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Private Equity in Singapore

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PRIVATE EQUITY IN SINGAPORE

Dr. Lin Lin

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A. INTRODUCTION

1. Definitions

Private equity (“PE”), the private raising of capital from sophisticated investors for the purposes of investing in private companies or privatising public companies,¹ has been growing in prominence in Singapore.

The basic theme of PE is that private capital is raised, often from wealthy individuals or institutional investors, and invested in private companies.² PE funds constituted in Singapore are often constituted as limited partnerships with a fixed lifespan. A limited partnership comprises a general partner (“GP”) and limited partners (“LP”). The fund manager, as the GP, raises funds, and makes investment and managerial decisions, with unlimited liability for the fund’s obligations whereas limited partners, as the investors of the fund, enjoy limited liability, unless they “take part in the management” of the partnership.³ This separation of ownership and control causes agency problems and is a source of regulatory concern.⁴

Venture capital (“VC”) is a subset of PE and consists of an equity investment in high-growth, high-risk, and often high-technology firms companies.⁵ Although VC funds are also typically organised as limited partnerships, VC fund managers tend to focus on early-stage, high-risk companies that are technologically intensive, whereas PE invests in virtually every industry, especially later-stage companies.⁶ VC also does not include restructuring or leveraged buyout financing whereas it is common for PE firms to acquire majority control of an existing or mature company from its current owners.⁷

¹ Jennifer Payne, “Private Equity and Its Regulation in Europe” (2011) 12 *European Business Organization Law Review* 559 at 562.

² European Union Committee of the House of Lords, Directive on Alternative Investment Fund Managers vol 1 (3rd Report of Session 2009–10) (HL Paper 48-I, 2010) at para 2.

³ Limited Partnerships Act (Cap 163B, 2010 Rev Ed) s 6.

⁴ Lee Harris, “A Critical Theory of Private Equity”, (2010) 35 *Del J Corp L* 259 at 262–263.

⁵ Lin Lin, “Venture Capital Exits and the Structure of Stock Markets: Lessons from China” (2017) 2(1) *AJCL* 1 at 8.

⁶ Lin Lin, “Venture Capital Exits and the Structure of Stock Markets: Lessons from China” (2017) 2(1) *AJCL* 1 at 8.

⁷ Lin Lin, “Venture Capital Exits and the Structure of Stock Markets: Lessons from China” (2017) 2(1) *AJCL* 1 at 8.

2. The market and the need of PE/VC

Singapore's fund management sector is burgeoning. In the 2016 survey conducted by the Monetary Authority of Singapore ("MAS"), it was reported that the overall assets under management ("AUM") for Singapore-based PE and VC funds grew by 14% and 32% respectively from 2015 to 2016 to reach a total of S\$157bn.⁸ Seventy-eight per cent of the total AUM was sourced from regional and international investors, demonstrating Singapore's position as a pan-Asian asset management centre.⁹ Singapore is currently the largest PE centre in Southeast Asia¹⁰ and the fifth largest PE market in Asia after China/Hong Kong, South Korea, India and Japan.¹¹

Singapore is seen as a popular place of registration of PE/VC funds. Apart from being ranked the top globally in terms of the ease of doing business,¹² Singapore's stable pro-business environment, efficient legal system and risk-based regulatory policies make it an attractive proposition for asset management activities.¹³ Furthermore, with its favourable income taxes and corporate taxes, absence of a capital gain tax and preferential tax treatment for qualifying funds, Singapore is ideally positioned to capitalise on the greater demand for investment solutions resulting from continued wealth creation in Asia.

Singapore is keen to ensure that it has a sufficiently robust yet flexible regulatory network in order to continue attracting investments and developing its PE/VC market.¹⁴ While the 2008 global financial crisis had caused regulation of the alternative investment industry to be tightened in many jurisdictions, it is questionable whether the same reactionary approach should be taken in Singapore. This chapter seeks to analyse the existing regulatory framework governing PE/VC in Singapore and address how the PE/VC markets should be regulated in Singapore.

⁸ Monetary Authority of Singapore, *2016 Singapore Asset Management Survey* (2016) at p 4.

⁹ Monetary Authority of Singapore, *2016 Singapore Asset Management Survey* (2016) at p 9.

¹⁰ Boston Consulting Group, *Report: Private Equity in Southeast Asia* (by Vikram Bhalla *et al*) (December 2012) at pp 13–15 <<https://www.bcg.com/documents/file123328.pdf>> (accessed November 2018).

¹¹ PricewaterhouseCoopers, *China Private Equity/Venture Capital 2016 Review and 2017 Outlook* (23 February 2017) at p 6 <<https://www.pwccn.com/en/private-equity/pe-china-review-feb2017.pdf>>.

¹² World Bank, "Ease of Doing Business in Singapore" (2017) <http://www.doingbusiness.org/data/exploreeconomies/singapore> (accessed November 2018). Singapore has been ranked number 1 for many years on the World Bank's Doing Business Report. See further Lin Lin & Michael Ewing-Chow, "The Doing Business Indicators in Minority Investor Protection: The Case of Singapore" [2016] *SingJLS* 46.

¹³ World Bank, "Ease of Doing Business in Singapore" (2017) <http://www.doingbusiness.org/data/exploreeconomies/singapore>. See further Lin Lin & Michael Ewing-Chow, "The Doing Business Indicators in Minority Investor Protection: The Case of Singapore" [2016] *SingJLS* 46.

¹⁴ Monetary Authority of Singapore, "Financial Sector Gears Up for the Future Economy", media release (13 February 2017) <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/Financial-Sector-Gears-Up-for-the-Future-Economy.aspx>> (accessed November 2018).

3. Impacts of PE on the economy

Healthy levels of PE activity may benefit the economy. In terms of industry performance, industries with high PE activity grow more rapidly than other sectors in terms of total production, value added and employment.¹⁵ PE has also been regarded as important source of capital during economic downturns when securing financing becomes difficult for ailing companies. PE funds appear to be unafraid of investing during downturns and in fact perform better at such times.¹⁶

The importance of PE as an alternative source of capital extends beyond its significance during downturns. With small and medium enterprises (“SMEs”) representing 99% of companies in Singapore and contributing nearly half of the gross domestic product,¹⁷ PE funding is crucial to provide financing to these SMEs which do not have access to the public markets.

In the context of VC, the importance of VC as an alternative source of capital is apparent; young companies often find it difficult to obtain financing from traditional sources as banks are unlikely to lend to smaller businesses that do not have collateral and proven track records.¹⁸ VC solves this “capital gap” by providing promising start-ups with the financing needed for next stage of technology and business development.¹⁹ In addition, entrepreneurs also gain access to professional management skills, mentoring and strategic support of experienced venture capitalists.²⁰

In addition, PE/VC is widely recognised as a powerful engine that can drive a country’s innovation, job creation, knowledge economy, and macroeconomic growth.²¹ In the Singapore context, the PE/VC industry is particularly crucial to its economy due to the country’s need to transition into an innovation-driven, knowledge-based and future-ready economy.²² As Singapore is bound by its small geographical size and faces challenging manpower constraints, future economic growth cannot be achieved through labour-led growth but must be based on productivity and innovation.²³ In order for Singapore to maintain its competitive edge in the global marketplace, the economy

¹⁵ World Economic Forum, *Globalization of Alternative Investments Working Papers Volume 3: The Global Economic Impact of Private Equity Report 2010* (December 2009) at p 7.

¹⁶ Shai Bernstein *et al*, “Private Equity and Industry Performance” (2017) 63(4) *Management Science* 901.

¹⁷ Spring Singapore, *Grow Your Business* <<https://www.enterprisesg.gov.sg/>>.

¹⁸ Hu Ying, “Regulation of Equity Crowdfunding in Singapore” [2015] SingJLS 46 at 59–60.

¹⁹ Hu Ying, “Regulation of Equity Crowdfunding in Singapore” [2015] SingJLS 46 at 59–60.

²⁰ Francis Koh & Winston Koh, “Venture Capital and Economic Growth: An Industry Overview and Singapore’s Experience” (2002) 47(2) *Singapore Economic Review* 243 at 248–251.

²¹ Lin Lin, “Engineering a Venture Capital Market: Lessons from China” (2017) 30(1) *Colum J Asian L* 160.

²² Carolyn Khew & Lin Yangchen, “Singapore ‘Could Be Global Innovation Hub’” *The Straits Times* (10 January 2016).

