> </ul>

<sup>4</sup> Senior management are persons principally responsible for the day-to-day management of the corporate finance business, and depending on the set up of each CF Adviser, such persons may or may not hold the position of a director of the CF Adviser.

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Overview of Requirements in the Notice	Steps to be taken
its business in advising on corporate finance.	<p>adviser and appointment of the transaction team and any subsequent changes to such appointment.</p> <ul style="list-style-type: none"> <li>Senior management may reasonably delegate their duties and responsibilities to persons with the necessary capacity, competence, knowledge, skill and authority.</li> </ul>
Ensure adequate supervision and management of its CFA Representatives.	<ul style="list-style-type: none"> <li>The CF Team should collectively possess the appropriate knowledge, skills, and experience, taking into consideration the nature, scale and complexity of each transaction. In considering whether the team possesses the appropriate experience, CF Advisers may have regard to whether its CFA Representatives have handled similar types of CF advisory transactions. CF Advisers are however not precluded from engaging other persons to supplement the experience of the team in specialised or niche areas. When doing so, CF Advisers should ensure compliance with the requirements in the Notice on reliance on the work of third parties.</li> <li>A CF Adviser must set out clear and effective reporting lines for escalation of material issues to senior management by its CFA Representatives.</li> </ul>

### Part 2 – Due Diligence Requirements

The Due Diligence for Transactions Generally requirement in paragraph 19 of the Notice applies when a CF Adviser advises on corporate finance, other than as provided in paragraph 3(a)(i) of the Notice.

The remainder of Part 2 of the Notice applies when giving advice on corporate finance in the capacity of an issue manager, sponsor or financial adviser (as the case may be) for entities listed or to be listed on the Singapore Exchange Securities Trading Limited ("**SGX-ST**") relating to:

- an initial public offer of shares, units in a business trust or collective investment scheme ("**IPOs**");
- a reverse takeover ("**RTOS**"); and
- a business combination entered into by a special purpose acquisition company.

Adopting feedback received pursuant to the Consultation Paper, CF Advisers who are advising on very substantial acquisitions will not be required to comply with the due diligence requirements in Part 2 of the Notice. However, such CF Advisers are required to observe the general conduct requirements in Part 1 of the Notice.

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MAS stated, in the MAS Response, that it does not consider there to be conflicts or overlaps between the Notice requirements and other requirements or guidelines (including the Association of Banks in Singapore Listings Due Diligence Guidelines ("**ABS DD Guidelines**")), that the ABS DD Guidelines are confined to certain transactions, such as IPOs, and that the ABS DD Guidelines are not legally binding. The due diligence requirements in the Notice will guide the determination of whether an issue manager has made reasonable inquiries as to the need for the inclusion of required information and whether there are false or misleading statements in the offer document under Section 253(5) of the SFA.

The below table briefly highlights the steps to be taken by CF Advisers to comply with the requirements in Part 2 of the Notice.

Overview of Requirements in the Notice	Steps to be taken
<b>Due Diligence for Transactions Generally</b>	
Conduct due diligence with reasonable care, skill and diligence.	<ul style="list-style-type: none"> <li>• Determine the nature and extent of the due diligence work required for a transaction.</li> <li>• Assess and verify the accuracy and completeness of material information provided by customers or other persons in connection with a transaction.</li> <li>• Monitor other information obtained during the transaction and developments relating to the customer or transaction that contradict or bring into question the reliability of the original information.</li> </ul>
<b>Advising the Listing Applicant on Regulatory Requirements</b>	
Inform the listing applicant and its directors of their duties and responsibilities under the SFA, the applicable listing rules and its continuing obligations after admission to the SGX-ST.	<ul style="list-style-type: none"> <li>• Third parties, such as legal advisers, may brief listing applicants on their duties and responsibilities, but the CF Adviser remains responsible for ensuring that listing applicants are informed of their duties and responsibilities under the relevant rules and regulations.</li> </ul>
<b>Dealing with Due Diligence Issues (including poison pen complaints) and Senior Management Oversight for Listing Applications</b>	
Assess and have reasonable grounds to be satisfied that a listing applicant is suitable for listing, taking into account any material issues identified as relevant for the assessment.	<ul style="list-style-type: none"> <li>• When performing due diligence:                             <ul style="list-style-type: none"> <li>○ verify material representations with relevant persons or other credible sources and conduct background checks on the listing group, its key executives, its directors and its controlling shareholders<sup>5</sup>;</li> <li>○ monitor and assess any material developments related to the transaction or listing applicant;</li> </ul> </li> </ul>

<sup>5</sup> For the purposes of Part 2 of the Notice, a "**controlling shareholder**" refers to a person who holds, directly or indirectly, 15% or more of the voting power in, or in fact exercises control over, a corporation.

