

# Legal Update

## New conditions for Sections 130 & 13U for Family Offices in Singapore

25 May 2022

In this legal update, we examine the new guidelines issued by the Monetary Authority of Singapore (“MAS”) on the new conditions under sections 130 and 13U (formerly sections 13R and 13X respectively) under the Income Tax Act 1947 (“ITA”) for family offices in Singapore. These new conditions take effect from 18 April 2022. The new conditions have been issued after a review of the applicable regulations, policies and incentive regimes, and are to ensure that they remain relevant to the developments of the family office sector.<sup>1</sup>



### What is a family office?

A single family office (“SFO”) is an entity which manages assets for or on behalf of only one family and is wholly owned or controlled by members of the same family.

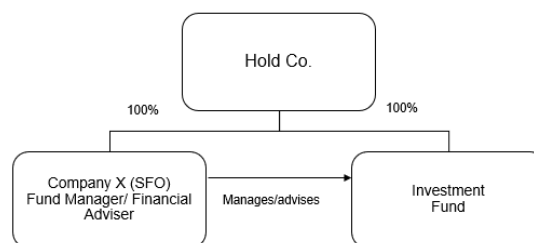
#### Meaning of “family”

The term ‘family’ in this context may refer to individuals who are lineal descendants from a single ancestor, as well as the spouses, ex-spouses, adopted children and step-children of these individuals.

#### Potential Structure

For instance, a family may set up a holding company (“Hold Co.”) to hold an investment fund (the “Investment Fund”) and a wholly-owned subsidiary (i.e. Company X) to manage or advise on the Investment Fund.

Where Company X solely manages the Investment Fund, Company X, may be considered an SFO and be exempt from the requirement to be licensed or registered under the Securities and Futures Act 2001 (“SFA”) and/or the Financial Advisers Act 2001 (“FAA”).



*Diagram: Illustration of a possible ownership structure for a family office*

<sup>1</sup> For a brief summary of the new conditions in comparison to the old regime, please refer to the Appendix.



## New conditions for sections 130 & 13U

MAS has introduced new conditions to the sections 130 & 13U applications for family offices effective from 18 April 2022. All new applications submitted from **18 April 2022** onwards will be subject to these new conditions.

Briefly, section 130 of the ITA, also known as the Singapore Resident Fund Scheme (and previously referred to as the Section 13R scheme), exempts from tax the income earned by a Singapore-incorporated or variable capital company arising from investments in funds managed throughout each basis period in any year of assessment by a family office in Singapore.

Section 13U of the ITA, also known as the Enhanced-Tier Fund Tax Exemption Scheme (and previously referred to as the Section 13X scheme), exempts from tax the income arising from funds managed by a Singapore-based fund manager/family office.

These tax exemption schemes are powerful incentives to attract funds and fund managers to establish or to domicile themselves in Singapore.

### **Who do the new conditions apply to?**

The new conditions apply to funds that are managed or advised directly by a family office which is either:

- (i) an exempt fund management company who manages assets for on behalf of the family or families; or
- (ii) wholly owned or controlled by members of the same family or families.<sup>2</sup>

### **Minimum Assets Under Management ("AUM")**

Previously, the conditions for the section 130 scheme did not stipulate a minimum fund size.

However, the new conditions require a minimum AUM of S\$10 million at the point of application and the fund must commit to increase its AUM to S\$20 million within a two-year grace period.

As a result of this update, parties intending to apply for the section 130 scheme will now need to be ready to commit a greater amount of capital when setting up their family office.

The minimum fund size for section 13U scheme remains unchanged at S\$50 million at the point of application. However, a concession is granted to, inter alia, private equity funds, real estate/infrastructure and credit funds which cannot meet the minimum fund size condition on a drawn down basis by way of committed capital ("**Committed Capital Concession**"). This Committed Capital Concession is subject to the following conditions:

- (i) the level of committed capital must be legally enforceable through a contract between the investor and the approved person (i.e. the fund) at the point of the tax application; and
- (ii) the fund manager should have recourse to recover any capital committed or to take the necessary remedial action.

