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In this issue, we first consider the Financial Holding Companies Act 2013 (FHCA) which has recently come into force on 30 June 2022. The FHCA aims to mitigate intra-group contagion risk, prevent multiple use of capital within a group, and limit group concentration risk exposures, and will be of clear interest to company groups operating in Singapore. This issue also looks at the new Retail ESG fund guidelines issued by MAS. This is a move by MAS to mitigate greenwashing at a product level. The guidelines by MAS are a timely development given investor interest in ESG related investment products.

I. Financial Holding Companies Act 2013

Henry Tan, Advocate & Solicitor

1. Introduction

The Financial Holding Companies Act 2013 (the “**FHCA**”)¹, which aims to support effective prudential oversight of financial holding company groups (“**FHCs**” and FHC groups, “**FHC groups**”)² came into force on 30 June 2022. Under the FHCA, the Monetary Authority of Singapore (the “**MAS**”) is empowered to designate an FHC for regulation where:

- (i) the FHC is an ultimate holding company of a financial group headquartered in Singapore; or
- (ii) the FHC is an intermediate FHC (that is, an FHC that is not an ultimate holding company) established in Singapore (“**Intermediate FHC**”) that has a Singapore bank or licensed insurer³

¹ <https://sso.agc.gov.sg/Act/FHCA2013/Uncommenced/20210622032829?DocDate=20140408>

² See Section 2(1) of the FHCA for the definitions of “FHC group” and “financial holding company”.

³ See Section 2(1) of the FHCA for the definitions of “bank” and “licensed insurer”.

as a subsidiary, and such subsidiary is considered by the MAS (a) to be significant to the FHC group of the intermediate FHC or (b) to affect the stability of, or public confidence in, the financial system in Singapore.

Broadly, the FHCA aims to mitigate intra-group contagion risk, prevent multiple use of capital within a group, and limit group concentration risk exposures.⁴ It is noteworthy that as a result of limb (ii) above, foreign FHC groups with an Intermediate FHC in Singapore may also be affected by the application of the FHCA. This Article provides a brief discussion of the key aspects of the FHCA.

2. Designated FHCs are subject to regulatory oversight

The FHCA enables the MAS to classify an FHC as a designated FHC (“**Designated FHC**”).⁵ An FHC that is classified as a Designated FHCs will be subject to the MAS’ regulatory oversight.

3. Regulation of Designated FHCs

(1) Activities of Designated FHCs

A Designated FHC is not permitted to engage in any activity without the MAS’ approval except for (i) being a holding company for its subsidiaries⁶, (ii) acquiring or holding of shares in any company as permitted under the FHCA, (iii) conducting general management, and capital and liquidity management and providing advisory, financial, accounting, or information processing services in support of the business of any entity within the FHC group of the Designated FHC, and (iv) such other activities as the MAS may specify.⁷

(2) Change in Constitution of Designated FHCs

A Designated FHC must furnish the MAS with the particulars of any proposed amendment or alteration to its constitutional documents before making such amendment or alteration. Within 3 months from the date on which such amendment or alteration has been made, the Designation FHC must furnish the MAS with particulars of the same with supporting documents for verification.⁸

(3) Change in Shareholding or Control of Designated FHCs

(i) Mergers Involving Designated FHCs

⁴ https://www.mas.gov.sg/annual_reports/annual20122013/robust01_03.html

⁵ See Section 4 of the FHCA for the definition of “designated financial holding company” and the power of the MAS to designate an FHC as a Designated FHC.

⁶ See Section 2(1) of the FHCA for the definitions of “holding company” and “subsidiary”.

⁷ See Section 8 of the FHCA.

⁸ See Sections 10(1) and (2) of the FHCA.