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Overview of Requirements in the Notice	Steps to be taken
	<ul style="list-style-type: none"> <li>○ inspect key physical assets and interview major business customers and other stakeholders (for example, key suppliers, creditors, counterparties or bankers); and</li> <li>○ where there are material issues involved, (a) review relevant records and supporting documents (for example, invoices, contracts signed with key customers, financial statements, title deeds and regulatory approvals); and (b) obtain additional information from third-party sources (for example, public records or other databases) or appoint third parties to perform relevant checks, where appropriate.</li> <li>● If extenuating circumstances prevent the performing of any of the required due diligence procedures, the CF Adviser must take mitigating measures to address all associated risks, and document its reasons (with supporting documents, where appropriate) for not performing that due diligence procedure and the mitigating measures taken to address the risks.</li> <li>● Where a CF Adviser receives, or is made aware of any allegation or complaint against the listing applicant, its key executive, its director or its controlling shareholder, the CF Adviser must assess whether the allegation or complaint has a material bearing on the accuracy or adequacy of the information provided or affects the suitability for listing, and if so, must independently investigate the allegation or complaint.</li> <li>● Ensure its senior management:             <ul style="list-style-type: none"> <li>○ adequately supervises the formulation and implementation of the transaction team's due diligence plan (including material departures from such plan);</li> <li>○ reviews and approves the resolution of reportable matters<sup>6</sup> relating to listing applications; and</li> <li>○ reviews and approves the material conclusions from the due diligence performed by the transaction team.</li> </ul> </li> </ul>
<b>Reliance on Experts</b>	
<p>A CF Adviser must have reasonable grounds to be satisfied with the knowledge, skills and experience, the qualifications and the</p>	<ul style="list-style-type: none"> <li>● Consider whether the expert's work scope and resources to be applied to the engagement are appropriate to achieve the objective of the expert's engagement (to the extent a reasonable non-expert could make such an assessment).</li> </ul>

<sup>6</sup> Reportable matters refer to material issues relating to non-compliance with the SFA, the Notice, listing rules and other relevant legal and regulatory requirements, extenuating circumstances that prevent the performing of any of the due diligence process, conflicting information from a customer or other persons, suspicious circumstances, difficult or sensitive issues or any other material issues that may be prejudicial to the transaction.

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<p>independence of any expert appointed to provide an expert's opinion in connection with the listing application</p>	<ul style="list-style-type: none"> <li>• If necessary, in its view, propose additional services or due diligence to the customer.</li> <li>• Satisfy itself that its reliance on the conclusions or opinions in any expert's report is reasonable.</li> <li>• Review the expert's report critically (to the extent a non-expert could make such an assessment) and compare the information in the report against its own knowledge and experience.</li> <li>• Investigate and address material discrepancies or material omissions within the expert's report or between the report and other information known to the CF Adviser, including, where necessary, engaging an independent party to conduct a review of the report.</li> <li>• Assess (to the extent a non-expert could make such an assessment) whether material bases, assumptions and qualifications (such as significant accounting policies and estimates in the case of financial information) in the report are fair, reasonable and complete.</li> </ul>
Admission of the Listing Applicant	
<p>A CF Adviser must have reasonable grounds to be satisfied that the listing applicant is suitable for listing.</p>	<p>Prior to submission of the listing application, and before the listing applicant's admission to the SGX-ST, the CF Adviser must have reasonable grounds to be satisfied that:</p> <ul style="list-style-type: none"> <li>• all material due diligence issues have been satisfactorily resolved or clearly disclosed in the listing application or prospectus;</li> <li>• the information in the listing application is complete;</li> <li>• the listing applicant is compliant with the relevant listing rules;</li> <li>• the listing applicant has procedures, systems and controls which (a) enable it to comply with the listing rules and other relevant legal and regulatory requirements applicable to their activities; and (b) provide a reasonable basis to make a proper assessment of the financial position and prospects of the listing applicant;</li> <li>• the directors of the listing applicant collectively have the experience and qualifications to manage the listing applicant's business and ensure that it complies with its obligations under the listing rules; and</li> <li>• each of the listing applicant's directors understands and is competent to discharge his director's obligations under the listing rules.</li> </ul>

