STANDARDS BOARD FOR ALTERNATIVE INVESTMENTS

SBai Toolbox

A Guide for Chinese Onshore Alternative Managers Expanding Offshore

1. Introduction

Access for global institutional investors to Chinese onshore managers can be challenging for several reasons including the different regulatory and operational environments. Chinese onshore managers may therefore choose to expand their operations offshore to be able to distribute their products more efficiently to global allocators.

Hong Kong and Singapore are typical destinations for offshore expansion for Chinese managers, but there are important considerations when selecting a new jurisdiction. Managers need to understand both the regulatory framework, operational expectations, and practical differences including office space and talent acquisition. Therefore, there is no one size fits all approach to expansion offshore and managers will need to consider their own circumstances, strategy, and expansion plans when choosing an offshore jurisdiction.

This memo provides an informational guide to these considerations including:

- A comparison of practices in the different regions
- Key regulatory differences, and
- Practical differences

2. Comparison of Regional Practices

Asset managers looking to operate in a new jurisdiction for the first time have several areas that need to be understood and compared. This includes the regulatory environment, operational practicalities, and any restrictions on investment strategy.

The below table provides a high-level comparison of these areas in China versus offshore locations in Hong Kong and Singapore.

	China[1]	Hong Kong & Singapore
Regulation	Oversight by the China Securities Regulatory Commission (CSRC). Asset Management Association of China (AMAC) conducts supervision as a *self-regulatory* organisation.	Regulators with enforcement powers: • The Securities and Futures Commission of Hong Kong (SFC) • The Monetary Authority of Singapore (MAS)

[1] Practices here refer to Private Securities Funds in China

	China[1]	Hong Kong & Singapore
Fund Structuring	Funds are typically pooled, asset management schemes, and contractual funds that are governed by contractual relationships.	Standalone funds and master feeder funds that are domiciled offshore. Singapore domiciled Variable Capital Company (VCC) and Hong Kong domiciled Open-ended Fund Company and Limited Partnership Fund (LPF) are increasing in popularity.
Investors	Funds are typically open to Qualified Investors only and each fund is limited to no more than 200 investors.	Funds are typically open to Qualified Investors only but there is no limitation on the number of investors[2].
Marketing	Distribution is typically via channels such as banks, trust companies and wealth management platforms rather than direct targeting of institutions.	Direct targeting of institutions such as pensions, endowments, advisors, fund of funds, family offices, and financial institutions is the standard method of marketing.
Operations	Back-office services such as fund registration, valuation, accounting, and IT are typically outsourced. Medium to large scale managers may have the capabilities to do this in-house.	Back-office services can be either outsourced or completed in-house.
Investment Strategy	Typical strategies include equity long/short, equity long only, China macro, fixed income, and CTA.	Strategies are typically more diverse compared to onshore China.
Investment Restrictions	Direct access to onshore instruments only. Onshore managers need to use OTC, swaps, Stock Connect, or QDII to access offshore markets.	Direct access to global markets. Offshore managers need to use swaps, Stock Connect, P-notes, or QFII to access Chinese onshore instruments.

3. Regulatory Differences

One of the key differences between various financial jurisdictions is the regulatory environment. Key differences include regulatory supervision and enforcement, and the types of licences and registrations that are required.

The below tables illustrate some of these key differences.

Regulators

	China	Hong Kong	Singapore
Regulator	For onshore Chinese managers, the main regulators of private securities investment	The Securities and Futures Commission ("SFC") is the main regulator of authorised	The Monetary Authority of Singapore ("MAS") is the main regulator of hedge funds in Singapore

[2] The exception to this is in Singapore if the regulated entity is a Regulated Fund Management Company (RFMC) in which case it may serve up to 30 Qualified Investors and manage up to USD 250m in assets under management.

