Singapore Venture Capital & Private Equity Association

#07-02A Far East Finance Building 14 Robinson Road Singapore 048545 * Tel: (65) 6224 7001 * Fax: (65) 6224 6772 * UEN No. S92SS0118E

SVCA Response to MAS Questionnaire on Singapore Limited Partnership Regime

Question 1 – MAS and ACRA seek comments on the current process and procedures of: (a) introducing new limited partners into an existing limited partnership; and (b) assigning the interests of a limited partner in a limited partnership, under Singapore law. In particular, is there any section in the Limited Partnership Act that creates difficulty in effecting the above?

While there are no provisions of the Limited Partnership Act that create any particular difficulty with (a) the introduction of new limited partners or (b) the assignment of interests in a limited partnership, there is significant uncertainty as to the application of the Stamp Duty Act to such transactions. In order for Singapore to fully benefit from the ongoing international onshoring trend in the private funds industry, we would encourage a review of the stamp duty regime, as it applies to limited partnerships. Under the current regime, stamp duty may apply to transfers of limited partner interests where the limited partnership holds shares in a Singapore private company (even if the fund's portfolio assets, held directly or indirectly through the Singapore private company, do not consist of property that would itself attract stamp duty). Further, the broad wording of the Stamp Duty Act (Chapter 312), gives rise to significant uncertainty as to whether other ordinary events in the life of a fund structured as a limited partnership (such as equalisation payments at subsequent closings or default and excuse mechanisms) may give rise to stamp duty, where the percentage interests of the limited partners in the limited partnership may change (often without the limited partners themselves having taken any action).

The limited partnership did not exist in Singapore when GST was first implemented in 1994. As such, the provisions of the GST legislation do not contemplate limited parentships as investment structures and thus do not address issues that may arise from the use of the limited partnership. This has lead to uncertainties, including as to whether GST is applicable on the transfer of an interest in a limited partnership. We would suggest that the GST legislation be amended to make clear that the transfer of a limited partnership interest is exempt from GST. This will provide the level of certainty that international investors require in respect of their investment and divestment in Singapore limited partnerships, which such international investors typically require and receive when investing in offshore limited partnerships.

We would also note the following with respect to other popular international jurisdictions where limited partnerships are often formed: (a) there is no stamp duty nor VAT/GST in the Cayman Islands and Delaware (two of the leading jurisdictions for the formation of limited partnerships), (b) while there is stamp duty and/or VAT/GST in Australia, Hong Kong and the United Kingdom, we understand that they do not apply to the transfers of interests in limited partnerships in those jurisdictions.

Question 2 – Are there any benefits of or concerns with providing an express mechanism to allow for the transfer of a limited partner's rights, obligations and role to another person under the Limited Partnerships Act? If so, what are these?

We do not think it is necessary for the Act to provide an express mechanism for the transfer of a limited partner's rights, obligations and role. The hallmark of international best practice for limited partnership frameworks is to allow the parties to the limited partnership agreement (which is simply a contract among the partners) the broadest possible spectrum within which they can agree the terms that will apply to their partnership. With this in mind, any mechanism in the Act in respect of the transfer of a limited partner's rights, obligations or role should be for guidance only (i.e. not be mandatory) and should be subject to the terms of the limited partnership agreement.

#07-02A Far East Finance Building 14 Robinson Road Singapore 048545 * Tel: (65) 6224 7001 * Fax: (65) 6224 6772 * UEN No. S92SS0118E

Question 3 – MAS and ACRA seek comments on the take-up rate of limited partnerships as investment vehicles in Singapore, compared to other investment structures. Is there any specific factor that could affect the take-up rate?

The limited partnership was introduced in Singapore in 2009 and, despite limited promotion, has been successful. We believe there is room to make the Singapore limited partnership more attractive by (a) bringing the Singapore Limited Partnership Act more in-line with the leading international jurisdictions (in particular with respect to full flexibility of contractual terms), (b) clarifying that stamp duty and GST should not apply to the various changes that may occur in the percentage interests of the limited partners in the limited partnership, and (c) dispensing the need for limited partners to file Singapore tax returns (with the general partner filing the tax return instead). We would also encourage the MAS and the Singapore government to consider promoting the use of the limited partnership in the same manner that they have promoted the use of the VCC (including with respect to financial subsidies).

Question 4 – MAS and ACRA seek comments on the current process and procedures of withdrawal of limited partners from an existing limited partnership under Singapore law. Is there sufficient clarity under Singapore law on the process and the effect of a withdrawal of a limited partner from the limited partnership? If there are legislative gaps that need to be addressed, what would be the optimal or practicable ways to address such gaps?

We do not think it is necessary for the Act (or other provisions of Singapore law) to specifically provide processes or procedures for the withdrawal of a limited partner. We would suggest that international best practice on this point is to allow the parties to the limited partnership agreement the broadest possible spectrum within which they can agree the terms that will apply to withdrawal of a limited partner. As such, any mechanism in the Limited Partnership Act (or elsewhere in Singapore law) on this point should be for guidance only (i.e. not be mandatory) and should be subject to the terms of the limited partnership agreement.

Question 5 – MAS and ACRA seek comments on whether the rights, duties and obligations of limited and general partners are in line with international best practices. Please provide the rationale (including jurisdiction, if applicable) for any proposed change.

