

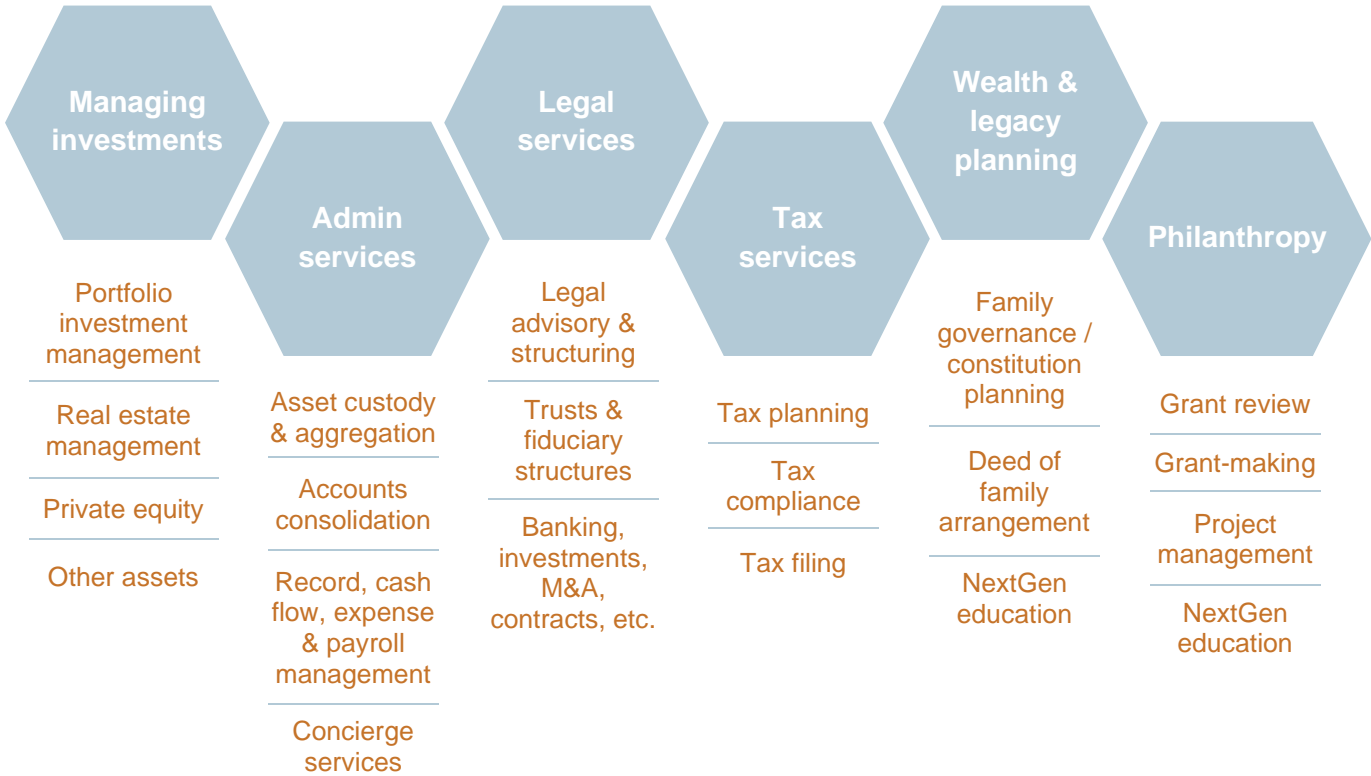
Establishing a
Singapore family office



What is a Family Office?

The concept of a 'family office' does not have a fixed definition. Typically, it is conceptualised as an entity which provides a variety of services that a family may need. It is the employer of administrative and professional staff who exclusively assist family members in the management of their affairs. Their roles could include safe-keeping important family and business records, ensuring that such records are available when needed, especially in the case of death or incapacity of a family member, and also the management of the family wealth above the level of the family business. There is therefore a wide range of services that each family office can be tasked to provide and it is ultimately for each family to decide what it would like its family office and its team of family officers to do and what it would prefer to outsource to third-party service providers instead. It is not uncommon for a family to require its family office to provide portfolio investment management, broader asset management or financial advisory services and administrative and concierge services to the family members and their investment holding entities.