	China	Hong Kong	Singapore
	funds and fund managers are the CSRC and AMAC. AMAC is a self-regulatory authority.	investment funds and fund managers in Hong Kong.	
Key Rule(s)	The Securities Investment Fund Law The Interim Measures for the Supervision and Administration of Private Investment Funds, and The Administrative Measures for Securities Investment Fund Management Companies. Provisions on Strengthening the Regulation of Privately Offered Investment Funds.	The Securities and Futures Ordinance (Cap. 571) ("SFO")[3] which treats all funds as Collective Investment Schemes ("CIS"), with hedge funds being one of the specific schemes Fund Manager Code of Conduct[4]	The Securities and Futures Act[5] Securities and Futures (Licensing and Conduct of Business) Regulations[6]
Additional Regulatory Requirements	A private fund shall not be publicly promoted Private funds shall be offered to qualified investors, and the number of qualified investors shall not exceed 200 cumulatively The private fund management institutions and non-publicly offered funds shall both register at AMAC.	There are additional regulatory requirements in place around competence and financial resources of managers. Licensed representatives and responsible officers are required to be "fit and proper" to carry out the relevant regulated activities. Each licensed corporation should have at least two responsible officers with sufficient industry qualifications and experience (including management experience) as accepted by the SFC. Such responsible officers should have sufficient authority within the firm to oversee the firm's	There are different categories of licensing for Fund Management Companies (FMCs) which impact an FMC's regulatory requirements such as base capital requirements: • Registered FMC • Accredited/Institutional Licensed FMC • Retail Licensed FMC • Venture Capital FMC FMCs are subject to internal audit requirements. FMCs are generally not allowed to hold client assets and are expected have independent custody arrangements in place.

[3] https://www.elegislation.gov.hk/hk/cap571
[4] https://www.sfc.hk/-/media/EN/assets/components/codes/files-current/web/codes/fund-manager-code-of-conduct/fund-manager-code-of-conduct.pdf
[5] https://sso.agc.gov.sg/Act/SFA2001
[6] https://www.mas.gov.sg/regulation/regulations/securities-and-futures-licensing-and-conduct-of-business-regulations

	China	Hong Kong	Singapore
		conduct of regulated activities[7]	

Fund Definition and Licencing Requirements

	China	Hong Kong	Singapore
Definition	A PRC Securities Investment Fund is defined as publicly or privately raised by fund managers to invest in securities (e.g., China A shares) for the benefit of the fund unitholders	The SFC handbook[8] for authorised funds states that hedge funds are generally regarded as non-traditional funds that possess different characteristics and utilise different investment strategies from traditional funds[9]. The SFC will exercise its discretion in imposing additional conditions to each scheme on a case-by-case basis as appropriate.	According to the MAS's Code on Collective Investment Schemes ("CIS")[10], "there are different characteristics and investment strategies that define hedge funds. From the code "A hedge fund generally refers to a scheme which aims to achieve a high return through the use of advanced investment strategies." In considering whether a fund constitutes a hedge fund, MAS will consider the use of advanced investment strategies which may involve financial instruments which are not liquid, financial derivatives, concentration of investments, leverage or short selling or the use of alternative asset classes.
Structure	Funds are typically in the form of a contractual fund.	Authorised funds are typically in the form of unit trusts or open-ended companies.	Funds are typically, close-ended funds (i.e., corporation), open-ended unit trusts, or Limited Liability Partnerships/LLPs

[7] https://www.sfc.hk/en/Regulatory-functions/Intermediaries/Licensing/Types-of-intermediary-and-licensed-individual
[8] https://www.sfc.hk/-/media/EN/files/LIC/handbook/licensing-handbook.pdf
[9] Note that there are exemptions allowed for unauthorised funds as discussed later in this memo under distribution, marketing, and investors.
[10] https://www.mas.gov.sg/regulation/codes/code-on-collective-investment-schemes

	China	Hong Kong	Singapore
Licensing	Asset management firms (which are non-financial institutions such as banks, securities companies, mutual fund management companies) require a Private Fund Management (PFM) licence (i.e., registration with AMAC as a private fund manager) to operate	• **Type 1** *(Dealing in Securities)* • **Type 4** *(Advising on Securities)* • **Type 9** *(Asset Management)* Typically, a hedge fund manager based in Hong Kong would hold a Type 9 license and usually does not need to hold Type 1 license. Whether a Type 4 license is required will depend on the nature of the hedge fund manager's activities in Hong Kong.[11]	Capital Markets Services license (issued by the MAS under the Securities and Futures Act ("SFA")) or Financial Advisers license (Issued by the Financial Advisers Act ("FAA")):[12]

Distribution, Marketing, and Investors

Limitations and rules on licences different between Hong Kong and Singapore:

	Hong Kong	Singapore
Rules	A hedge fund manager licensed for Type 9 (asset management) regulated activity is permitted to market the hedge funds under its management as the SFO allows a Type 9 licensee to engage in this activity for the purpose of carrying on its asset management business. However, this also means that the manager must be licensed for Type 1 (dealing in securities) regulated activities if he/she markets a fund that is not under its management.	Offshore fund managers marketing offshore funds to Singapore investors must be licensed or regulated in the offshore jurisdiction and must be "fit and proper" (the MAS Guidelines on Fit and Proper Criteria, revised on 28 January 2020)[13]. For Onshore Hedge Funds, to market a hedge fund to persons in Singapore, the marketer must hold a Capital Markets Services License ("CMSL") for dealing in capital markets products under the SFA, unless an exemption applies.[14] For Offshore Hedge Funds, the licensing requirements under the SFA have extra-territorial effect. Section 339 of the SFA provides that it will apply to any act done partly in and partly outside Singapore

[11] Further details on the differences between licences can be found in Appendix A.
[12] Further details on what these licences cover can be found in Appendix A.
[13] Further details can be found in Appendix C.
[14] The Securities and Futures (Exemption from Requirement to Hold Capital Markets Services License) Regulations set out the person who is exempt from the requirement to hold a CMSL to carry on business in dealing in capital markets products that are securities, units in a collective investment scheme or exchange-traded derivatives contracts that are listed or quoted on an approved exchange, or a recognized market operator that is incorporated in Singapore.

	Hong Kong	Singapore
		which, if done wholly in Singapore, would constitute an offence under the SFA. In addition, any act done outside Singapore (for example, the provision of services from outside Singapore) that has a substantial and reasonably foreseeable effect in Singapore will also be deemed to have been carried out in Singapore.[15]
Investors	Although SFC has a regulatory framework for the authorization (public offering) of hedge funds, it is rarely used. Fund managers prefer to rely on exemptions to save time and to have greater flexibility in terms of capital-raising, investor reporting and investment strategies. Unauthorized (private) hedge funds cannot be marketed to the Hong Kong public unless an exemption applies. Key exemptions include marketing by way of private placement (therefore not to the "public" of Hong Kong) or only to "professional investors" as defined under the Securities and Futures Ordinance and the Securities and Futures (Professional Investor) Rules For unauthorized corporate funds, the Seventeenth Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance provides additional safe harbours.[16]	Accredited Investors[17]: • Net personal assets exceed SGD 2 million (or equivalent), of which the net value of the investor's primary place of residence can only contribute up to SGD 1m • Net financial assets exceed SGD 1 million (or equivalent) • Income in the preceding 12 months not less than SGD 300,000 (or equivalent) Institutional Investors: The Government • A statutory board as may be prescribed by regulations, • An entity directly or indirectly wholly and beneficially owned by a central government and whose principal activity is: (i) to manage its own funds; (ii) to manage the funds of the central government (including any pension or provident fund); or (iii) to manage the funds of another entity that is wholly and beneficially owned, whether directly or indirectly, by the central government of that country

Tax

There are regional differences in terms of corporations, funds, transactions, and investor level taxes between China, Singapore, and Hong Kong. There are also varying degrees of exemptions available to funds with specific criteria to be eligible for these exemptions in each jurisdiction.

[15] An offshore sponsor marketing a hedge fund in Singapore that does not wish to apply for a license to market a fund in Singapore can engage a Singapore licensed placement agent (a holder of a CMSL under the SFA or a person who is exempt from the license) to conduct the marketing on its behalf.
[16] For further detail on these Safe Harbours please see Appendix B.
[17] Accredited Investors need to opt in to be classified this way.

Asset managers should ensure to consult with a professional tax advisor to understand the tax implications for their specific circumstances.

4. Starting an Offshore Asset Management Business

If looking to either Hong Kong or Singapore as a destination for an offshore business, there are several practical implications that need to be considered:

Office Space and Rental

There are several popular locations in both Hong Kong and Singapore for asset management offices; however, rent, and other costs will vary.

In Hong Kong, Central is one of the most expensive areas and managers at the start of their journey may find other locations such as Sheung Wan, Admiralty, or Wanchai more cost effective until the business grows.

In Singapore, the most expensive areas are Raffles Place, Shenton Way/Tanjong Pagar, and City Hall. Similarly, areas such as Beach Road/Bugis or Orchard Road may be more suitable at the early stages of the business.