A Designated FHC is not permitted to be merged or consolidated with, or be taken over by, any other entity without the prior written approval of the relevant minister (if the Designated FHC has a bank subsidiary) or the MAS (if the Designated FHC does not have a bank subsidiary).⁹

(ii) Control of Substantial Shareholdings in Designated FHCs

Generally, no person is permitted to be a substantial shareholder of a Designated FHC without the prior approval of the relevant minister (if the Designated FHC has a bank subsidiary) or the MAS (if the Designated FHC does not have a bank subsidiary).¹⁰

(iii) Control of Shareholding and Voting Rights in Designated FHCs

Generally (i) no person is permitted to be (x) a 12% controller¹¹, (y) a 20% controller¹² or (z) an indirect controller¹³ of a Designated FHC with a bank subsidiary without the prior approval of the relevant minister and (ii) no person is permitted to be (x) a 20% controller or (y) an indirect controller of a Designated FHC without a bank subsidiary absent the prior approval of the MAS.¹⁴

(4) Exposures and Limits on Investments

(i) Exposures

A Designated FHC is not permitted to grant any credit facility¹⁵ except to a company within its FHC group or a company within the FHC group of the Designated FHC's ultimate financial holding company.¹⁶

The MAS may impose certain requirements on a Designated FHC for purposes of limiting the exposure¹⁷ thereof, including requirements in respect of the Designated FHC's substantial shareholder group, financial group, director group, third party single counterparty group¹⁸ or any other person or class of persons as the MAS may prescribe.¹⁹

(ii) Disclosures of Interests by Directors

⁹ See Sections 12 and 19 of the FHCA.

¹⁰ See Sections 13 and 20 of the FHCA.

¹¹ See Section 11(2) of the FHCA for the definition of "12% controller".

¹² See Section 11(2) of the FHCA for the definition of "20% controller".

¹³ See Section 11(2) of the FHCA for the definition of "indirect controller".

¹⁴ See Sections 14 and 21 of the FHCA.

¹⁵ See Section 2(1) of the FHCA for the definition of "credit facility".

¹⁶ Section 28(1) of the FHCA.

¹⁷ See the Schedule to the FHCA for the definition of "exposure".

¹⁸ See the Schedule to the FHCA for the definitions of "substantial shareholder group", "financial group", "director group", and "third party single counterparty group".

¹⁹ Section 28(2) of the FHCA.

Every director of a Designated FHC with direct or indirect interest in any exposure or proposed exposure of the Designated FHC or any company within the FHC group of the Designated FHC must promptly declare the nature of his or her interest to the board of directors of that Designated FHC.²⁰

(iii) Limit on Equity Investments

Subject to certain exceptions, the MAS may restrict the amount of equity investment²¹ in a single company that a Designated FHC may acquire or hold.²²

(iv) Investments in Companies

Subject to certain exceptions, no Designated FHC is permitted to directly or indirectly acquire or hold a major stake²³ in any company without the prior approval of the MAS.²⁴

(v) Immovable Property

Subject to certain exceptions, no Designated FHC is permitted to acquire or hold interests in or rights over immovable property²⁵, wherever situated.²⁶

(5) Assets and Capital Requirements

(i) Liquid Assets

The MAS may impose (a) requirements in relation to the minimum amount or amounts of liquid assets to be held by a Designated FHC, having regard to the risks arising from the activities of the Designated FHC and its FHC group and such other factors the MAS considers relevant or (b) limits on each liquid asset²⁷ or class of liquid assets to be held by a Designated FHC.²⁸

(ii) Minimum Capital Requirements

²⁰ Section 29(1) of the FHCA.

²¹ Section 30(5) of the FHCA for the definition of "equity investment".

²² Section 30 of the FHCA.

²³ See Section 31(10) of the FHCA for the definition of "major stake".

²⁴ Section 31 of the FHCA.

²⁵ See Section 32(5) of the FHCA for the definition of "immovable property".

²⁶ Section 32 of the FHCA.

²⁷ See Section 34(11) of the FHCA for the definition of "liquid asset".

²⁸ Sections 34(1) and (2) of the FHCA.