Family Office



Regulatory exemption for the Family Office in Singapore

Where a family office performs a portfolio management function, it is important to consider closely whether its activities are subject to regulation. The applicable regulatory regimes are those which can apply to fund management companies. In Singapore, this is the Securities and Futures Act 2001 ('**SFA**'). If the family office provides only financial advisory services, then the relevant legislation to consider is the Financial Advisers Act 2001 ('**FAA**').

It is often the case that an exemption from regulation can apply where a family office only manages the funds of a group company which is ultimately held by members of the same family. The relevant exemption under the SFA (or the FAA as the case may be) requires both the family office entity and the fund entity to be 'related corporations'. This may be achieved through the inclusion of a common holding company in the ownership structure or the establishment of an appropriate subsidiary.

It is also possible to seek a case-by-case exemption from regulation under the SFA and/or the FAA from the Monetary Authority of Singapore ('**MAS**'). This may be appropriate where it is not practical from a wealth planning perspective for the family office entity and the fund entity to be held under a common holding company.

There are various reasons why structuring the family office entity and the fund entity as related corporations may not be suitable for a family and we can discuss with and guide the family to make the appropriate structuring decisions.

Taxation of the Family Office in Singapore on its management fee income

While part of the purpose of a family office is to act as a cost pool (for wages, rent and incidental costs), it also needs to return a profit under principles of transfer pricing which apply in the income tax context. A family office is therefore generally a tax-paying entity in the jurisdiction in which it is established. A single family office established in Singapore will pay income tax at the rate of 17% on the net profit that it derives (unless it qualifies for any special tax incentive). This may be reduced by an applicable partial tax exemption and/or tax rebate.

Family investment fund

A family 'fund' is very often established to hold the investments of family members which are committed to the structure. This may include both bankable and non-portfolio assets (such as direct private equity ('PE') investments or real estate). Very often, there is a segregation of assets into different companies below the level of a family fund. This ring-fencing of assets may be preferred where external leverage is needed, or for other reasons such as a greater ease of cash extraction, liability protection or the anticipation of a certain preferred exit strategy for a specific investment.

The use of cell companies is an increasingly attractive option for families wishing to establish a single family fund and yet retain a degree of separation in the management of assets. Cell companies may be established in a variety of jurisdictions and enable a notional segregation of assets and liabilities within the same company into "cells" or "segregated portfolios". Assets may be contributed by family members into separate cells which may be managed according to different investment strategies. Because assets within each cell cannot be used to meet the liabilities of another cell, family members need not be concerned about the investment performance or the liabilities crystallising within another cell. Where agreed rules on the withdrawal and redemption of interests are implemented, family members pooling into a cell company are encouraged to remain together for investments. It can therefore be helpful for families who are not just planning for management of their wealth but also a more considered succession plan for their wealth transition. Singapore has in early 2020 introduced its own domestic cell company. This is known as the Variable Capital Company ('VCC') which is a reference to its other defining feature which enables a much easier upstreaming of cash.

The management of the assets of a family fund by a family office in Singapore can give rise to tax exposure for the income and gains derived and realised by the family fund in Singapore. The family fund can be taken to have a taxable presence in the place where portfolio management activities are undertaken. This outcome can apply even where the family fund is located in an onshore jurisdiction such as Luxembourg which has a comprehensive double tax agreement with Singapore. Some jurisdictions have specific domestic law exemptions which avoid taxation at the level of a family fund.