²³ Pearl Lee, “Singapore Needs to Base Its Growth on Productivity and Innovation: Ong Ye Kung” *The Straits Times* (25 January 2017).

must progress to the next stage of value creation and PE/VC plays an important role in encouraging such progress.²⁴

As Singapore is constrained by its small internal market, any attempts to further attract Singapore-directed PE/VC investments may be difficult to yield significant returns. Instead, Singapore should strategically position itself as the conduit of capital in the region and strive to be the leading intermediary for financial flows in Asia. Encouraging PE fund managers to domicile their funds in Singapore will be a critical step towards strengthening Singapore's competitive position as a regional financial centre. Offshore fund formation will increase market volatility, improve capital liquidity and allow PE fund managers to develop a deeper knowledge of the available opportunities in Singapore and the region. In order to ensure that Singapore will become the preferred choice for PE operations, Singapore should maintain favourable treatment of PE activities by its tax and regulatory authorities and also provide up-to-date legal structures that are capable of meeting the commercial needs of the fund management industry.

B. PE/VC REGULATORY AND LEGISLATIVE FRAMEWORK IN SINGAPORE

Singapore currently does not have regulations which pertain *specifically* to PE/VC. However, there is regulation relating to general fund management activities, with the Securities and Futures Act²⁵ ("SFA") and the subsidiary legislation promulgated under the SFA being the more important regulations. Under the SFA, the MAS also has the authority to issue guidelines and codes in furtherance of its regulatory objectives.²⁶ While these guidelines and codes are, strictly speaking, not subsidiary legislation, they are still highly relevant as they elucidate the regulatory position taken by the MAS. Furthermore, as part of its broader efforts to promote financing for enterprise development, the MAS has recently introduced a simplified authorisation process and regulatory framework for VC fund managers.²⁷

This section will first provide an overview of regulation of fund managers and funds and then discuss the existing legal structures and the tax policies previously introduced to encourage fund management activities and re-domiciliation of funds. It reaches the conclusion that the previous efforts have been inadequate and further regulatory and legislative reform is required for Singapore to achieve its goal of becoming an onshore hub.

²⁴ Dr Koh Poh Koon, Minister of State for Trade and Industry, "Supporting Our Companies and People to Seize New Growth Opportunities", speech at the Committee of Supply Debate under Head V (3 March 2017).

²⁵ Cap 289, 2006 Rev Ed.

²⁶ Securities and Futures Act (Cap 289, 2006 Rev Ed) s 321.

²⁷ Monetary Authority of Singapore, "MAS Simplifies Rules for Managers of Venture Capital Funds to Facilitate Start-ups' Access to Capital", media release (20 October 2017) <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-simplifies-rules-for-managers-of-venture-capital-funds.aspx>> (accessed November 2018).

1. Regulation of fund managers

In order to engage in fund management activity in Singapore, the fund manager (typically organised as a fund management company (“FMC”) must either hold a capital markets services (“CMS”) licence issued by the MAS,²⁸ or fall under an exemption from licensing requirements.²⁹

There are two types of CMS licences that the MAS can grant to FMCs: (a) the *licensed accredited/institutional FMC* (which can cater to an unlimited number of accredited and institutional investors); or (b) the *licensed retail FMC* (which can deal with retail investors).

Alternatively, the fund manager can apply for an exemption from licensing requirements with the MAS, registering instead as a *registered FMC*. To qualify as a registered FMC, the fund manager can only provide fund management services to no more than 30 qualified investors³⁰ and the total AUM of the fund manager does not exceed S\$250,000.³¹ Pursuant to the SFA, a “qualified investor” is either (a) an accredited investor (which includes individuals whose net personal assets exceed S\$2m in value (and the net equity of an individual’s primary residence can only contribute up to S\$1m of the S\$2m threshold) or whose annual income is not less than S\$300,000, as well as corporations with assets exceeding S\$10m); or (b) an institutional investor (which includes pension funds, collective investment schemes, banks and statutory boards).³²

Both licensed and registered FMCs have to fulfil several requirements before receiving MAS approval. Some of these key requirements include ensuring minimum base and risk-based capital amounts, the presence of compliance arrangements and a risk management framework.³³ However, the advantage of being a *registered FMC* as opposed to a *licensed FMC* is that the former has less onerous requirements to fulfil before receiving MAS approval. This is mainly due to the fact that there is a limitation on the number and type of investors that registered FMCs are allowed to market their funds to.

²⁸ Securities and Futures Act (Cap 289, 2006 Rev Ed) s 82.

²⁹ See reg 14 and para 5 of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Cap 289, Rg 10, 2004 Rev Ed).

³⁰ Of which a maximum of 15 can be funds.

³¹ Securities and Futures (Licensing and Conduct of Business) Regulations (Cap 289, Rg 10, 2004 Rev Ed) Second Schedule, paras 5(7) and 5(1)(i).

³² See para 5(3) of the Second Schedule to the Securities and Futures (Licensing and Conduct of Business) Regulations (Cap 289, Rg 10, 2004 Rev Ed), read with s 4A(1)(a) of the Securities and Futures Act (Cap 289, 2006 Rev Ed) on the definitions of “accredited investor” and “institutional investor”.

³³ Monetary Authority of Singapore, *Guidelines on Licensing, Registration and Conduct of Business for Fund Management Companies* (SFA 04-G05, 7 August 2012; revised 8 October 2018) at para 3.1.

Additionally, all FMCs, regardless of whether they are registered or licensed, must comply with several ongoing business conduct requirements. These include ensuring adequate disclosure, mitigating conflicts of interest, and ensuring that assets under management are subject to independent custody and valuation.³⁴

With effect from 20 October 2017, VC fund managers will be subject to a simplified authorisation process and regulatory regime.³⁵

To qualify for the VC fund manager regime, the VC fund manager has to manage funds that meet the following characteristics:

- (a) invest in business ventures that are not listed on a securities exchange;
- (b) invest at least 80% of committed capital in securities that are directly issued by start-ups that are no more than ten years old;
- (c) units of the fund are not available for new subscription after the close of fundraising, and can only be redeemed at the end of the fund life; and
- (d) are offered only to accredited and/or institutional investors.³⁶

Unlike PE fund managers, qualifying VC fund managers are not required to have directors and representatives with at least five years of relevant experience in fund management.³⁷ New VC fund managers can expect a simplified and expeditious authorisation process.

Under the new regulatory framework for VC fund managers, new and existing VC fund managers will also be exempted from the capital requirements and business conduct rules that currently apply to other fund managers.³⁸ The base capital requirement and

³⁴ Monetary Authority of Singapore, *Guidelines on Licensing, Registration and Conduct of Business for Fund Management Companies* (SFA 04-G05, 7 August 2012; revised 8 October 2018) at para 4.1.2.

³⁵ Monetary Authority of Singapore, “MAS Simplifies Rules for Managers of Venture Capital Funds to Facilitate Start-ups’ Access to Capital”, media release (20 October 2017) <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-simplifies-rules-for-managers-of-venture-capital-funds.aspx>> (accessed November 2018).

³⁶ Monetary Authority of Singapore, “MAS Simplifies Rules for Managers of Venture Capital Funds to Facilitate Start-ups’ Access to Capital”, media release (20 October 2017) <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-simplifies-rules-for-managers-of-venture-capital-funds.aspx>> (accessed November 2018).

³⁷ Monetary Authority of Singapore, “MAS Simplifies Rules for Managers of Venture Capital Funds to Facilitate Start-ups’ Access to Capital”, media release (20 October 2017) <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-simplifies-rules-for-managers-of-venture-capital-funds.aspx>> (accessed November 2018).

³⁸ Monetary Authority of Singapore, “MAS Simplifies Rules for Managers of Venture Capital Funds to Facilitate Start-ups’ Access to Capital”, media release (20 October 2017) <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-simplifies-rules-for-managers-of-venture-capital-funds.aspx>> (accessed November 2018).

the risk-based capital requirement will be removed.³⁹ VC fund managers will also be exempted from the requirement for independent valuation, internal audits and submission of audited financial statements to MAS.⁴⁰ As a safeguard, the VC fund managers will have to disclose to their customers that they are not subject to the same regulatory requirements as other licensed fund managers.⁴¹

The new regulatory framework for qualifying VC fund managers is a welcome change by the industry as it takes into account the fact that VC fund managers’ sophisticated investor client base typically perform extensive due diligence on the VC fund manager and negotiate extensive contractual safeguards to protect their own interests.⁴² As shown in a 2014 market survey conducted by Preqin Ltd,⁴³ PE investors (including VC investors) in Singapore are mainly institutional investors.