A Designated FHC is required to have a minimum paid-up ordinary share capital of not less than the highest amount of the paid-up capital which any of its subsidiaries that is a bank incorporated in Singapore or a licensed insurer incorporated, formed or established in Singapore is required to hold under the Banking Act or the Insurance Act respectively.²⁹

A Designated FHC is required to have capital funds³⁰ of not less than the highest amount of the paid-up capital³¹ which any of its subsidiaries that is a bank incorporated in Singapore or a licensed insurer incorporated, formed or established in Singapore is required to hold under the Banking Act or the Insurance Act, respectively.³²

A Designated FHC is also prohibited from reducing its paid-up capital or purchasing or otherwise acquiring shares issued by the Designated FHC if such shares will be held as treasury shares, without the approval of the MAS.³³

Additionally, the MAS may require a Designated FHC to maintain paid-up capital and capital funds in Singapore of such amount, and in such manner, as the MAS considers appropriate, having regard to the risks arising from the activities of the Designated FHC and its FHC group and such other factors the MAS considers relevant.³⁴

(iii) Capital Adequacy Requirements

The MAS may require a Designated FHC to maintain, on a consolidated basis in aggregate with any one or more companies in which the Designated financial holding company has a major stake (as the MAS may determine), such amount of capital adequacy, as calculated in the form and manner determined by the MAS.³⁵

(iv) Leverage Ratio Requirement

The MAS may require the leverage ratio of a Designated FHC to be not less than a specified amount as calculated in the form and manner determined by the MAS.³⁶

(6) Other Matters in Respect of Designated FHCs

²⁹ Section 35(1) of the FHCA.

³⁰ See Section 2(1) of the FHCA for the definition of "capital funds".

³¹ Pursuant to Section 35(9) of the FHCA, "paid-up capital" does not include any amount that is represented by treasury shares.

³² Section 35(2) of the FHCA.

³³ Section 35(4) of the FHCA.

³⁴ Section 35(3) of the FHCA.

³⁵ Section 36(1) of the FHCA.

³⁶ Section 37(1) of the FHCA.

(i) Audit, Inspections and Investigations

Every Designated FHC is required to obtain the approval of the MAS for the appointment of an auditor or a replacement thereof.³⁷

The MAS is also empowered to inspect, under conditions of secrecy, the books of any Designated FHC and any other company within its FHC group which is a financial institution³⁸, as well as any branch, agency or office outside Singapore opened by any Designated FHC or any other company within its FHC group.³⁹

Furthermore, the MAS has the power to investigate, under conditions of secrecy, the books of any Designated FHC and any other company within its FHC group, if the MAS has reason to believe that any Designated FHC is contravening the provisions of the FHCA.⁴⁰

(ii) MAS' Powers of Control Over Designated FHCs

Any Designated FHC that is or is likely to become insolvent, is or is likely to become unable to meet its obligations, or has suspended or is about to suspend payments, is required to immediately inform the MAS of that fact.⁴¹

The MAS is generally empowered to direct or take over the operations of a Designated FHC if (i) the Designated FHC informs the MAS that it is or is likely to become insolvent, is or is likely to become unable to meet its obligations, or that it has suspended or is about to suspend payments, (ii) the Designated FHC becomes unable to meet its obligations, or is insolvent, or suspends payments, (iii) the MAS is of the opinion that the Designated FHC is or is likely to become insolvent, or that it is or is likely to become unable to meet its obligations, or that it is about to suspend payments or has contravened any of the provisions of the FHCA or (iv) the MAS considers it in the public interest to do so.⁴²

4. Regulations and Notices Issued under the FHCA

Various regulations and notices, as well as a circular, have been issued under the FHCA to supplement the provisions of the FHCA. These regulations and notices, and the circular, which relate to, amongst many others, the corporate governance, investment activities, appointment of external auditors and capital requirements of FHCs, are available on the website of the MAS⁴³.

³⁷ Section 39(1) of the FHCA.