Singapore tax exemption for the family fund managed by the Family Office

Singapore has a number of income tax exemptions which are found in the Income Tax Act 1947 ('ITA'). Specifically, relating to the family fund, the three main Singapore fund tax exemptions are:

- the Offshore Fund Exemption Scheme (under Section 13D (formerly Section 13CA) of the ITA);
- the Resident Fund Exemption Scheme (under Section 13O (formerly Section 13R) of the ITA); and
- the Enhanced-Tier Fund Exemption Scheme (under Section 13U (formerly Section 13X) of the ITA).

Each family's circumstances, objectives and needs should be carefully reviewed before we can advise more specifically on the suitable tax exemption for the family fund entity. If appropriate, it is important to review the family's existing investment holding structures and advise if any restructuring or consolidation should be done before submitting an application to MAS (if required) in respect of the right entity(ies) in order to achieve an overall more tax-efficient result. For families with members living in or assets located in different countries, it will be important to also consider foreign tax and legal issues in the structuring of the family office and the fund entity(ies).

In general, the Offshore Fund Exemption Scheme requires the corporate fund to be a non-tax resident of Singapore, with no presence in Singapore (other than a fund manager). The Resident Fund Exemption Scheme on the other hand, requires the fund to be a Singapore resident company or a VCC, and if any non-qualifying investors should hold more than a prescribed percentage in such Resident Fund, they are required to pay a financial penalty to the Comptroller of Income Tax. The Enhanced-Tier Fund Exemption Scheme has been extended to all forms of fund vehicles, including a Singapore VCC, and does not impose any financial penalty on non-qualifying investors. A comparison table of the three exemptions above is set out in **Appendix 1**.

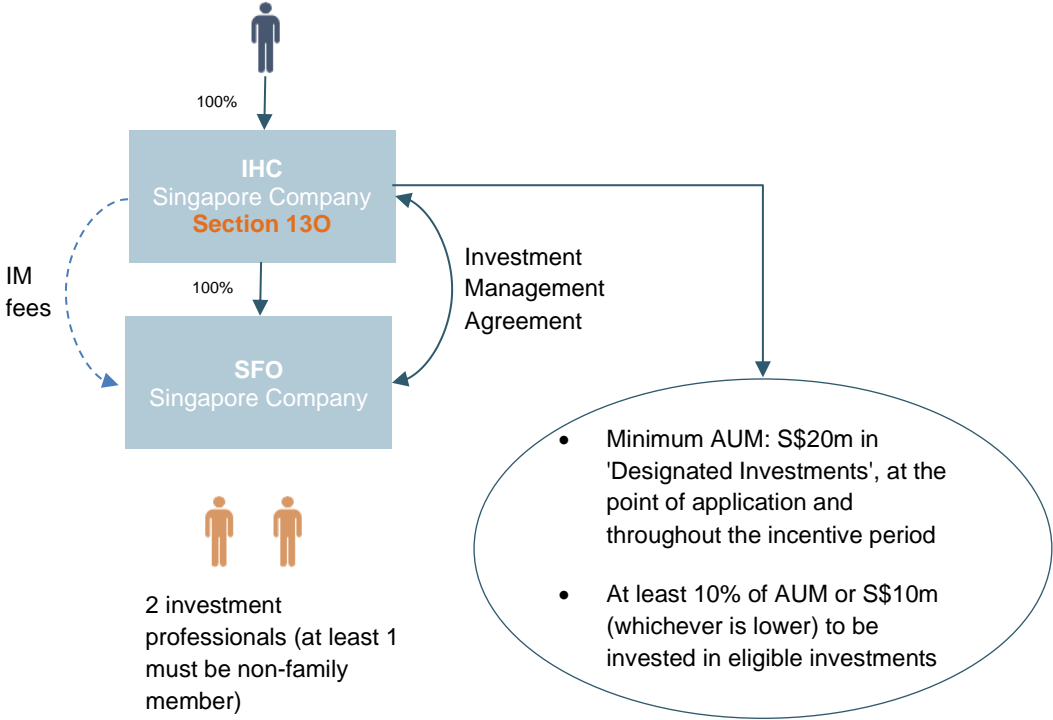
It should be noted that, at least initially, a VCC can only appoint a registered or licensed fund manager in Singapore. As such, a single family office that is usually structured to be exempt from licensing as a fund manager cannot manage the funds of a VCC. The MAS is re-considering the possibility of extending the VCC structure to exempt single family offices. In the meantime, families who are keen to consider the use of similar liability segregation or cell companies can consider using the segregated portfolio companies ('**SPCs**') established in jurisdictions such as the Cayman Islands or the British Virgin Islands.