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## **Concluding Remarks**

In the MAS Response, MAS states that it is of the view that there are no conflicts or overlaps between requirements in the Notice and other requirements or guidelines and, where relevant, the Notice operates to elaborate on ways in which CF Advisers can achieve the regulatory objectives of existing requirements.

The Notice takes effect on 1 October 2023, but CF Advisers are urged to immediately work towards enhancing its existing Policies such that they can implement the necessary changes within the transition period.

For further queries and specific advice, please feel free to contact our team below.



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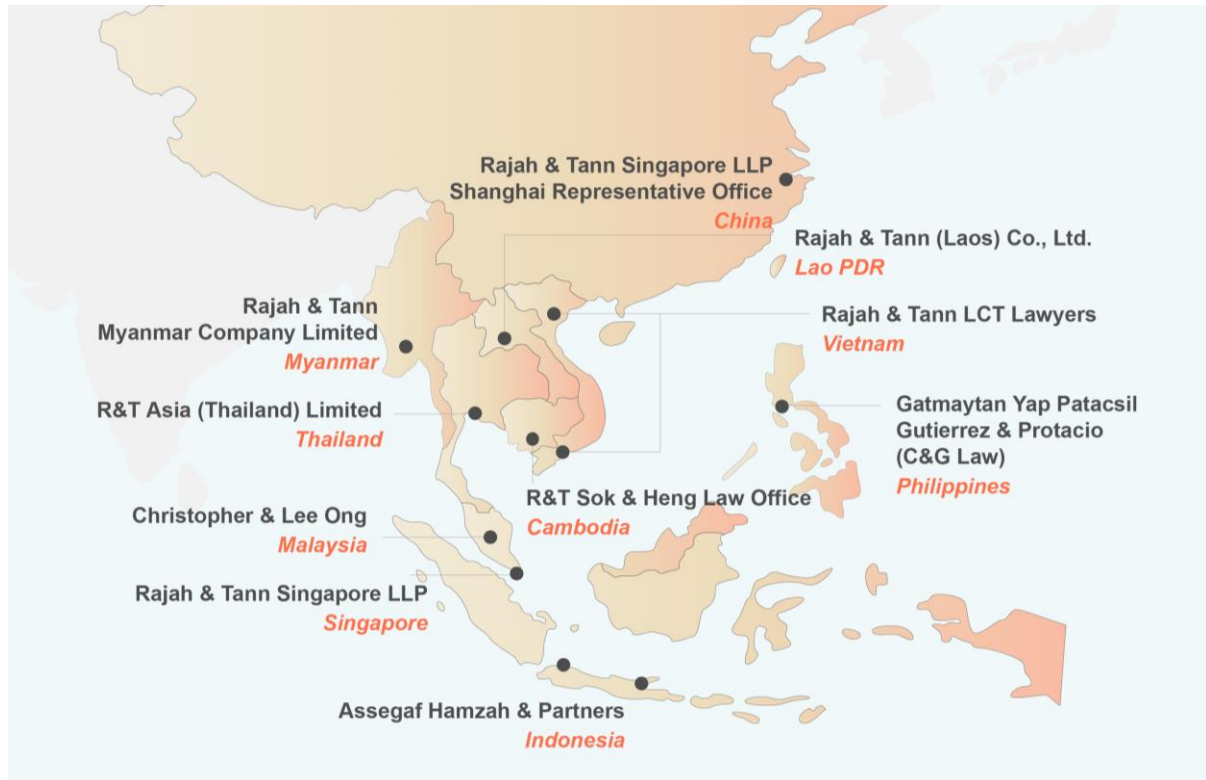
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