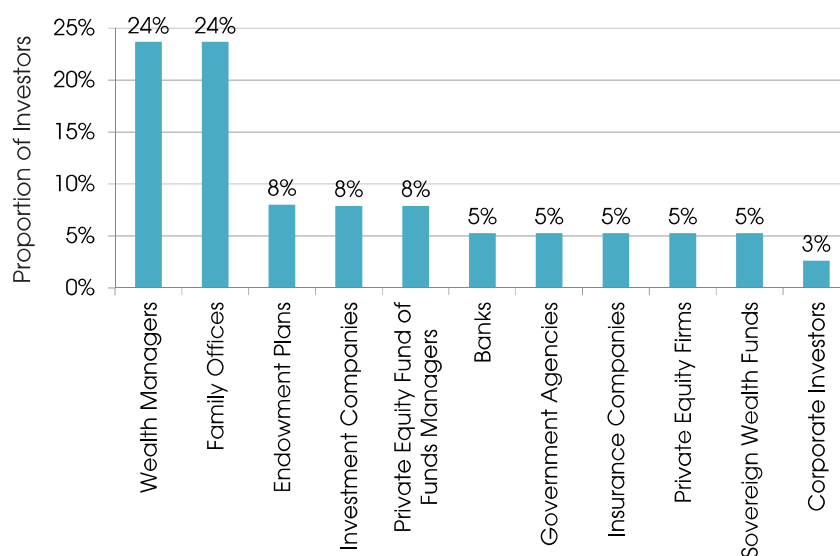


Figure 1: Singapore-based PE investors by Investor Type⁴⁴

³⁹ Choo Lye Tan & Carey Kong, “The MAS’s New Regulatory Regime for Venture Capital Fund Managers Comes into Force” *K&L Gates* (2 November 2017) <<http://www.klgates.com/the-mass-new-regulatory-regime-for-venture-capital-fund-managers-comes-into-force-11-01-2017/>> (accessed November 2018).

⁴⁰ Choo Lye Tan & Carey Kong, “The MAS’s New Regulatory Regime for Venture Capital Fund Managers Comes into Force” *K&L Gates* (2 November 2017) <<http://www.klgates.com/the-mass-new-regulatory-regime-for-venture-capital-fund-managers-comes-into-force-11-01-2017/>> (accessed November 2018).

⁴¹ Monetary Authority of Singapore, *Response to Feedback – Proposed Regulation for Managers of Venture Capital Fund* (20 October 2017) at p 9.

⁴² Monetary Authority of Singapore, “MAS Simplifies Rules for Managers of Venture Capital Funds to Facilitate Start-ups’ Access to Capital”, media release (20 October 2017) <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-simplifies-rules-for-managers-of-venture-capital-funds.aspx>> (accessed November 2018). See also Monetary Authority of Singapore, *Proposed Regulatory Regime for Managers of Venture Capital Funds* (Consultation Paper P004-2017, February 2017) at p 3.

⁴³ See Figure 1 below.

⁴⁴ Preqin & Singapore Venture Capital & Private Equity Association, *Preqin and SVCA Special Report: Singapore and ASEAN Private Equity* (April 2014) at p 13

VC investors are generally selective and tend to fund new rounds of capital raising to VC fund managers that have demonstrated successful track record in its initial fund.⁴⁵ Furthermore, a less regulated approach for VC fund managers may be justifiable as the level of operational, conduct and systemic risks that VC funds pose are reduced compared to other fund types as VC funds are close-ended, do not invest in public markets and typically do not use leverage.⁴⁶ By reducing unnecessary regulatory and administrative burden on VC fund managers, it allows them a faster time-to-market and minimises their compliance burden.⁴⁷ Faster approvals and reduced regulatory requirements will attract more VC fund managers to establish their funds in Singapore and thus expand the local VC funding pool. This will help to support the growth of start-ups, which is essential to drive innovation and growth and further Singapore's position as a centre for fund management. However, a wait-and-see approach should thus be adopted and the VC funds closely monitored to ensure that the liberalisation of regulation does not result in marginisation of investor interests.

2. Regulation of funds

Apart from the regulation of fund managers discussed above,⁴⁸ the funds themselves are also subject to regulation.

PE funds, which are primarily non-redeemable at the election of the investors, are considered “closed-end funds” for the purposes of SFA regulation⁴⁹ and have two regulatory options open to them.⁵⁰ The first option is to seek approval from the MAS to be an *authorised* (for schemes constituted in Singapore) or *recognised* (for schemes

https://www.svca.org.sg/editor/source/Publication/Preqin_SVCA_Special_Report_Singapore_ASEAN_Private_Equity_April_2014.pdf (accessed November 2018).

⁴⁵ Preqin & Singapore Venture Capital & Private Equity Association, *Preqin and SVCA Special Report: Singapore and ASEAN Private Equity* (April 2014) at p 13 <https://www.svca.org.sg/editor/source/Publication/Preqin_SVCA_Special_Report_Singapore_ASEAN_Private_Equity_April_2014.pdf> (accessed November 2018).

⁴⁶ Monetary Authority of Singapore, “MAS Simplifies Rules for Managers of Venture Capital Funds to Facilitate Start-ups’ Access to Capital”, media release (20 October 2017) <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-simplifies-rules-for-managers-of-venture-capital-funds.aspx>> (accessed November 2018). See also Monetary Authority of Singapore, *Proposed Regulatory Regime for Managers of Venture Capital Funds* (Consultation Paper P004-2017, February 2017) at p 3.

⁴⁷ Monetary Authority of Singapore, “MAS Simplifies Rules for Managers of Venture Capital Funds to Facilitate Start-ups’ Access to Capital”, media release (20 October 2017) <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-simplifies-rules-for-managers-of-venture-capital-funds.aspx>> (accessed November 2018)..

⁴⁸ See paras 14.14–14.23 above.

⁴⁹ Monetary Authority of Singapore, *Guidelines on Licensing, Registration and Conduct of Business for Fund Management Companies* (SFA 04-G05, 7 August 2012; revised 8 October 2018) at paras 8–9.

⁵⁰ Monetary Authority of Singapore, *Response to Feedback Received – Consultation on Proposed Amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 and Proposed Regulatory Treatment of Closed-end Funds* (1 April 2013) at para 3.4.

constituted outside of Singapore) investment scheme⁵¹ and register a *prospectus* with the MAS.⁵²

The second option is to invoke one of the several exemptions to exempt the fund from the authorisation and prospectus requirements. The most applicable exemption for PE funds is the restricted scheme exemption, which is available to funds that are marketed only to accredited investors and other relevant persons.⁵³ Where the restricted scheme exemption is invoked, instead of lodging a prospectus with the MAS, the fund would be required to lodge an *information memorandum* containing specific disclosures, as well as a *notification* setting out the particulars of the fund and the manager.⁵⁴ PE funds would typically make use of this exemption, since information memorandums are effectively summaries of the salient terms of the investment schemes, and are hence less cumbersome and costly to prepare than prospectuses, which require long and comprehensive disclosures.⁵⁵

As VC funds under the new simplified regime are required to be closed-ended and only be offered to end-investors who are either accredited investors or institutional investors, they will be exempted from the authorisation and prospectus requirements. They will be only required to lodge the information memorandum and notification with the MAS.

14.28 The regulation of the funds themselves is relatively light touch as most of the regulatory gatekeeping is done at the fund manager level.

3. Existing legal structures

Previously, there were only two forms of business structures in Singapore: business firms (that is, sole proprietorships and general partnerships) and companies.⁵⁶ As a business firm is not a separate legal entity from its owners, it is deemed undesirable for fund management purposes since the owners have unlimited and joint liability for all debts and liabilities incurred by their firms and by their business partners.⁵⁷ Alternatively, while a company limits the shareholder's liability to the capital that he has invested in the company,⁵⁸ the capital maintenance rules make it restrictive to use the Singapore corporate structure.⁵⁹ Distributions from a company can only be made

⁵¹ Securities and Futures Act (Cap 289, 2006 Rev Ed) ss 286 and 287.

⁵² Securities and Futures Act (Cap 289, 2006 Rev Ed) s 296.

⁵³ Securities and Futures Act (Cap 289, 2006 Rev Ed) s 305.

⁵⁴ Monetary Authority of Singapore, *Response to Feedback Received – Consultation on Proposed Amendments to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 and Proposed Regulatory Treatment of Closed-end Funds* (1 April 2013). See also reg 32 and paras 1 and 2 of the Sixth Schedule of the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 (S 602/2005).

⁵⁵ Stefanie Yuen Thio, "Chapter 24: Singapore" in *The Asset Management Review* (Paul Dickson ed) (Law Business Research, 5th Ed, 2016) at p 397.

⁵⁶ "Public Consultation Paper on Limited Partnerships in Singapore", on file with the author.

⁵⁷ "Public Consultation Paper on Limited Partnerships in Singapore", on file with the author.

⁵⁸ "Public Consultation Paper on Limited Partnerships in Singapore", on file with the author.

⁵⁹ Capital maintenance rules mean that a company must not take any steps that in affect return capital to its shareholders unless profits have been made.

out of profits and not capital⁶⁰ and a company is also required to go through administrative processes such as solvency tests prior to any repayment of capital.⁶¹ Moreover, company's shareholders will be subject to taxation at both the entity level and the owner level.

Recognising the limited partnership's appeal and the unsuitability of the existing business structures in Singapore to PE and fund investment businesses, the Company Legislation and Regulatory Framework Committee recommended in 2002 to enact legislation to introduce the limited partnership as a new business structure.⁶² The study team's recommendation was accepted and the limited partnership was introduced in 2009 so as to encourage alternative investment fund managers to set up or re-domicile their funds to Singapore.

