INTEGRIUM

Regulatory Update

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EFFECTIVE CONTROL OF CAPITAL MARKETS SERVICES LICENSEES

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INTRODUCTION

The Financial Institutions (Miscellaneous Amendments) Act 2024 ("**FIMA**"), passed by Parliament and assented to by the President in 2024, is intended to strengthen and streamline the Monetary Authority of Singapore's ("**MAS**") powers related to investigations, reprimands, supervision, and inspections across various Acts under its jurisdiction. These Acts include: (a) the Financial Advisers Act 2001; (b) the Financial Services and Markets Act 2022; (c) the Insurance Act 1966; (d) the Payment Services Act 2019; (e) the Securities and Futures Act 2001; and (f) the Trust Companies Act 2005.

FIMA also introduces miscellaneous amendments to certain Acts under MAS' purview that are: (a) consequential to the implementation of new processes; (b) clarificatory or technical in nature; and (c) intended to update provisions or eliminate administrative constraints. This regulatory update discusses the MAS' implementation of amendments in relation to definition of effective controller of Capital Markets Services Licensees ("**CMSL**") in the Securities and Futures Act 2001 ("**SFA**").

EFFECTIVE CONTROLLER

A recently implemented provision of FIMA (with effect from 24/01/2025) includes revisions to the definition of effective controllers in subsection (6) of Section 97A of the SFA. The updated definition of effective controllers for holders of a Capital Markets Services Licence is provided below.

A person has effective control of the holder of a capital markets services licence -

i. if the person, alone or acting together with any connected person, holds, directly or indirectly, 20% or more of the issued share capital of the holder:

ii. if the person, alone or acting together with any connected person, controls, directly or indirectly, 20% or more of the voting power in the holder;

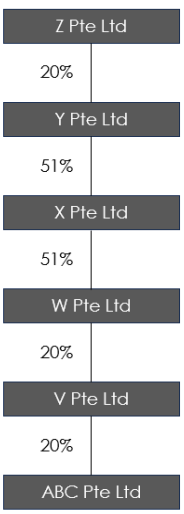
iii. if the holder or its directors are accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person (whether conveyed by the person alone or together with any other person, and whether with or without holding shares or controlling voting power in the holder); or

iv. if the person (whether alone or acting together with any other person, and whether with or without holding shares or controlling voting power in the holder) is able to determine the policy of the holder.

EXAMPLES

With the new definition, MAS has revised the application form[1] to provide examples, which are appended below in full for your convenience. In these examples, a reference to "A being x% owned by B" means that B holds x% of the issued share capital in A which entitles B to control x% of voting power in A. It is also worth noting that examples are not exhaustive and assume that there is no other relationship or arrangement (formal or informal) between such persons.

Example 1: ABC Pte Ltd is 20% owned by V Pte Ltd; V Pte Ltd is 20% owned by W Pte Ltd; W Pte Ltd is 51% owned by X Pte Ltd; X Pte Ltd is 51% owned by Y Pte Ltd; and Y Pte Ltd is 20% owned by Z Pte Ltd.

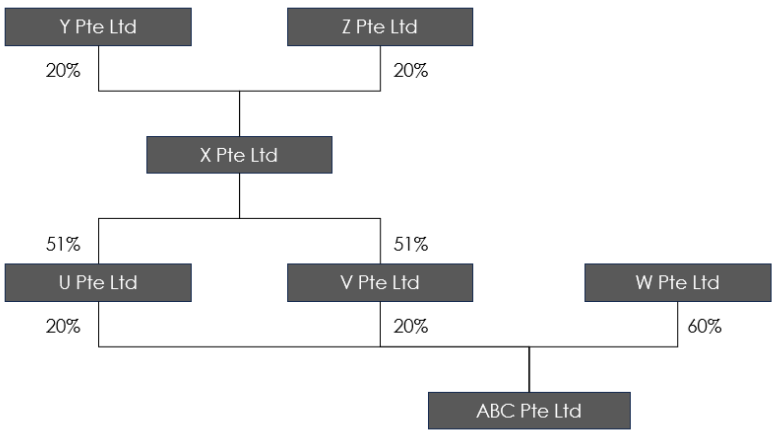


[1] From the version dated 24 January 2025.