As the family office eco-system in Singapore grows and matures, the qualifying conditions for the fund tax exemptions have also been updated by the MAS, with the intended objective to achieve greater positive spillovers to the Singapore economy and also to enhance the professionalism of the family offices in Singapore. For instance, with effect from 18 April 2022, a new requirement was introduced stipulating that SFOs must invest at least 10% of the funds managed or S\$10m, whichever is lower, in eligible investments. Other changes relate to an enhanced minimum fund size, minimum number of investment professionals and minimum business spending requirements. These requirements have been further enhanced with effect from 5 July 2023. The updated conditions are set out in **Appendix 1**.

The Singapore government recognises that besides direct contributions such as employment generated, spending in the financial industry and supporting industries (such as legal, accounting, other ancillary advisory services), family offices also expand the potential pool of capital for purposeful causes such as ESG investments and philanthropic activities.

Fund vehicles managed by a licensed/ registered fund management company ('**FMC**') are not subject to the updated conditions, however, if there is an intention to replace the licensed/registered fund manager with a single family office in the future, the fund would likely have to make a fresh application and be potentially subject to the new criteria.

For illustration purposes, an example of the structuring of a Singapore family office and the fund entity to qualify for the Section 130 Resident Fund Exemption Scheme from 5 July 2023 is set out below:



Updated Section 130 conditions	
Minimum AUM	S\$20m at the point of application and throughout the incentive period. The entire minimum fund size must be comprised of Designated Investments.
Minimum capital deployment requirement ('MCDR')	<p>At least 10% or S\$10m of the IHC's AUM (whichever is lower) continues to have to be invested into an expanded list of eligible investments comprising the following (subject to the multiplier for selected investments - see row below):</p> <ul style="list-style-type: none"> • Equities, REITs, Business Trusts or ETFs listed on MAS-approved exchanges • Qualifying Debt Securities • Non-listed funds distributed by licensed financial institutions in Singapore • Investments into non-listed Singapore-incorporated operating companies with operating business(es) and with substantive presence in Singapore • Climate-related investments • Blended finance structures with substantial involvement of financial institutions in Singapore <p>The IHC must meet the MCDR by the end of the first full financial-year and in each subsequent financial year.</p>