In addition to rent, asset managers will have to consider utilities and other expenses when assessing the best location for their offices in line with their budgets. As part of research into this asset managers should consider whether office space has additional charges for:

- Utilities such as telephony, water, and electricity
- Office insurance
- Air Conditioning
- Management Fees associated with the building
- Government Rates that may be applicable to business operations

Talent Pool

In general, the cost of talent in China is at least the same as Hong Kong and Singapore and in some cases can be more expensive. Income tax in China is typically higher than both Hong Kong and Singapore and as such packages need to be competitive.

Asset managers should take the time to understand market rates for various roles and levels of experience in the jurisdiction they are considering moving to.

Financial Services Ecosystem

Law Firms

Forming an offshore fund (for example based in Cayman) will require both onshore counsel (typically the "lead counsel", advising on laws of the manager's domicile) and offshore counsel (advising on fund domicile law). Depending on the domicile of key investors (e.g., US, UK), additional local counsel advisors may also be needed.

Onshore counsel:

International Law Firms: There are many leading firms that have well-established fund formation, merger and acquisition, and regulatory advisory teams in Hong Kong, and increasingly also in Singapore:

- Some will have specialists in derivatives, capital markets, insolvency, litigation, and other niche areas
- They may be able to leverage global capability (e.g., US/UK advice)
- Costs for services will be more expensive that local law firms due to the breadth of experience required

Local Law Firms: Both jurisdictions also have reputable local firms with lawyers that have had at international firms and have deep local knowledge:

- May offer a nimble, pragmatic, and cost-effective solution for start-up managers
- Typically, only cover local HK or SG law (no US/UK capability)
- This will be cheaper than international law firms, but experience may be limited

Offshore counsel:

Both jurisdictions are well served by a deep pool of offshore firms that advise on a full range of practice.

Fund Administration

Fund administration services are comparable between Singapore and Hong Kong. Typically, these firms will have offshore teams with a servicing staff located in the country of the manager to increase cost effectiveness.

Costs for fund administration do not depend on the domicile of the fund. Factors that will impact cost include the administrator, the services provided, and the asset classes traded amongst other things. The costs are either tiered based on AUM (usually with a minimum fee level) or a flat fee.

Auditor and Tax Advisors

Audit costs between jurisdictions are comparable and costs are split between a local auditor and the offshore domicile (e.g., Cayman).

With introduction of a local domicile fund vehicle e.g., Variable Capital Company ("VCC"), a Singapore domiciled fund structure, the audit fee for such structures may be lower when compared to Cayman fund as only one layer of fee will be charged (i.e., no additional Cayman fee).

Tax advisor costs will vary depending on the expertise required and which tax domiciles it covers. Tax advisors may need to be used for advising the structure, reviewing fund governing documents and other disclosure requirements. The scope of services required in Singapore is relatively more than in Hong Kong with additional work, namely Goods and Services Tax compliance filing work, which is not required in Hong Kong.

5. Chinese Managers Expanding Offshore:

As discussed above in the memo, there are several regulatory and practical considerations that need to be considered for a manager looking to expand offshore:

	Challenges
Regulator	Managers need to understand the offshore regulatory framework of their chosen jurisdiction and the different compliance standard that will be expected.
Costs	Running costs will typically be higher along with the Total Expense Ratio of the Fund (i.e., the funds operating costs).
Operations and Risk Management	Managers will need to understand both regulator and allocator requirements in this space. This includes having proper operational and risk management procedures in place, building internal functions to ensure segregation of duties, and monitoring conflicts of interest.
Marketing[18]	Managers will likely be less familiar with the investor base which may be compounded by language barriers and a lack of resources for marketing. Managers

[18] For details about investors typically targeted at various AUM sizes see Appendix D.

	Challenges
	may also not be familiar with the investor's requirements or the regulatory rules for marketing under different regimes.
Investment	There may be less familiarity with global instruments in offshore markets and the counterparties required to trade them.

The standards expected in these jurisdictions (and by institutional allocators) are important for an offshore manager looking to expand offshore. Becoming a signatory to the SBAI Alternative Investment Standards is a great way to demonstrate a commitment to robust operational standards.