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<sup>2</sup> However, these new conditions **do not** apply to the following:

- (i) Applications which have submitted preliminary information before 18 April 2022 and with correspondences with MAS in the last six months;
- (ii) Applications that MAS had received a formal application via MASNET before 18 April 2022, but which is approved after 18 April 2022; or
- (iii) Applications which were formally approved, with the issuance of a formal Letter of Offer from MAS, before 18 April 2022.

**Investment Professionals**

Section 130

Prior to the new conditions, the section 130 scheme only required the fund to be managed or advised directly by a fund management company (“**FMC**”) in Singapore, where the FMC holds a capital markets services (“**CMS**”) licence or is exempt from the requirement to hold such a licence under the SFA.

Under the new conditions, the fund must now be managed or advised directly throughout each year by a family office in Singapore and the family office must employ at least two Investment Professionals (“**IPs**”) which include portfolio managers, research analysts, and traders who are earning more than S\$3,500 per month and must be engaging substantially in the qualifying activity.

In the event where the family office is unable to employ two IPs at the point of application, the fund is given a one-year grace period to employ the second IP.

Section 13U

Regarding the new conditions to the section 13U scheme, the fund must also be managed or advised directly throughout the year by a family office in Singapore, where the family office employs at least three IPs. Moreover, one of the three IPs must be a non-family member of the beneficial owner(s). If the family office is unable to employ one non-family member as an IP at the point of application, it will be given a one-year grace period to do so.

In addition, it should be noted that IPs must be tax resident in Singapore. These updates are indicative of MAS’ intention to encourage family offices to hire Singaporeans as IPs, and to increase the professionalism of family office professionals in Singapore.

**Business spending**

Section 130

Prior to the new conditions, funds under the section 130 scheme must have incurred at least S\$200,000 in expenses in each financial year.

Under the new conditions, the fund will need to incur at least S\$200,000 in total business spending in each financial year, as per the tiered business spending framework (as set out in the table below).

MAS has specified that “total business spending” should relate to the operating activities of the fund and not financing activities. Examples of such expenditure includes, but is not limited to, remuneration, management fees, tax advisory fees, operating costs, and rent.

Section 13U

For the section 13U scheme, funds will now need to incur at least S\$500,000 in local business spending (as compared to the previous position of S\$200,000 in local business spending) in each financial year, and this is also similarly subject to the tiered business spending framework (as set out in the table below). Similar to the section 130 scheme, “local business spending” should only relate to the operating activities of the fund and does not include financing activities.

Tiered business spending framework

	<b>Minimum total business spending</b>	<b>Minimum local business spending</b>
<b>AUM range</b>	<b>Section 130</b>	<b>Section 13U</b>
Less than S\$50 million	S\$200,000	S\$500,000
Between S\$50 million and below S\$100 million	S\$500,000	
S\$100 million and above	S\$1 million	

### **Local investment**

Irrespective of whether the fund intends to apply for the 130 or the 13U scheme, it will now need to invest at least 10% of its AUM or S\$10 million, whichever is lower, in local investments at any one point in time. It should be noted that the criteria for local investment is distinct from the abovementioned requirements relating to total business spending and is an additional criteria imposed under the new conditions.

In the event that the fund is unable to invest at least 10% of its AUM or S\$10 million, whichever is lower, in local investments by the point of application, the fund will be given a one-year grace period to do so.

MAS has specified that local investments could include:

- Equities listed on Singapore-licensed exchanges<sup>3</sup>;
- Qualifying debt securities;
- Funds distributed by Singapore-licensed/registered fund managers; or
- Private equity investments into non-listed Singapore-incorporated companies (e.g., start-ups) with operating business(es) in Singapore.



### What does this mean for SFOs in Singapore?

Overall, the new conditions provide much food for thought for families looking to establish a family office in Singapore. The enhanced requirements imposed may sieve out families with a smaller capital from establishing a family office in Singapore as such parties might be deterred by the stricter criteria. Future applicants would need to consider their respective investment strategies and how they would like to structure their family office establishment in Singapore.

The new conditions provide a spark in further invigorating the SFO sector in Singapore and are indicative that MAS is welcoming of a new phase of activities in this sector by sifting the wheat from the chaff – this would likely deepen the quality and professionalism of family office management in Singapore. Ultimately, the new conditions will ensure that Singapore's economy benefits from the investments in this sector and will raise the nation's profile in the market.