Section 4(1) of the Limited Partnership Act currently provides that "the Partnership Act (Cap. 391) and the rules of equity and of common law applicable to partnerships (except so far as they are inconsistent with the express provisions of the Partnership Act) shall apply to limited partnerships". There are provisions in the Partnership Act that we believe are not appropriately applicable to a limited partnership that have not been specifically carved out by the Limited Partnership Act. For example, the Partnership Act would imply that a limited partner owes a duty to the limited partnership to render true accounts, account for private profits and not to compete. Given the nature of a limited partner's status (i.e. not being in any way involved in the management of the limited partnership), we believe that such restrictions that apply to partners of an ordinary partnership should not apply to a limited partner. We would note in particular that investors in private funds frequently invest in many funds and have other direct and indirect business interests many of which may compete with each other. Therefore, we recommend, at a minimum, amending the Act to confirm that a limited partner is not subject to such duties. Note that this is consistent with the approach with private fund limited partnerships in England and other jurisdictions. That said, we believe that a more helpful amendment would be to add the following at the end of Section 4(1) "except where they are inconsistent with the express provisions of this Act".

#07-02A Far East Finance Building 14 Robinson Road Singapore 048545 * Tel: (65) 6224 7001 * Fax: (65) 6224 6772 * UEN No. S92SS0118E

Question 6 – Do limited partners face any constraint in investing in other investment funds or in carrying on business, by virtue of being limited partners of a limited partnership registered under the Limited Partnerships Act? Please elaborate on the challenges (if any), and the rationale for any suggestion to address such challenges.

Please see response to Question 5 which highlights a technical issue created by the cross-referencing to the Partnership Act. Notwithstanding this issue, market practice among many limited partners is to invest broadly with little regard to what might be deemed a "competing" investment. We would again suggest that it be clarified that either (a) the "partner duties" section of the Partnership Act do not apply to limited partners, or (b) that more general "saving language be added to Section 4(1) of the Limited Partnership Act as detailed in our response to Question 5.

Question 7 – Is there sufficient clarity under Singapore law on whether limited partners are subject to fiduciary obligations? Should the Limited Partnerships Act legislate whether limited partners are subjected to fiduciary duties? Should the Limited Partnerships Act provide that the default position under the Act can be displaced by a partnership agreement to the contrary?

As mentioned in our responses to Questions 5 and 6, we do not feel that there is sufficient clarity on this issue. We would suggest that the Limited Partnership Act be amended to confirm that limited partners (and their representatives) are not subject to fiduciary duties, except to the extent expressly set out in the Limited Partnership Agreement. This would be in-line with international best practice.

Question 8 – The First Schedule to the Limited Partnerships Act lists activities which if undertaken by a limited partner will not result in the limited partner being regarded as taking part in the management of a limited partnership. MAS and ACRA seek comments on whether any changes should be made to the scope of the activities set out in the First Schedule of the Limited Partnerships Act.

We would suggest revising the First Schedule to the Limited Partnership Act to be fully in-line with international standards. The current list of activities on the First Schedule is not as comprehensive as the lists in England and other jurisdictions (including the proposed list in Hong Kong).

Question 9 – MAS and ACRA seek comments on the process of tax filing for a limited partnership constituted under Singapore law. MAS also seeks comments on the current process and procedure where limited partners may be required to file a Singapore income tax return on an individual basis in relation to any income derived from the said limited partnership. Please elaborate on the challenges (if any), and provide the rationale for any suggestion to address such challenges.

Investors in limited partnerships have significant reservations about the prospect of filing tax returns in a country of the limited partnership domicile merely by virtue of their having invested in the limited partnership. The usual expectation is that any tax filings should be taken care of by the fund manager or the general partner. This is due in part to the limited partner having somewhat limited access to information that may be required to make such filings. In addition, international limited partners may well be unfamiliar with the tax rules of the country where the limited partnership is domiciled. Hence, we would suggest that the Singapore tax regulations be revised to provide that a Singapore tax return need only be filed by the general partner on behalf of the limited partnership, instead of by any of the limited partners themselves. Any taxes should then also be paid by the general partner on behalf of the limited partnership for ease of administration.

Question 10 – With the introduction of Variable Capital Companies as a new investment vehicle structure, MAS and ACRA seek comments on whether there is value in also further enhancing the limited partnership structure as an investment vehicle. If so, MAS and ACRA seek comments on how Singapore's laws relating to limited partnerships could be amended to promote limited partnerships as an investment vehicle.

Please see our responses to Questions 1 through 9 and the following.

We would suggest that the ACRA registration form and accompanying guidance be reviewed and improved to ensure the response options on the form reflect the underlying legislation and are appropriate for practice (e.g., the ACRA form currently only allows a new limited partnership to register a term of one or three years. This does not reflect the legislative requirements, or how fund terms are determined in practice). We are also aware of ACRA delaying registration of limited partnerships on the basis that they are being established as funds. As the supervision of limited partnerships that are funds is achieved through the fund manager licensing and registration regime (overseen by the MAS), it seems unnecessary for ACRA to use the vehicle registration process as a check on the fund manager regime. Such practices are unhelpful to Singapore maintaining its reputation as an efficient and transparent jurisdiction for fund establishment.

Given the current unprecedented situation resulting from the COVID-19 pandemic, the private funds industry (and the legal community generally) urgently needs amendments to be made to the Electronic Transactions Act (Chapter 88) to permit private funds to complete virtual investor closings using entirely electronically executed documents. In particular, we would suggest (a) the removal of *powers-of-attorney* from the list of documents that are excluded from the Electronic Transactions Act, and (b) confirmation that deeds may be executed electronically.