Appendix A – Explanation of Hong Kong and Singapore Licensing Types

Hong Kong

Under the Securities and Futures Ordinance (SFO), all the persons carrying on regulated activities shall be licensed by or registered with SFC. For a hedge fund manager in Hong Kong, the three most relevant regulated activities are:

- **Type 1** *(Dealing in Securities)* – This is the buying and selling of "securities" or inducing another party to enter into an agreement with a view to the buying or selling of securities. Here, the term "securities" is defined in the widest possible sense under the SFO and includes, among other things and subject to exceptions, shares, stocks, bonds, debentures, interests in any collective investment scheme and interests "commonly known as securities".
- **Type 4** *(Advising on Securities)* - Giving advice or issuing analyses or reports on whether, which, when, or the terms and conditions on which securities should be acquired or disposed of.
- **Type 9** *(Asset Management)* - Includes real estate investment scheme management or securities or futures contract management which, importantly, includes providing a service of managing a portfolio of securities for another person.

Typically, a hedge fund manager based in Hong Kong would hold a Type 9 license and usually does not need to hold Type 1 license. Whether a Type 4 license is required will depend on the nature of the hedge fund manager's activities in Hong Kong.

A fund manager seeking to be licensed must be either, a Hong Kong incorporated company, or a non-Hong Kong company registered with the Hong Kong Companies Registry under Part 16 of the Companies Ordinance (Cap. 622). Sole proprietorship or partnership is not an acceptable form of business structure for licensing purposes.

Singapore:

Capital Markets Services license (issued under the Securities and Futures Act ("SFA")):

- Dealing in Capital Markets Products
- Advising on corporate finances
- Fund management
- Real estate investment and trust management
- Product financing
- Providing credit rating services
- Providing custodial services

Financial Advisers license (issued under the Financial Advisers Act ("FAA")):

- Advising others, either directly or through publications and writings, and whether in electronic, print or other form, concerning any investment product other than:
    - In the manner set out in paragraph 2 of the act[19], or
    - Advising on corporate finance within the meaning of the Securities and Futures Act (Cap. 289)
- Advising others by issuing or promulgating research analyses or research reports, whether in electronic, print, or other form, concerning any investment product.
- Arranging of any contract of insurance in respect of life policies, other than a contract of reinsurance.

Appendix B – Safe Harbours (Hong Kong)

In Hong Kong, for unauthorized corporate funds, the Seventeenth Schedule to the Companies (Winding Up and Miscellaneous Provisions) Ordinance provides additional safe harbours:

For unauthorized (private) hedge funds

- An offer to not more than 50 persons
- An offer made only to "professional investors“, including institutional investors and non-institutional investors
    - Institutional Investors includes bankers, dealers, insurance companies and certain regulated CIS
    - Non-Institutional Investors includes
        - High net worth individuals, meaning individuals with a portfolio of not less than HK$ 8 million
        - Corporations whose sole business is to hold investments, and which are wholly owned by high-net-worth individuals
        - Corporations or partnerships with a portfolio of not less than HK$8 million or total assets of not less than HK$ 40 million, and
        - Trust corporations registered under the Trustee Ordinance or regulated under the laws of a place outside Hong Kong having total assets under trust of not less than HK$ 40 million

For unauthorized corporate funds

- A hedge fund structured as a company may be exempt from the authorization requirements if the shares are offered only to persons whose ordinary business is to buy or sell shares or debentures, whether as principal or agent
- A hedge fund structured as a company may be exempt from the authorization requirement if (i) the materials contain a prescribed warning statement, and (ii) the minimum denomination or the minimum consideration payable by any person for the shares to be subscribed is not less than HK$ 500,000

Appendix C – Definition of “Fit and Proper” for Licencing (Singapore)

Offshore fund managers marketing offshore funds to Singapore investors must be licensed or regulated in the offshore jurisdiction and must be "fit and proper“ (the MAS Guidelines on Fit and Proper Criteria, revised on 28 January 2020):

A relevant person

- Honesty, integrity, and reputation

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[19] https://sso.agc.gov.sg/Act/FAA2001?ProvIds=Sc2-#Sc2-

- Competence and capability
- Financial soundness

An institution

- All its substantial shareholders meet the fit and proper criteria of these Guidelines
- Each of its directors and chief executive officer, or equivalent persons, meet the fit and proper criteria of these Guidelines
- It has in place appropriate recruitment policies, adequate internal control systems and procedures that would reasonably ensure that the persons that it employs, authorises, or appoints to act on its behalf, in relation to its conduct of the activity regulated under the relevant legislation, meet the fit and proper criteria of these Guidelines

Appendix D – SBAI China Working Group Members

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