In the limited partnership, the GP is personally liable for debts and losses of the limited partnership while LPs enjoy the limited liability shield and are not personally liable for debts and losses of the partnership beyond his agreed contribution.⁶³ This structure suits the different roles of the fund manager (the GP) and investors (the LPs) in a PE/VC fund.⁶⁴ In practice, the fund manager also delegates the investment management function to a separate fund management company to help ring-fence its liability.⁶⁵ As Singapore's limited partnership is not a separate legal entity, it is a tax transparent vehicle where the LPs are not liable to tax at the entity level.⁶⁶ Instead, each partner will be taxed on his or its share of the income from the LP.

Another positive feature of the limited partnership is that the limited partnership is largely governed by the limited partnership agreement and is free from the legal constraints that are usually applicable to companies, especially in relation to return of

⁶⁰ Companies Act (Cap 50, 2006 Rev Ed) s 403(1).

⁶¹ The satisfaction of solvency requirements under Companies Act (Cap 50, 2006 Rev Ed) is stated in s 76F(1) for share buybacks and ss 78B(1)(b) and 78C(1)(b) for capital reduction.

⁶² *Final Report on Limited Partnerships: Report of the Study Team on Limited Partnerships – Summary of Recommendations on Limited Partnerships* at para 2.2 <<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan034486.pdf>> (accessed November 2018).

⁶³ Provided that the limited partners do not take part in management of the limited partnership: Limited Partnerships Act (Cap 163B, 2010 Rev Ed) s 6.

⁶⁴ Bill Jamieson & Amit Dhume, "Singapore" in *Investment Funds* (Sam Kay ed) (Sweet & Maxwell, 3rd Ed, 2016) at p 412 <<https://www.cnplaw.com/wp-content/uploads/2017/12/Investment-Funds-International-Series-CNP-Singapore-Chapter-March-2016.pdf>>.

⁶⁵ Bill Jamieson & Amit Dhume, "Singapore" in *Investment Funds* (Sam Kay ed) (Sweet & Maxwell, 3rd Ed, 2016) at p 412 <<https://www.cnplaw.com/wp-content/uploads/2017/12/Investment-Funds-International-Series-CNP-Singapore-Chapter-March-2016.pdf>>.

⁶⁶ Inland Revenue Authority of Singapore, *IRAS e-Tax Guide: Income Tax Treatment of Limited Liability Partnerships (LLPs)* (2nd Ed, 1 March 2014) at para 7.1 <https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax_Guides/etaxguides_IIT_Income%20Tax%20Treatment%20of%20LLPs_2014-03-01.pdf> (accessed November 2018).

capital and distribution of profits.⁶⁷ There is also no limit on the number of partners that may comprise a limited partnership whereas a private company is restricted to no more than 50 members.⁶⁸

However, despite its theoretical advantages, the Singapore limited partnership form has had a poor take-up rate by Singapore-based PE fund managers.⁶⁹ Most funds continue to be formed as Cayman Islands exempted limited partnerships. The Singapore-based PE fund managers' preference to domicile their funds in the Cayman Islands is probably attributable to path dependency and the familiarity of use of the Cayman jurisdiction rather than any inherent advantage conferred by Cayman limited partnership laws.⁷⁰ Just like Singapore's limited partnership, the Cayman exempted limited partnership does not have its own legal personality.⁷¹ The time frame to set up a fund is also similar. Restricted schemes (which most PE funds will fall under) require less than a week for notification in Singapore while Cayman registration certificates can be issued within three to five working days or in around 48 hours if fast-tracked.⁷² The other factor that heavily contributes to the Cayman jurisdiction's popularity is its extremely favourable tax policies and this will be further elaborated below.⁷³

	Number of new entities registered/incorporated			
	Company	Business (partnership/ sole proprietorship)	Limited liability partnership	Limited partnership
2009	25,524	25,780	2,084	41
2010	28,511	23,995	2,199	54
2011	30,284	23,396	2,283	38
2012	32,076	22,057	2,253	55

⁶⁷ Note that the Limited Partnerships Act (Cap 163B, 2010 Rev Ed) makes constant reference to the partnership agreement.

⁶⁸ Companies Act (Cap 50, 2006 Rev Ed) s 18(1)(b).

⁶⁹ See Table 1 below.

⁷⁰ Low Kah Keong, "Singapore" in *The Private Equity Review* (Kirk August Radke ed) (Law Business Research, 2nd Ed, 2013) at p 91 <<http://www.wongpartnership.com/files/download/700>> (accessed November 2018).

⁷¹ Gary Smith, "Briefing Note: Cayman Islands Private Equity Funds and the Use of Exempted Limited Partnerships" *Loeb Smith* (22 February 2016) <<http://www.loebsmith.com/story/2016/02/22/cayman-islands-private-equity-funds-and-the-use-of-exempted-limited-partnerships/34/>> (accessed November 2018).

⁷² Private Funds Management, "July/August 2016 Fund Domiciles Guide", online: <https://www.privatefundsmanagement.net/uploadedFiles/Private_Equity_Manager/Non-Pagebuilder/Aliased/News_And_Analysis/2016/July/Magazine/PFM_Fund%20Domicile%20Jul-Aug16.pdf> at 6-7.

⁷³ See paras 14.44–14.46 below.

2013	35,902	23,910	2,355	62
2014	37,679	35,046	2,990	103
2015	34,056	29,838	2,201	82
2016	35,994	26,513	2,465	140
2017	39,240	19,854	2,294	182

Table 1: New entities registered/incorporated in Singapore (2009–2017)⁷⁴

Notably, Singapore fund managers are now increasingly utilising a master–feeder structure, with the foreign (usually Cayman) limited partnership acting as the pooling master fund and a Singapore incorporated feeder fund that is wholly owned by the master fund deploying the capital into portfolio companies.⁷⁵ Investors would purchase shares in the Singapore incorporated feeder fund and the feeder fund would in turn purchase interests for equivalent consideration in the Cayman master fund.

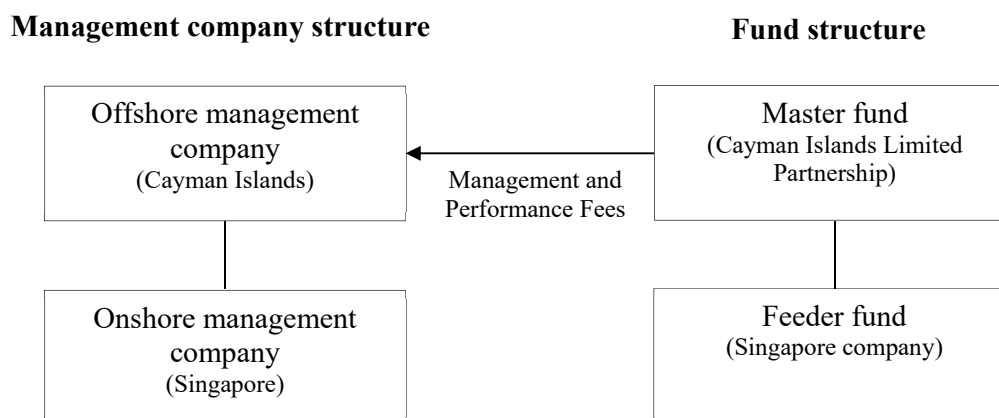


Figure 2: Master–feeder fund structure⁷⁶

This dual structure allows them to enjoy both the limited partnership’s flexibility and the tax-optimisation opportunities conferred by having a Singapore intermediate holding company.⁷⁷ A PE fund must be domiciled in Singapore as a company if it

⁷⁴ Data compiled from Accounting and Corporate Regulatory Authority annual reports 2009–2017 <https://www.acra.gov.sg/Publications/ACRA_Annual_Reports/> (accessed November 2018).

⁷⁵ Low Kah Keong, “Singapore” in *The Private Equity Review* (Kirk August Radke ed) (Law Business Research, 2nd Ed, 2013) at pp 91–93.

⁷⁶ Adapted from Henri Arisianian, *Entrepreneurship in Finance: Successfully Launching and Managing a Hedge Fund in Asia* (Palgrave Macmillan, 2016) at p 98.

⁷⁷ Low Kah Keong, “Singapore” in *The Private Equity Review* (Kirk August Radke ed) (Law Business Research, 2nd Ed, 2013) at pp 91–93.

wishes to take advantage of Singapore's extensive double tax treaty ("DTA") network.⁷⁸

4. Current tax policies

(a) Goods and services tax ("GST")

For non-resident funds, services provided to it generally qualify for zero-rating relief for being an international service under the Goods and Services Tax Act.⁷⁹ Offshore funds effectively suffer no GST.