<p>Multiplier applicable to meet the MCDR requirement</p>	<p>To further MAS' goal of encouraging family offices to deploy their capital to benefit Singapore and the region and catalyse commercial capital into worthwhile but less attractive green and transition projects, MAS will provide additional recognition (applying a multiplier of either 2x or 1.5x) for certain types of eligible investments for the purpose of meeting the MCDR requirement:</p> <p>Multiplier 2x amount invested in the following eligible investments recognised for MCDR computation:</p> <ul style="list-style-type: none"> • Equities listed on MAS-approved exchanges • ETFs with primary mandates to invest in Singapore-listed equities on MAS-approved exchanges • Non-listed funds distributed in Singapore with primary mandates to invest in Singapore-listed equities on MAS-approved exchanges • Deeply concessional capital in blended finance structures with substantial involvement of financial institutions in Singapore <p>Multiplier 1.5x amount invested in the following eligible investments recognised for MCDR computation:</p> <ul style="list-style-type: none"> • Concessional capital in blended finance structures with substantial involvement of financial institutions in Singapore
<p>Minimum staffing</p>	<p>At the point of application and throughout the incentive period, the SFO must have at least 2 investment professionals who must be Singapore tax residents and at least 1 of whom must be a non-family member.</p>
<p>Tiered business spending framework for IHC's annual local business spending ('Spending Requirement')</p>	<p>The Spending Requirement is computed based on the AUM of the IHC at the end of its financial year:</p> <ul style="list-style-type: none"> • For AUM under S\$50m: <u>S\$200,000</u> • For AUM of at least S\$50m, but less than S\$100m: <u>S\$500,000</u> • For AUM equal or above S\$100m: <u>S\$1m</u> <p>Spending can take the form of:</p> <p>(A) Business Expenses: there must be a minimum of S\$200,000 of local business spending ('LBS') for all AUM fund sizes. LBS should be calculated according to accounting principles and include but are not limited to, the following expenses paid to local entities: remuneration, management fees, tax advisory fees, and operating costs.</p> <p>(B) Eligible Donations/Grants: For expenses above the S\$200,000 LBS threshold, the Spending Requirement may also be met by:</p> <ul style="list-style-type: none"> • Eligible Donations (i.e., donations to Singapore Registered Charities, Exempt Charities, or Institutions of a Public Character) • Grants to blended finance structures with substantial involvement of financial institutions in Singapore
<p>Singapore private banking ('PB') account</p>	<p>The IHC must have a Singapore PB account with a MAS-licensed financial institution at the point of application and throughout the incentive period.</p>

Other tax considerations for the family fund structure

Other factors relevant for consideration in order to provide a more integrated and holistic advice to the family in the structuring of the family office and the fund entities include:

- the tax exposure and implications in other relevant jurisdictions (e.g., the family's home jurisdiction, jurisdictions where assets are located, jurisdictions where family members/trust beneficiaries are located);
- the nature of the underlying assets and investments held by each entity (e.g., whether there are any real estate, substantial listed stakes, operating businesses, etc.) and the family's investment objective and strategy in respect of each investment – special considerations should apply if the family fund is intended to hold operating businesses or the family's substantial listed stakes in any entity;
- the current residence status of the relevant family members (and any anticipated changes in their status);
- whether any employment pass, permanent residence or citizenship status is required or desired to be obtained for any family member or employee of the family office;
- the profile of the members of the investment management team and how and where they operate from, who the bank signatories are and whether any additional reporting obligations are triggered;
- the family's governance and succession plans;
- the family's religion and whether there are any forced heirship concerns; and
- the family's philanthropic philosophy and intentions.

Ultimate holding vehicle, family trust and shareholders' agreement

Very often, a family office will be established as part of a comprehensive wealth planning strategy. This often involves the settling of family assets into a trust or a foundation. These vehicles offer a high degree of flexibility from a succession planning, governance and asset protection perspective. Where a trust is used, either an institutional trustee or a private trust company may be appointed as the trustee. Control and management of a trust is achieved through the terms of the trust instrument and associated documentation.

There are a number of considerations which should be worked through when deciding where to establish the ultimate holding vehicle. Where a trust is used, these considerations include the applicable governing law and the place of administration. The choice of governing law will impact whether the trust may be established as a perpetual vehicle or for only a finite term. It will also impact the robustness of the structure from an asset protection or an anti-forced heirship perspective.

The provision of trust business in Singapore is a regulated activity. An exemption does however exist for private trust companies ('PTCs'). Where a PTC-based structure is to be implemented, it is necessary for a licensed trust company to be engaged to provide AML/KYC services in relation to the structure. The settlor and beneficiaries must also be part of the same family group or be closely held companies. The set-up of the structure needs to be carefully managed to ensure that it affords the maximum degree of flexibility while meeting asset protection and succession planning needs.

In certain instances, a trust may not be a suitable planning option and instead the family may choose to regulate their relationship inter-se through a shareholders' agreement. We can also advise the family on the drafting and putting in place a shareholders' agreement.