Please do not hesitate to contact our team if you have any further queries.

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<sup>3</sup> This includes Approved Exchanges ("**AEs**") that have been licensed by MAS, namely, Asia Pacific Exchange Pte Ltd, Ice Futures Singapore Pte Ltd, Singapore Exchange Derivatives Trading Limited, and Singapore Exchange Securities Trading Limited.

## Appendix

<b>Amendments to Section 130 (formerly Section 13R)</b>										
<b>Requirements</b>	<b>Before 18 April 2022</b>	<b>After 18 April 2022</b>								
Minimum Assets Under Management (AUM)	No requirement, but in practice at least S\$5 million will typically be required for private banking purposes.	The fund must have a minimum AUM of S\$10 million at the point of application, and that the family office must commit to increasing its AUM to a minimum of S\$20 million within a two-year grace period, if applicable.								
Mandatory Spending in Local Investments	No requirement	The fund managed by the family office must invest at least 10% of its AUM or S\$10 million, whichever is lower, in local investments at any one point in time. In the event that this condition is not met by the point of application, an additional one-year grace period will be granted.								
Minimum Number of Investment Professionals	No requirement	The family office must have at least two investment professionals employed at the point of application, but it will be given a one-year grace period to employ the second investment professional if it fails to do so by the point of application.								
Minimum Annual Business Spending	The family office must incur a minimum annual business spending of S\$200,000.	<p>The family office must incur a minimum annual business spending in accordance with the following framework:</p> <table border="1" style="margin-left: auto; margin-right: auto; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%; padding: 5px;"><b>AUM</b></th> <th style="width: 70%; padding: 5px;"><b>Minimum Annual Business Spending</b></th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">Less than S\$50 million</td> <td style="padding: 5px;">S\$200,000</td> </tr> <tr> <td style="padding: 5px;">Greater than (or equal to) S\$50 million but less than S\$100 million</td> <td style="padding: 5px;">S\$500,000</td> </tr> <tr> <td style="padding: 5px;">Greater than (or equal to) S\$100 million</td> <td style="padding: 5px;">S\$1 million</td> </tr> </tbody> </table>	<b>AUM</b>	<b>Minimum Annual Business Spending</b>	Less than S\$50 million	S\$200,000	Greater than (or equal to) S\$50 million but less than S\$100 million	S\$500,000	Greater than (or equal to) S\$100 million	S\$1 million
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<b>Amendments to Section 13U (formerly Section 13X)</b>										
<b>Requirements</b>	<b>Before 18 April 2022</b>	<b>After 18 April 2022</b>								
Mandatory Spending in Local Investments	No requirement	The fund managed by the family office must invest at least 10% of its AUM or S\$10 million, whichever is lower, in local investments at any one point in time. In the event that this condition is not met by the point of application, an additional one-year grace period will be granted.								
Minimum Number of Investment Professionals	The family office must have at least three investment professionals employed at the point of application.	The family office must have at least three investment professionals employed at the point of application, with at least one investment professional being a nonfamily member, but it will be given a one-year grace period to employ one non-family member as an investment professional if they are unable to do so by the point of application.								
Minimum Annual Business Spending	The family office must incur a minimum annual business spending in Singapore of S\$200,000.	<p>The family office must incur a minimum annual business spending in Singapore in accordance with the following framework:</p> <table border="1"> <thead> <tr> <th><b>AUM</b></th> <th><b>Minimum Annual Business Spending</b></th> </tr> </thead> <tbody> <tr> <td>Less than S\$50 million</td> <td>S\$500,000</td> </tr> <tr> <td>Greater than (or equal to) S\$50 million but less than S\$100 million</td> <td>S\$500,000</td> </tr> <tr> <td>Greater than (or equal to) S\$100 million</td> <td>S\$1 million</td> </tr> </tbody> </table>	<b>AUM</b>	<b>Minimum Annual Business Spending</b>	Less than S\$50 million	S\$500,000	Greater than (or equal to) S\$50 million but less than S\$100 million	S\$500,000	Greater than (or equal to) S\$100 million	S\$1 million
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