For Singapore-resident funds, services provided to it are ordinarily standard-rated at 7% unless exempt.⁸⁰ However, as a concession, qualifying funds managed by a prescribed fund manager in Singapore are allowed to claim a substantial portion of their input GST on prescribed expenses.⁸¹ To further grow Singapore as a centre for fund management and administration, the concession has been extended until 31 March 2019.⁸²

(b) Stamp duty

Since Singapore's limited partnership is not a legal person, transfers of partnership interests are not subject to stamp duty.⁸³ Stamp duty is also not payable when there is no document executed for the transfer of a company's scripless shares.⁸⁴

(c) Income tax

If the fund were organised as a limited partnership, any income will be taxed at the level of the investor (regardless of whether the investor is domiciled in Singapore) and not at the level of the limited partnership.⁸⁵ Where the investor is an individual, his

⁷⁸ Low Kah Keong, "Singapore" in *The Private Equity Review* (Kirk August Radke ed) (Law Business Research, 2nd Ed, 2013) at p 96.

⁷⁹ Cap 117A, 2005 Rev Ed. Goods and Services Tax Act (Cap 117A, 2005 Rev Ed) s 8(2A) and First Schedule.

⁸⁰ Goods and Services Tax Act (Cap 117A, 2005 Rev Ed) s 22 and Fourth Schedule.

⁸¹ Tharman Shanmugaratnam, Minister for Finance, "Budget 2009 Debate Round-up Speech" (5 February 2009) Annex C-1: Enhancing Business Cashflow and Competitiveness of Singapore Budget 2009 <http://www.singaporebudget.gov.sg/budget_2009/speech_pe/annexc1.pdf> (accessed November 2018).

⁸² Tharman Shanmugaratnam, Deputy Prime Minister and Minister for Finance, "Budget 2014 Debate Round-up Speech" (5 March 2014) Annex A-5: Tax Changes for Businesses of Singapore Budget 2014 <http://www.singaporebudget.gov.sg/data/budget_2014/download/annexa5.pdf> (accessed November 2018).

⁸³ Stamp duties are payable for transfer of limited liability partnership ("LLP") interests as LLPs are legal persons.

⁸⁴ Inland Revenue Authority of Singapore, "Stamp duty for shares" <<https://www.iras.gov.sg/irashome/Other-Taxes/Stamp-Duty-for-Shares/Learning-the-basics/Stamp-Duty-Basics-for-Shares/>> (accessed November 2018).

⁸⁵ Inland Revenue Authority of Singapore, *IRAS e-Tax Guide: Income Tax Treatment of Limited Liability Partnerships (LLPs)* (2nd Ed, 1 March 2014) at p 4

share of income will be taxed based on his personal income tax rate which is capped at 22%.⁸⁶ Where the investor is a company, its share of income will be taxed at the fixed corporate tax rate of 17%.⁸⁷

If the fund were organised as a company, in the absence of any tax exemptions, the fund itself would be taxed at the flat rate of 17% on its net chargeable income.⁸⁸ The investors will then be taxed a second time when they are filing for their individual income tax. However, to achieve tax neutrality, various tax exemptions are provided to exempt Singapore-domiciled funds from virtually all incidence of income tax.

The existing legal framework in Singapore provides tax relief for PE/VC funds that are either managed by Singapore-based fund managers, or tax resident in Singapore. Table 2 summarises the tax incentives available to PE/VC fund investors.

	Offshore fund tax exemption scheme⁸⁹	Onshore fund tax exemption scheme⁹⁰	Enhanced tier fund tax exemption scheme⁹¹
Fund's legal form	Foreign company, trust and limited partnership	Company incorporated in Singapore	Company, trust and limited partnership
Fund residence	Must not be resident in Singapore, must not have any	Must be resident in Singapore, must not be 100% owned by	No restrictions

<https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax_Guides/etaxguides_IIT_Income%20Tax%20Treatment%20of%20LLPs_2014-03-01.pdf> (accessed November 2018).

⁸⁶ Inland Revenue Authority of Singapore, “Individual Income Tax Rates” <<https://www.iras.gov.sg/irashome/Quick-Links/Tax-Rates/Individual-Income-Tax-Rates/>> (accessed November 2018).

⁸⁷ Inland Revenue Authority of Singapore, “Corporate Tax Rates” <<https://www.iras.gov.sg/irashome/Quick-Links/Tax-Rates/Corporate-Tax-Rates/>> (accessed November 2018).

⁸⁸ Inland Revenue Authority of Singapore, “Corporate Tax Rates” <<https://www.iras.gov.sg/irashome/Quick-Links/Tax-Rates/Corporate-Tax-Rates/>> (accessed November 2018).

⁸⁹ Income Tax Act (Cap 134, 2014 Rev Ed) s 13CA; Income Tax (Exemption of Income of Non-Residents Arising from Funds Managed by Fund Manager in Singapore) Regulation 2010 (S 6/2010).

⁹⁰ Income Tax Act (Cap 134, 2014 Rev Ed) s 13R; Income Tax (Exemption of Income of Approved Companies Arising from Funds Managed by Fund Manager in Singapore) Regulations 2010 (S 8/2010).

⁹¹ Income Tax Act (Cap 134, 2014 Rev Ed) s 13X; Income Tax (Exemption of Income Arising from Funds Managed in Singapore by Fund Manager) Regulations 2010 (S 414/2010).

	presence in Singapore, and must not be 100% beneficially owned, directly or indirectly, by Singapore investors	Singapore investors and each investor is a qualifying investor.	
Fund manager	Singapore-based and registered with MAS or holding CMS licence	Singapore-based and registered with MAS or holding CMS licence	Singapore-based and registered with MAS or holding CMS licence
Investors	Non-qualifying investors need to pay a penalty equivalent to the tax on their share of the fund's income	Non-qualifying investors need to pay a penalty equivalent to the tax on their share of the fund's income	No restrictions
Additional requirements	No	At least S\$200,000 in annual business spending, and have a Singapore-based administrator	Minimum fund size of S\$50m, at least S\$200,000 in annual business spending, no other tax incentives enjoyed, and Singapore-based fund administrator is required if fund is Singapore incorporated and resident company
MAS Approval	No	Yes, and no change of its investment strategy after MAS approval	Yes and, no change of its investment strategy after MAS approval
Distinctive Features	No	Access to Singapore's extensive DTA network	Forms organised as master-feeder fund structures can submit consolidated application

Table 2: Summary of incentives available to fund investors of PE/VC funds

In addition to the tax relief available to fund investors, tax relief can also be claimed for management fees and carried interest payable to Singapore tax-resident fund managers. The Singapore fund manager with a minimum asset under management of S\$250m can apply to the MAS under the Financial Sector Incentive Fund Management scheme, which grants a concessionary tax rate of 10% of the fee income (as opposed to the usual 17% corporate tax rate) from the provision of fund management or investment advisory services.⁹²

Furthermore, in recognition of the importance of VC activity in supporting entrepreneurship, a 5% concessionary tax rate will be accorded to approved VC fund management companies managing VC funds.⁹³ Angel investors who invest a minimum of S\$100,000 in a qualifying start-up will also enjoy a tax deduction of 50% of the investment at the end of a two-year withholding period.⁹⁴

5. Inadequacy of present measures

Globally, the majority of PE funds are still currently domiciled in the US State of Delaware, Jersey, the Cayman Islands, and Luxembourg due to their attractive legal and tax regimes.⁹⁵ These jurisdictions have in place flexible legal vehicles to promote the fund management industry. For example, Delaware adopts the limited partnership with separate legal personality while the Cayman Islands' exempted limited partnership has no legal personality.⁹⁶ Jersey offers three types of limited partnership – “standard” limited partnership (no separate legal personality), separate limited partnership (separate legal personality), and incorporated limited partnership (body corporate).⁹⁷ As Luxembourg is a civil law country, it has introduced a functional equivalent – the specialised investments fund (an undivided pool of assets with no separate personality).⁹⁸

⁹² Inland Revenue Authority of Singapore, “Budget 2018 – Overview of Tax Changes” <<https://www.iras.gov.sg/irashome/News-and-Events/Singapore-Budget/Budget-2018---Overview-of-Tax-Changes/>> (accessed November 2018).

⁹³ Income Tax Act (Cap 134, 2014 Rev Ed) s 13H.

⁹⁴ Inland Revenue Authority of Singapore, “Angel Investors Tax Deduction (AITD) Scheme” <<https://www.iras.gov.sg/irashome/Schemes/Individuals/Angel-Investors-Tax-Deduction-Scheme--AITD-/>> (accessed November 2018).

⁹⁵ Inland Revenue Authority of Singapore, “Angel Investors Tax Deduction (AITD) Scheme” <<https://www.iras.gov.sg/irashome/Schemes/Individuals/Angel-Investors-Tax-Deduction-Scheme--AITD-/>> (accessed November 2018).

⁹⁶ Walkers, “Cayman Islands: Comparison of Delaware and Cayman Limited Partnerships” *Mondaq* (21 December 2008) <<http://www.mondaq.com/caymanislands/x/71376/offshore+financial+centres/Comparison+Of+Delaware+And+Cayman+Limited+Partnerships>> (accessed November 2018).