³⁸ See Section 2(1) of the FHCA for the definition of "financial institution".

³⁹ Section 40 of the FHCA.

⁴⁰ Section 41 of the FHCA.

⁴¹ Section 46 of the FHCA.

⁴² Section 47 of the FHCA.

⁴³ <https://www.mas.gov.sg/>

II. MAS issues ESG disclosure and reporting guidelines for Retail ESG funds

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1. Introduction

The Monetary Authority of Singapore (“**MAS**”) issued⁴⁴ Circular No. CFC 02/2022 on Disclosure and Reporting Guidelines for Retail ESG Funds⁴⁵ (“**Circular**”) on 28 July 2022, setting out its expectations on how existing requirements under the Code on Collective Investment Schemes (“**CIS Code**”) and the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (“**SF(CIS)R**”) apply to retail environmental, social, and governance (“**ESG**”) funds, and the disclosure and reporting guidelines applicable to these funds, in an effort to mitigate the risk of greenwashing, at the product level.

Very simply put, greenwashing arises from the overstatement or lack of clarity about a firm’s sustainability commitments, or lack of alignment between the product’s sustainability-related name and its investment objective.

The MAS has recognised the need to guard against such risk given the growing investor interest in ESG related investment products internationally, and likewise in Singapore, where there is an increasing number of retail funds with ESG investment focus being offered. The Circular is meant to facilitate greater comparability in the disclosures made by retail ESG funds, which will in turn allow investors to make more informed investment decisions.

2. Scope of Circular

The Circular is relevant to all holders of a capital markets services licence in respect of fund management and trustees approved under Section 289 of the Securities and Futures Act 2001, and applies to an authorised or recognised scheme (“**ESG Fund**”) which:

- (i) uses or includes ESG factors as its key investment focus and strategy. This means that ESG factors significantly influence the scheme’s selection of investment assets, such as impact investing and ESG inclusionary investing (including broad and thematic strategies), but not where the scheme only uses negative screening⁴⁶ or merely incorporates or integrates ESG considerations into its investment process to seek financial returns; and

⁴⁴ <https://www.mas.gov.sg/regulation/circulars/cfc-02-2022---disclosure-and-reporting-guidelines-for-retail-esg-funds>

⁴⁵ <https://www.mas.gov.sg/-/media/MAS/Regulations-and-Financial-Stability/Regulations-Guidance-and-Licensing/Securities-Futures-and-Fund-Management/Regulations-Guidance-and-Licensing/Circulars/CFC-02-2022-Disclosure-and-Reporting-Guidelines-for-Retail-ESG-Funds.pdf>

⁴⁶ Per the Circular, this refers to the application of a set of filters to determine which companies, sectors or activities are ineligible to be included in a specific portfolio.

- (ii) represents itself as an ESG-focused scheme.

The Circular will take effect on 1 January 2023, and apply to prospectuses of ESG Funds lodged with the MAS on or after such date, as well as the annual reports of ESG Funds covering financial years ending on or after such date.

3. Name of fund

The CIS Code requires that a scheme's name should be appropriate, and not be undesirable or misleading.

Pursuant to the Circular, where a scheme's name includes or uses ESG-related or similar terms (e.g. "sustainable", "green"), the scheme should reflect such an ESG focus in its investment portfolio and/or strategy in a substantial manner, and comply with the Circular. Conversely, if a scheme's name uses a term which is considered by the MAS to be ESG-related but does not comply with the Circular, the name will be deemed inappropriate.

Factors the MAS would consider in assessing whether a scheme's investment portfolio and/or strategy is focused on ESG in a substantial manner include whether the scheme's net asset value is primarily invested in accordance with the scheme's investment strategy. As a guide, this normally involves a threshold of at least two-thirds of the scheme's net asset value being invested in accordance with the scheme's investment strategy.

The MAS also notes that there may be cases where it is neither possible nor practicable for a manager to determine, at the individual asset level, the proportion of a scheme's net asset value that is invested in accordance with ESG investing approaches. In such cases, the MAS expects the manager to explain in the offering documents how the scheme's investments are substantially ESG-focused.