In this example, **V Pte Ltd, W Pte Ltd, X Pte Ltd and Y Pte Ltd each have effective control of ABC Pte Ltd**, and their % control in ABC Pte Ltd should each be indicated as 20%.

- V Pte Ltd has effective control of ABC Pte Ltd as V Pte Ltd holds 20% of the issued share capital of or controls 20% of the voting power in ABC Pte Ltd.
- W Pte Ltd has effective control of ABC Pte Ltd since (i) V Pte Ltd is a connected person of W Pte Ltd as W Pte Ltd has control of 20% of the voting power in V Pte Ltd; and (ii) W Pte Ltd, together with its connected person V Pte Ltd, holds 20% of the issued share capital of or controls 20% of the voting power in ABC Pte Ltd.
- X Pte Ltd has effective control of ABC Pte Ltd since (i) V Pte Ltd is a connected person of X Pte Ltd as X Pte Ltd has control of 20% of the voting power in V Pte Ltd (through its subsidiary W Pte Ltd); and (ii) X Pte Ltd, together with its connected person V Pte Ltd, holds 20% of the issued share capital of or controls 20% of the voting power in ABC Pte Ltd.
- Y Pte Ltd has effective control of ABC Pte Ltd since (i) V Pte Ltd is a connected person of Y Pte Ltd as Y Pte Ltd has control of 20% of the voting power in V Pte Ltd (through its subsidiaries W Pte Ltd and X Pte Ltd); and (ii) Y Pte Ltd, together with its connected person V Pte Ltd, holds 20% of the issued share capital of or controls 20% of the voting power in ABC Pte Ltd.
- Z Pte Ltd does not have effective control of ABC Pte Ltd since Z Pte Ltd does not hold 20% of the issued share capital of or control 20% of the voting power in ABC Pte Ltd, whether alone or acting together with any connected person. This is because V Pte Ltd is not a connected person of Z Pte Ltd.

Example 2: ABC Pte Ltd is 20% owned by U Pte Ltd, 20% owned by V Pte Ltd and 60% owned by W Pte Ltd; U Pte Ltd and V Pte Ltd are each 51% owned by X Pte Ltd; X Pte Ltd is 20% owned by Y Pte Ltd and 20% owned by Z Pte Ltd.



In this example, **every entity has effective control of ABC Pte Ltd**.

The % control of U Pte Ltd and V Pte Ltd in ABC Pte Ltd should each be indicated as 20%; the % control of W Pte Ltd in ABC Pte Ltd should be indicated as 60%; the % control of X Pte Ltd in ABC Pte Ltd should be indicated as 40%; and the % control of Y Pte Ltd and Z Pte Ltd in ABC Pte Ltd should be indicated as 40%. Specifically,

U Pte Ltd, V Pte Ltd and W Pte Ltd have effective control of ABC Pte Ltd as U Pte Ltd and V Pte Ltd each hold 20% of the issued share capital of or control 20% of the voting power in ABC Pte Ltd, and W Pte Ltd holds 60% of the issued share capital of or controls 60% of the voting power in ABC Pte Ltd.

- X Pte Ltd controls 40% of the voting power in ABC Pte Ltd, through both of its subsidiaries U Pte Ltd and V Pte Ltd.
- Y Pte Ltd, together with X Pte Ltd which is its connected person (as Y Pte Ltd has control of 20% of the voting power in X Pte Ltd), controls 40% of the voting power in ABC Pte Ltd.
- The analysis for Y Pte Ltd applies similarly to Z Pte Ltd.

IMPLICATIONS

All holders of CMS license should review the list of existing persons with effective control (as determined under sections 97A(6)(a)(i) and (ii) of the SFA). They should also revisit their previous disclosures to MAS and assess whether any additional disclosures are needed to ensure compliance and avoid regulatory actions. Furthermore, entities should stay updated on any changes to application forms, circulars, and announcements issued by MAS on this matter.

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