⁹⁷ Collas Crill, “Partnerships in Jersey” <<http://www.collascrill.com/documents/factsheets/cc-partnerships-in-jersey/>> (accessed November 2018).

⁹⁸ PricewaterhouseCoopers, “Luxembourg Limited Partnership” at p 6 <<https://www.pwc.lu/en/private-equity/docs/pwc-private-equity-lux-limited-partnership.pdf>> (accessed November 2018).

In addition, Delaware is considered to be a tax shelter in the US – its corporation income tax is assessed at a flat 8.7% of taxable income⁹⁹ while its income tax is capped at the rate of 6.6%.¹⁰⁰ Likewise, Jersey’s standard rate of corporate tax is 0% while its maximum personal income tax is 20%.¹⁰¹ The Cayman Islands does not levy any income tax, corporation tax or capital gains tax.¹⁰² While Luxembourg has relatively higher taxes (27.08% for overall nominal corporate tax rate¹⁰³ and a maximum income tax rate of 42%),¹⁰⁴ it is benefitting from the regulatory crackdown on tax havens and its location in continental Europe. With the enactment of the Alternative Investment Fund Managers Directive¹⁰⁵ and the general tendency for more regulation and investor protection in the European Union’s (“EU’s”) alternative investment industry, several international players have started to move their Europe-targeted funds from unregulated offshore centres (that is, the Cayman Islands) to Luxembourg to avoid enhanced scrutiny from EU financial regulators.¹⁰⁶

This suggests that Singapore should attempt to increase its attractiveness as a domicile location by improving its legal structures and relaxing its tax regime.

C. DEVELOPING SINGAPORE AS AN ONSHORE HUB

Singapore is well placed to benefit from the future growth of PE investment as PE investors seek tax efficient structures in jurisdictions with extensive networks of DTAs. With increasing pressure for tax transparency, it is now essential to show commercial substance in the country of domicile of the legal entity where realisation proceeds are

⁹⁹ United States, Delaware, Division of Revenue, “Filing Corporate Income Tax” <http://revenue.delaware.gov/services/Business_Tax/FilingCIT.shtml> (accessed November 2018).

¹⁰⁰ United States, Delaware, Division of Revenue, “Step 5: Withholding Taxes” <http://revenue.delaware.gov/services/Business_Tax/Step5.shtml> (accessed November 2018).

¹⁰¹ Department of Jersey, “Taxation in Jersey” <<https://www.gov.je/LifeEvents/MovingToJersey/Pages/Tax.aspx>> (accessed November 2018).

¹⁰² Cayman Islands Government, “Taxes” <<http://www.gov.ky/portal/page/portal/cighome/cayman/theeconomy/taxes>> (accessed November 2018).

¹⁰³ Ernst & Young, “Global Tax Alert: Luxembourg’s Parliament Adopts Law on Tax Reform 2017” (19 December 2016) at p 2 <[http://www.ey.com/Publication/vwLUAssets/Luxembourgs_Parliament_adopts_Law_on_tax_reform_2017/\\$FILE/2016G_04432-161Gbl_LU%20Parliament%20adopts%20Law%20on%20tax%20reform%202017%20-%20Review%20of%20corporate%20tax%20measures.pdf](http://www.ey.com/Publication/vwLUAssets/Luxembourgs_Parliament_adopts_Law_on_tax_reform_2017/$FILE/2016G_04432-161Gbl_LU%20Parliament%20adopts%20Law%20on%20tax%20reform%202017%20-%20Review%20of%20corporate%20tax%20measures.pdf)> (accessed November 2018).

¹⁰⁴ KPMG, “Luxembourg – Income Tax” (1 March 2017) <<https://home.kpmg.com/xx/en/home/insights/2011/12/luxembourg-income-tax.html>> (accessed November 2018).

¹⁰⁵ Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

¹⁰⁶ Francis Nikolai Acosta, “Ucits *versus* Cayman: Which Fund Structure Is Best for You?” *Fund Selector Asia* (18 September 2018) <<https://fundselectorasia.com/ucits-versus-cayman-which-fund-structure-is-best-for-you/>>

being repatriated. If Singapore allows full commercial substance by being the location of both the fund vehicle and the fund manager, the PE fund will be able to obtain maximum benefit from Singapore's extensive DTA network. This will grant Singapore a natural competitive advantage over the many offshore asset management centres around the world. Since there is already an established base of PE fund managers using the city as an operational centre, Singapore should focus its efforts on encouraging the establishment of onshore funds.

Building up an onshore PE fund regime will also further consolidate Singapore's position as a leading financial centre and create new high value-added jobs. Onshore funds will (a) benefit the existing community of PE funds; (b) attract new foreign PE funds that wish to enter the Asian market to set up shop in Singapore; and (c) generate spill-over benefits such as more revenue for the Singapore-based advisory firms which provide fund administration, accounting, legal and tax advisory services to the PE firms.¹⁰⁷

As the purpose of this chapter is to discuss and propose what policymakers can do to improve the regulatory environment of PE in Singapore, the focus will be on legal and tax reforms. Due to Singapore's limited land space, small domestic market and underdeveloped manufacturing industry, there is limitation for policymakers to encourage the PE investment. However, the legal structures can be adopted to suit the commercial needs of the fund management industry and the exit environment can be improved to attract more funding to Singapore. As fund managers and investors are particularly sensitive to taxes, introducing liberal tax policies will also encourage onshoring of funds.

1. Legal reform

(a) Introducing the Singapore Variable Capital Company ("S-VACC")

To further develop Singapore as a centre for both fund management activities and investment fund domiciliation, the MAS has recently proposed the S-VACC to be a new specialised corporate structure for investment funds.¹⁰⁸

Due to the restrictions on return of capital to shareholders, funds in Singapore are not commonly constituted as investment companies.¹⁰⁹ The capital maintenance requirements impede the normal operations of funds as funds require the flexibility to vary their capital and redeem shares whenever investors exercise their redemption

¹⁰⁷ Similar benefits of having onshore private equity funds have been stated in Hong Kong's 2015 Financial Services Development Council Paper: Hong Kong, Financial Services Development Council, *A Paper on Limited Partnership for Private Equity Funds* (FSDC Paper No 17, December 2015) at p 1.

¹⁰⁸ Monetary Authority of Singapore, *Consultation Paper on the Proposed Framework for Singapore Variable Capital Companies* (Consultation Paper P006-2017, March 2017) at p 3.

¹⁰⁹ Monetary Authority of Singapore, *Consultation Paper on the Proposed Framework for Singapore Variable Capital Companies* (Consultation Paper P006-2017, March 2017) at p 5.

rights.¹¹⁰ Furthermore, the Companies Act¹¹¹ does not cater for the creation of sub-funds with segregated assets and liabilities and this prevents fund managers from reaping economic of scale by consolidating certain administrative functions within an umbrella fund.¹¹² The proposed legislative framework for S-VACCs intends to address these shortcomings by introducing a specialised corporate structure that will dispense with existing aspects of company law that are not conducive for funds.

Under the proposed framework for S-VACCs, the S-VACC will enjoy separate legal personality and the liability of shareholders of a S-VACC is also limited to the amount unpaid on the shares respectively held by them.¹¹³

However, unlike a company, a S-VACC will not be subject to declaration of solvency prior to repayment or redemption of capital and can distribute and repay out of its net assets.¹¹⁴ Funds organised as S-VACCs will enjoy greater confidentiality as S-VACCs do not need to disclose their registers of shareholders to the public and are only required to make the registers available to supervisory and law enforcement agencies where necessary.¹¹⁵ In addition, there will be segregation of assets and liabilities of sub-funds within an umbrella structure and this will allow fund managers to achieve cost efficiencies by consolidating administrative functions at the umbrella fund level.¹¹⁶ In the event of a sub-fund's insolvency, each sub-fund may be wound up as if it were a separate legal person and there will be ring-fencing of each sub-fund's assets and liabilities during liquidation.¹¹⁷

The introduction of the S-VACC structure signifies a move towards the international standards as other leading fund jurisdictions such as Luxembourg and Ireland have already established specialised corporate structures to facilitate asset management activities.¹¹⁸ Given that over 70% of offshore funds sold in Singapore are corporate

¹¹⁰ Monetary Authority of Singapore, *Consultation Paper on the Proposed Framework for Singapore Variable Capital Companies* (Consultation Paper P006-2017, March 2017) at p 5.

¹¹¹ Cap 50, 2006 Rev Ed.

¹¹² Monetary Authority of Singapore, *Consultation Paper on the Proposed Framework for Singapore Variable Capital Companies* (Consultation Paper P006-2017, March 2017) at p 5.

¹¹³ PricewaterhouseCoopers, "Singapore Variable Capital Company (S-VACC): The Game Changer for Asset Management in Asia Pacific" at p 13 <<https://www.pwc.com/sg/en/asset-management/assets/svacc/svacc-briefing-paper.pdf>> (accessed November 2018).