We have assisted families with structuring suitable family fund vehicles using cell companies such as the Cayman Islands or British Virgin Islands Segregated Portfolio Companies and this presents a range of governance options. The introduction of the Singapore VCC will further add to the options available for consideration¹. At least initially, the VCC may have more limited appeal to families considering private family fund vehicles as it can only be used as a collective investment scheme managed by a registered or licensed fund manager in Singapore – that would exclude a single family office that is generally structured to be exempt from licensing under the fund management regulatory regime in Singapore. For the purpose of the Enhanced-Tier Fund Exemption, the value of the investments held in all the cells within the same cell company can be aggregated and count towards the single qualifying application threshold of S\$50 million. Hence it is tax efficient for the family members to come together to invest through a bespoke family investment fund which may be either managed by a selected fund manager or their own exempt single family office.

Family governance strategy and family constitution

There is a high degree of divergence in the approach taken by families to the formalisation of their governance strategy. Some families choose to adopt a family constitution which may set out not only the family's commitment to core values, their vision, and the mission of their family business but also define the different roles, powers, composition, recruitment policy, succession policy, decision making and dispute resolution processes for the family business and the key governance bodies. Other families may choose to incorporate key governance terms in their family company's constitutional documents, in a separate shareholders' agreement, deed of family arrangement or within the terms of their family trust.

A holistic approach and discussion would also help to identify and highlight issues that could have been properly documented and clarified to avoid long drawn out disputes subsequently.

¹ As at June 2023, 910 VCCs have been registered with the Accounting and Corporate Regulatory Authority. Source: <https://www.acra.gov.sg/training-and-resources/facts-and-figures/business-registry-statistics>.

Immigration planning

A family office is very often located in a jurisdiction in which there are existing family or commercial ties. For UHNW individuals who are truly global citizens, it is increasingly common to consider the formation of a family office as part of a broader immigration strategy. This is particularly so for jurisdictions like Singapore which can act as a hub for the management of investments made throughout the region.

In Singapore, the Economic Development Board and the Ministry of Manpower have collaborated to form Contact Singapore. This is intended for Contact Singapore to act as a facilitator for inbound investment into the country. The Global Investor Programme ('GIP') offered and administered by Contact Singapore provides investment-based options for foreign UHNW individuals to obtain Singapore permanent residence status.

An applicant under the GIP is required to either establish or expand a business in Singapore or invest money into approved funds. Where a business is to be established or expanded in Singapore, it must fall into one of a prescribed list of industries – this includes the establishment of a local family office.

Depending on the precise circumstances, the establishment of a family office in Singapore may form part of a migration strategy for an UHNW individual and his/her family members. On various factors, Singapore is an attractive place for UHNW individuals to base themselves and to manage their proprietary wealth.

Family philanthropy planning

Families wishing to establish a family office can use the structure for the furtherance of their philanthropic objectives. This may involve the establishment of a designated vehicle to act as a grantmaker or a charity. In Singapore, it is possible to establish a charity as either a purpose trust or a company limited by guarantee.

Charities are subject to the regulation of the Singapore Commissioner of Charities. Care is needed to ensure that this vehicle remains compliant with applicable laws and ideally tax efficient such that tax savings translate into more funds for the philanthropic objectives.

In some circumstances it is considered preferable for surplus liquidity of the designated philanthropy vehicle to be managed by the family office. This may be possible though care is needed to ensure that the regulatory status of the family office is preserved and that an exposure to income tax for the philanthropy vehicle is not created.

Donations to certain Singapore charities and local charitable causes could be structured to qualify the donor for up to 250% income tax deduction, whereas certain foreign donations may also be structured to qualify for 100% income tax deduction.