4. Disclosure requirements

(1) Prospectus

The SF(CIS)R requires that a scheme's prospectus should disclose its investment objective, focus and approach, as well as the risks of investing in the scheme.

Pursuant to the Circular, the prospectus of an ESG Fund should disclose the following:

- (i) Investment focus
 - (a) the scheme's ESG focus (e.g. climate change, low carbon footprint, sustainability, reduction in greenhouse gas emissions);

- (b) the relevant ESG criteria, methodologies or metrics (e.g. third-party or proprietary ratings, labels, certifications) used to measure the attainment of the scheme's ESG focus;

(ii) Investment strategy

- (a) a description of the sustainable investing strategy used by the scheme to achieve its ESG focus, the binding elements of that strategy in the investment process, and how the strategy is implemented in the investment process on a continuous basis;
- (b) any relevant ESG criteria, metrics or principles considered in the investment selection process (e.g. a climate-focused fund may use climate-related indicators such as carbon footprint, weighted average carbon intensity, greenhouse gas emissions and exposure to carbon-related assets);
- (c) the minimum asset allocation into assets used to attain the ESG focus of the scheme;

(iii) Reference benchmark

- (a) where the scheme uses a benchmark index to measure the attainment of its ESG focus, an explanation of how the benchmark index is consistent with or relevant to its investment focus;
- (b) where the scheme uses a benchmark index for financial performance measurement only, a statement of that fact; and

(iv) Risks

- (a) risks associated with the scheme's ESG focus and investment strategy (e.g. concentration in investments with a certain ESG focus, limitations of methodology and data, lack of universal ESG standards or taxonomy, or reliance on third party information sources).

Any ESG-related terms used in the prospectus should be clearly defined.

(2) Annual reports

The annual report of an ESG Fund should disclose the following:

- (i) a narrative on how and the extent to which the scheme's ESG focus has been met during the financial period, including a comparison with the previous period (if any);
- (ii) the actual proportion of investments that meet the scheme's ESG focus (if applicable); and

- (iii) any action taken by the scheme in attaining the scheme's ESG focus (e.g. stakeholder engagement activities).

(3) Additional information

Where appropriate, additional information on the following areas regarding an ESG Fund, its manager or index provider should be disclosed to investors or prospective investors on the manager's website or by other appropriate means:

- (i) how the ESG focus is measured and monitored, and the related internal or external control mechanisms that are in place to monitor compliance with the scheme's ESG focus on a continuous basis (including methodologies used to measure the attainment of the scheme's ESG focus, if any);
- (ii) sources and usage of ESG data or any assumptions made where data is lacking;
- (iii) due diligence carried out in respect of the ESG-related features of the scheme's investments; and
- (iv) any stakeholder engagement policies (including proxy voting) that can help shape corporate behaviour of companies that the scheme invests in and contribute to the attainment of the scheme's ESG focus.

5. Application of Circular to recognised schemes

For recognised schemes, the MAS will consider the schemes' compliance with the relevant ESG rules in their home jurisdictions, if any, in assessing their compliance with the Circular. In particular, Undertakings for the Collective Investment in Transferable Securities (UCITS) schemes which fall within the scope of ESG funds will be deemed to have complied with the Circular's disclosure requirements if they are classified as falling under Article 8 or 9 of the European Union's Sustainable Finance Disclosure Regulation⁴⁷. The name of the UCITS scheme should still comply with the requirements of the Circular.

6. Closing comments

The MAS will continue to monitor developments in the ESG investing landscape, and update and supplement the Circular as appropriate.

The Circular is but one measure in the MAS' comprehensive green and sustainable finance strategy for

⁴⁷ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector

Singapore, more information on which can be found on its website⁴⁸.

⁴⁸ <https://www.mas.gov.sg/development/sustainable-finance>

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