¹¹⁴ Monetary Authority of Singapore, *Consultation Paper on the Proposed Framework for Singapore Variable Capital Companies* (Consultation Paper P006-2017, March 2017) at p 6.

¹¹⁵ Monetary Authority of Singapore, *Consultation Paper on the Proposed Framework for Singapore Variable Capital Companies* (Consultation Paper P006-2017, March 2017) at p 6.

¹¹⁶ Monetary Authority of Singapore, "MAS Proposes a New Corporate Structure for Investment Funds", media release (23 March 2017) <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/MAS-Proposes-a-New-Corporate-Structure-for-Investment-Funds.aspx>> (accessed November 2018).

¹¹⁷ Monetary Authority of Singapore, *Consultation Paper on the Proposed Framework for Singapore Variable Capital Companies* (Consultation Paper P006-2017, March 2017) at p 10.

¹¹⁸ Monetary Authority of Singapore, *Consultation Paper on the Proposed Framework for Singapore Variable Capital Companies* (Consultation Paper P006-2017, March 2017) at p 5.

form funds that are domiciled in foreign locations,¹¹⁹ there is clearly a market demand for specialised corporate structure that is designed for asset management activities. By allowing the re-domiciliation of equivalent foreign corporate funds to Singapore as S-VACCs,¹²⁰ it will encourage fund managers to consolidate the fund domicile with their fund management activities in Singapore. The enactment of S-VACC legislation will enhance Singapore's competitiveness as an onshore hub and is key to elevating Singapore's value position as a leading jurisdiction for PE activities.

(b) *Reforming the limited partnership structure*

As a distinct feature, Singapore's limited partnership does not have a personality separate from its partners. The draftsman adopted the recommendation of the 2002 study team to not include the separate legal personality feature. Such a recommendation was made primarily because the study team was concerned that overseas tax authorities might treat the Singapore limited partnership as an opaque entity for tax purposes if it has a separate legal personality.¹²¹ This will reduce the limited partnership's attractiveness to investors and negatively affect the take-up rate of the limited partnership structure in Singapore.¹²² For instance, in the UK, Japan and Germany, while legal separation may not be the most critical issue for tax purposes, it will be counted as a factor contributing to non-transparency in a tie-breaker situation.¹²³ In New Zealand, the mere fact that the limited partnership has a separate legal personality will deprive the investor (who is a New Zealand tax resident) of the benefit of tax transparent treatment.¹²⁴

Moreover, by adopting the aggregate approach, the Singapore limited partnership has no perpetual succession.¹²⁵ It also cannot hold property and enter contracts in its own

¹¹⁹ PricewaterhouseCoopers, "Singapore Variable Capital Company (S-VACC): The Game Changer for Asset Management in Asia Pacific" at p 6.

¹²⁰ Monetary Authority of Singapore, *Consultation Paper on the Proposed Framework for Singapore Variable Capital Companies* (Consultation Paper P006-2017, March 2017) at 16.

¹²¹ *Final Report on Limited Partnerships: Report of the Study Team on Limited Partnerships – Summary of Recommendations on Limited Partnerships* at para 7.1.5 <<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan034486.pdf>> (accessed November 2018).

¹²² *Final Report on Limited Partnerships: Report of the Study Team on Limited Partnerships – Summary of Recommendations on Limited Partnerships* at para 7.1.5 <<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan034486.pdf>> (accessed November 2018).

¹²³ *Final Report on Limited Partnerships: Report of the Study Team on Limited Partnerships – Summary of Recommendations on Limited Partnerships* at para 7.1.6 <<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan034486.pdf>> (accessed November 2018).

¹²⁴ *Final Report on Limited Partnerships: Report of the Study Team on Limited Partnerships – Summary of Recommendations on Limited Partnerships* at para 7.1.6 <<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan034486.pdf>> (accessed November 2018).

¹²⁵ *Final Report on Limited Partnerships: Report of the Study Team on Limited Partnerships – Summary of Recommendations on Limited Partnerships* at para 7.1.2 <<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan034486.pdf>> (accessed November 2018).

name.¹²⁶ As the previous limited partnership has ceased to exist and a new limited partnership had been created on each occasion when a partner retired or a new partner was admitted, the third party who dealt with a limited partnership over time might have unknowingly transacted with several different partnerships.¹²⁷ The legal characterisation of the limited partnership is thus at odds with the commercial perception that the limited partnership is an entity.

Notably, it is now an international trend for jurisdictions to introduce separate legal personality for limited partnerships. The UK government has recently expressed interest to introduce the separate legal personality for English limited partnerships.¹²⁸ The British Virgin Islands (“BVI”) has already adopted this approach and all BVI limited partnerships formed under the new BVI Limited Partnership Act 2017¹²⁹ have the ability to elect whether it shall be formed with or without legal personality.¹³⁰ It is suggested that Singapore should consider the same to provide a relevant and viable vehicle for the fund management industry. Separate legal personality will provide better reflection of commercial reality and consistency with legal developments in other jurisdictions.¹³¹ It would also provide a more elegant solution to the various practical problems, such as continuity on change of partners, ownership and transfer of partnership property, and the procedure and substance of litigation.¹³²

Apart from introducing separate legal personality, the BVI Limited Partnership Act 2017 also introduces the ability to publicly register a charge against a limited partnership with legal personality and obtain priority under BVI laws over subsequent charges as a result.¹³³ This ability to register security interests and the certainty on

¹²⁶ *Final Report on Limited Partnerships: Report of the Study Team on Limited Partnerships – Summary of Recommendations on Limited Partnerships* at para 7.1.2 <<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan034486.pdf>> (accessed November 2018).

¹²⁷ The Law Commission & The Scottish Law Commission, *Partnership Law: Report on a Reference under Section 3(1)(e) of the Law Commissions Act 1965 (Cm 6015, November 2003)* at para 5.8. While the third party might be required to pursue legal remedies for past wrongs against different aggregations of persons, admittedly this is not a critical issue for limited partnerships since general partners are readily identifiable and limited partners’ liability is restricted to their capital contribution.

¹²⁸ James Burdett & John Unger, “Limited Partnership Reform: Implications for Private Funds” *Thomson Reuters: Practical Law* (26 April 2016) <[https://uk.practicallaw.thomsonreuters.com/9-627-0642?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/9-627-0642?transitionType=Default&contextData=(sc.Default)&firstPage=true&bhcp=1)> (accessed November 2018).

¹²⁹ Act No 24 of 2017.

¹³⁰ Michael Killourhy, “BVI Limited Partnerships Act 2017” *Ogier* (12 February 2018) <<https://www.ogier.com/publications/bvi-limited-partnership-act-2017>> (accessed November 2018).

¹³¹ Elspeth Berry, “Limited Partnership Law in the United States and the United Kingdom: Teaching an Old Dog New Tricks?” [2012] *JBL* 160 at 164.

¹³² Elspeth Berry, “Limited Partnership Law in the United States and the United Kingdom: Teaching an Old Dog New Tricks?” [2012] *JBL* 160 at 164.

¹³³ Limited Partnership Act 2017 (Act No 24 of 2017) (BVI) ss 57 and 63. Michael Killourhy, “BVI Limited Partnerships Act 2017” *Ogier* (12 February 2018) <<https://www.ogier.com/publications/bvi-limited-partnership-act-2017>> (accessed November 2018).

priority that the creditors shall receive as a result of registration is an innovative feature that is unique to BVI partnership law.¹³⁴ The BVI legislation also facilitates an investor's ability to borrow to finance any capital call by clearly permitting (subject to the terms of any limited partnership agreement) the investor to charge its partnership interest under the limited partnership as security for such borrowing.¹³⁵ Apart from being able to assign the right to a partner's uncalled capital to a third party¹³⁶, the management is expressly granted a broad range of statutory remedies, including forfeiture of partnership interests, against an investor who defaults on capital calls.¹³⁷ The general partners may exercise these statutory remedies without the fear of being held in breach of their fiduciary duty towards the other partners and without the risk that such remedies will be unenforceable solely on the basis that they are penal in nature.¹³⁸ Singapore should emulate these highly commercial features of the BVI limited partnership to ensure that its own limited partnership will better meet modern investment practices and norms.

Separately, with effect from 6 April 2017, the UK has created a new class of limited partnerships for private investment funds – the private fund limited partnership (“PFLP”).¹³⁹ The PFLP is subject to a simplified regulatory regime and aims to provide a more flexible vehicle for investment fund managers. The PFLP reduces many of the financial and administrative burdens associated with structuring a private fund as an ordinary UK limited partnership and also removes the requirement for limited partners to make a capital contribution.¹⁴⁰ However, the PFLP regime does not allow for limited partnerships outside of Scotland to have separate legal personality.¹⁴¹

¹³⁴ Michael Killourhy, “BVI Limited Partnerships Act 2017” *Ogier* (12 February 2018) <<https://www.ogier.com/publications/bvi-limited-partnership-act-2017>> (accessed November 2018).