Appendix – Summary of fund tax exemptions supported by a Single Family Office in Singapore (with effect from 5 July 2023)

	Offshore Fund Exemption Scheme (Section 13D, ITA)	Resident Fund Exemption Scheme (Section 13O, ITA)	Enhanced-Tier Fund Exemption Scheme (Section 13U, ITA)
Legal form of the Fund	Managed account of individual, company or trust – must not be resident in Singapore or have a taxable presence in Singapore besides the fund manager.	Company (including VCC) – must be incorporated and resident in Singapore.	Fund vehicles constituted in all forms including managed accounts; may be resident in or outside Singapore.
Approval required from MAS	No.	Yes.	Yes – approval can also be sought on a stand-alone basis or on a consolidated basis (for master-feeder, master-SPV or master-feeder-SPV structures).
Fund manager	Must be a fund management company carrying out such fund management activities in Singapore.		
Regulatory status of fund manager	The local fund manager must be registered, licensed or otherwise exempt from licensing under the SFA.		
Staffing of the exempt SFO	No prescribed requirement.	At the point of application and throughout the incentive period, the SFO must have at least 2 investment professionals, at least 1 of whom must be a non-family member.	At the point of application and throughout the incentive period, the SFO must employ at least 3 investment professionals, at least 1 of whom must be a non-family member.
Minimum Assets Under Management ('AUM') by the exempt SFO	No requirement.	Minimum AUM of S\$20m comprising of Designated Investments at the point of application and throughout the incentive period.	Minimum AUM of S\$50m comprising of Designated Investments per fund-applicant at the point of application and throughout the incentive period.

Minimum Capital Deployment Requirement ('MCDR') (for funds managed by exempt SFO)	No requirement.	<p>At least 10% or S\$10m of the IHC's AUM (whichever is lower) continues to have to be invested into an expanded list of eligible investments comprising the following (subject to the applicable multiplier for selected investments):</p> <ul style="list-style-type: none"> • Equities, REITs, Business Trusts or ETFs listed on MAS-approved exchanges • Qualifying Debt Securities • Non-listed funds distributed by licensed financial institutions in Singapore • Investments into non-listed Singapore-incorporated operating companies with operating business(es) and with substantive presence in Singapore • Climate-related investments • Blended finance structures with substantial involvement of financial institutions in Singapore <p>The fund must meet the MCDR by the end of the first full financial-year and in each subsequent financial year.</p>	
Fund administration	No requirement.	Fund administration to be undertaken locally.	Fund administration to be undertaken locally if the fund is incorporated and resident in Singapore.
Tiered business spending framework for the fund's annual local business spending ('Spending Requirement')	No requirement.	<p>The Spending Requirement is computed based on the AUM of the fund at the end of its financial year:</p> <ul style="list-style-type: none"> • For AUM under S\$50m: S\$200,000 • For AUM of at least S\$50m, but less than S\$100m: S\$500,000 • For AUM equal or above S\$100m: S\$1m <p>Spending can take the form of:</p> <p>(A) Business Expenses: there must be a minimum of S\$200,000 of local business spending ('LBS') for all AUM fund sizes. LBS should be calculated according to accounting principles and include but are not limited to, the following expenses paid to local entities: remuneration, management fees, tax advisory fees, and operating costs.</p> <p>(B) Eligible Donations/Grants: For expenses above the S\$200,000 LBS threshold, the Spending Requirement may also be met by:</p> <ul style="list-style-type: none"> • Eligible Donations (i.e., donations to Singapore Registered Charities, Exempt Charities, or Institutions of a Public Character) • Grants to blended finance structures with substantial involvement of financial institutions in Singapore 	
Investment strategy	No restriction.	Investment strategy can only be changed with approval from MAS, and only where there are bona fide commercial reasons.	
Financial penalty	Non-qualifying investors are subject to a financial penalty, which is the percentage held by the beneficial owner in the fund x the amount of income derived by the fund x the income tax rate applicable to the fund had the income not been exempt (i.e., 17% for a company).	None.	
Singapore private banking ('PB') account	Currently no strict requirement for the IHC to have a Singapore PB account.	The IHC must have a Singapore PB account with a MAS-licensed financial institution at the point of application and throughout the incentive period.	

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If you would like to discuss further how we can help,
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