¹³⁵ Limited Partnership Act 2017 (Act No 24 of 2017) (BVI) s 44. Michael Killourhy, “BVI Limited Partnerships Act 2017” *Ogier* (12 February 2018) <<https://www.ogier.com/publications/bvi-limited-partnership-act-2017>> (accessed November 2018).

¹³⁶ Limited Partnership Act 2017 (Act No 24 of 2017) (BVI) s 48. Michael Killourhy, “BVI Limited Partnerships Act 2017” *Ogier* (12 February 2018) <<https://www.ogier.com/publications/bvi-limited-partnership-act-2017>> (accessed November 2018).

¹³⁷ Limited Partnership Act 2017 (Act No 24 of 2017) s 40. Michael Killourhy, “BVI Limited Partnerships Act 2017” *Ogier* (12 February 2018) <<https://www.ogier.com/publications/bvi-limited-partnership-act-2017>> (accessed November 2018).

¹³⁸ Michael Killourhy, “BVI Limited Partnerships Act 2017” *Ogier* (12 February 2018) <<https://www.ogier.com/publications/bvi-limited-partnership-act-2017>> (accessed November 2018).

¹³⁹ John Adams *et al*, “Private Fund Limited Partnership: The UK’s New Fund Vehicle” *Shearman & Sterling: Perspectives* (3 May 2017) <<https://www.shearman.com/Perspectives/2017/05/The-UK-New-Fund-Vehicle>> (accessed November 2018).

¹⁴⁰ John Adams *et al*, “Private Fund Limited Partnership: The UK’s New Fund Vehicle” *Shearman & Sterling: Perspectives* (3 May 2017) <<https://www.shearman.com/Perspectives/2017/05/The-UK-New-Fund-Vehicle>> (accessed November 2018).

¹⁴¹ Mikhaelle Schiappacasse & Nathalie Sadler (Dechert LLP), “A New Lease of Life for Limited Partnerships in the UK” *Lexology* (26 June 2017)

14.60 In light of the proposed introduction of the S-VACC structure, it would be unnecessary for Singapore to create a specialised form of limited partnerships akin to UK's PFLP. Instead, Singapore should revise the current limited partnership regime to closely match BVI's Limited Partnership Act. This will offer greater attraction to fund managers that wish to domicile the funds as Singapore limited partnerships.

2. Tax reform

In order to attract more PE/VC investment and support SME development, countries such as Australia and Hong Kong are introducing special limited partnerships with tax incentives. Under Australia's Venture Capital Limited Partnerships program, income and capital gains earned by eligible limited partners will be exempt from tax.¹⁴² To be eligible for the tax incentives, (a) the VC fund must be structured as a limited partnership (established in Australia or in a country with which Australia has a DTA); (b) it must have at least A\$10m committed capital; and (c) all general partners must be residents of Australia or residents of a country which Australia has a DTA with.¹⁴³ Meanwhile, Hong Kong has proposed to exempt all onshore PE limited partnerships from profits tax and stamp duty so as to align tax treatment for PE's limited partnership structures with the open-ended fund companies that are predominantly used by onshore mutual funds and hedge funds.¹⁴⁴

In contrast, Singapore's present tax exemptions for onshore funds are considerably more restrictive. A resident fund can only be exempted under the Onshore Fund Tax Exemption Scheme if it is not 100% owned by Singapore investors and each investor is a qualifying investor.¹⁴⁵ While the Enhanced Tier Fund Exemption Scheme places no restriction on Singapore-resident investors, the fund is required to have at least S\$50m in committed capital.¹⁴⁶ Creating a fund regime in Singapore that is comparable and competitive to other existing fund regimes would help Singapore position itself as an onshore hub for serving the PE industry. As such, Singapore can consider implementing further tax incentives such as offering complete income tax exemption for qualifying VC funds.

3. Improving exit environment

<https://www.lexology.com/library/detail.aspx?g=1c2a3d38-0260-4777-8f23-daa4efe84299> (accessed November 2018).

¹⁴² Australian Taxation Office, "Venture Capital Limited Partnerships" <https://www.ato.gov.au/Business/Venture-capital-and-early-stage-venture-capital-limited-partnerships/Venture-capital-limited-partnerships/> (accessed November 2018).

¹⁴³ Australian Taxation Office, "Venture Capital Limited Partnerships" <https://www.ato.gov.au/Business/Venture-capital-and-early-stage-venture-capital-limited-partnerships/Venture-capital-limited-partnerships/> (accessed November 2018).

¹⁴⁴ Hong Kong, Financial Services Development Council, "A Paper on Limited Partnership for Private Equity Funds" (FSDC Paper No 17, December 2015) at p 12.

¹⁴⁵ Income Tax Act (Cap 134, 2014 Rev Ed) s 13CA; Income Tax (Exemption of Income of Non-Residents Arising from Funds Managed by Fund Manager in Singapore) Regulations 2010 (S 6/2010).

¹⁴⁶ Income Tax Act (Cap 134, 2014 Rev Ed) s 13X; Income Tax (Exemption of Income Arising from Funds Managed in Singapore by Fund Manager) Regulations 2010 (S 6/2010) reg 3.

The local stock market provides an attractive exit option for PE investors. Initial public offerings tend to be the most profitable for a portfolio company¹⁴⁷ and there is also a strong correlation between the size and liquidity of a nation's stock market and the volume of its VC market.¹⁴⁸

The Singapore Exchange ("SGX") has two listing platforms – the Mainboard for established businesses and the Catalist for potentially fast-growing companies. There is no minimum operating track record, profit, share capital or market capitalisation requirement for Catalist stocks and Catalist also provides a greater scope for secondary fundraisings and easier acquisitions to facilitate business growth¹⁴⁹. For example, the Minimum Trading Price rule of 20 cents a share and the SGX watchlist do not apply to firms on the Catalist board.¹⁵⁰

In addition, SGX has announced on 19 January 2018 that it plans to soon allow companies to list with dual-class stock ("DCS") structure.¹⁵¹ DCS structures are typically characterised by one class of shares with only one vote per share (that is, the common shares usually offered to public investors) and another class of shares with multiple votes per share (usually held by founders).¹⁵² The result of this structure is that the founders would be given voting power or other related rights disproportionate to their shareholdings, thus allowing them to maintain control of the company while enabling access to public capital financing.¹⁵³ DCS structures are commonly used in PE/VC-backed firms as they enable entrepreneurs to maintain control of the firm even after listing.¹⁵⁴ The introduction of DCS structures will thus help to encourage growth of the PE/VC industry. By increasing the difficulty for hostile takeovers and reducing short-term pressures on financial performance, DCS can also potentially help owners of high-technology companies to incubate innovations that require time to develop before generating tangible revenue.¹⁵⁵

D. CONCLUSION

¹⁴⁷ Bernard Black & Ronald Gilson, "Venture Capital and the Structure of Capital Markets" (1998) 47 *Journal of Financial Economics* 243 at 247.

¹⁴⁸ Bernard Black & Ronald Gilson, "Does Venture Capital Require an Active Stock Market?" (1999) 11 *Journal of Applied Corporate Finance* 36.

¹⁴⁹ Singapore Exchange, "Market Updates: 10 Most Recent Catalist IPOs Averaged 56% Returns from Debut" (10 April 2017).

¹⁵⁰ Singapore Exchange, "Securities Trading: Minimum Trading Price" <http://www.sgx.com/wps/portal/sgxweb/home/trading/securities/trading_settlement#Minimum-Trading-Price> (accessed November 2018).

¹⁵¹ Cai Haoxiang & Angela Tan, "SGX Introducing Dual-class Shares" *The Straits Times* (20 January 2018).

¹⁵² Lin Lin, "Venture Capital Exits and the Structure of Stock Markets in China" (2016) 15 *AJCL* 1 at 22.

¹⁵³ Lance Lim, "Dual Class Shares in Singapore" *Singapore Law Gazette* (April 2017).

¹⁵⁴ Lin Lin, "Venture Capital Exits and the Structure of Stock Markets in China" (2016) 15 *AJCL* 1 at 22.

¹⁵⁵ Monetary Authority of Singapore, "Financial Sector Gears Up for the Future Economy", media release (13 February 2017) <<http://www.mas.gov.sg/News-and-Publications/Media-Releases/2017/Financial-Sector-Gears-Up-for-the-Future-Economy.aspx>> (accessed November 2018).

Singapore's robust yet not overly invasive regulatory framework will continue to put Singapore in good stead to further develop its reputation as a regional asset management centre. While the introduction of the S-VACC and the DCS structure is a welcome change, relaxation of tax policies and revision of the limited partnership structure are suggested so as to advance Singapore's goal of becoming a regional onshore hub for PE funds.