The Private Equity Review

Sixth Edition

Editor

Stephen L Ritchie

The Law Reviews

THE PRIVATE EQUITY REVIEW

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THE PRIVATE EQUITY REVIEW

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PREFACE

The sixth edition of *The Private Equity Review* comes on the heels of a solid but at times uneven 2016 for private equity. Deal activity and fundraising were strong in North America, Europe and Asia, but the year ended with uncertainty in the face of Brexit, a new United States administration and continued challenges in developing economies such as Brazil. Nevertheless, we expect private equity will continue to play an important role in global financial markets, not only in North America and Western Europe, but also in developing and emerging markets in Asia, South America, the Middle East and Africa. As large global private equity powerhouses extend their reach into new markets, home-grown private equity firms, many of whose principals learned the business working for those industry leaders, have sprung up in many jurisdictions to compete using their local know-how.

As the industry continues to become more geographically diverse, private equity professionals need guidance from local practitioners about how to raise money and close deals in multiple jurisdictions. This review has been prepared with this need in mind. It contains contributions from leading private equity practitioners in 29 different countries, with observations and advice on private equity deal making and fundraising in their respective jurisdictions.

As private equity has grown, it has also faced increasing regulatory scrutiny throughout the world. Adding to this complexity, regulation of private equity is not uniform from country to country. As a result, the following chapters also include a brief discussion of these various regulatory regimes.

While no one can predict exactly how private equity will fare in 2017, it can confidently be said that it will continue to play an important role in the global economy. Private equity by its very nature continually seeks out new, profitable investment opportunities, so its further expansion into growing emerging markets is also inevitable. It remains to be seen how local markets and policymakers respond.

I want to thank everyone who contributed their time and labour to making this sixth edition of *The Private Equity Review* possible. Each of them is a leader in his or her respective market, so I appreciate that they have used their valuable and scarce time to share their expertise.

Stephen L Ritchie
Kirkland & Ellis LLP
Chicago, Illinois
March 2017

Chapter 17

SINGAPORE

Low Kah Keong and Felicia Marie Ng[1]

I GENERAL OVERVIEW

In Singapore, no official statistics are published by any organisation on the size of the private equity (PE) fundraising market.

The Monetary Authority of Singapore (MAS) publishes an annual survey of the fund management industry, and the 2015 survey reported that total assets managed by Singapore-based asset managers grew by 9 per cent to S$2.6 trillion, compared with an end-of-year total of S$2.4 trillion in 2014.

The 2015 survey also reported that funds employing 'alternative investment strategies' (which comprise PE, hedge funds and real estate), which accounts for about 29 per cent of the total assets under management (AUM), saw strong growth in 2015. As at end-2015, overall hedge fund AUM grew by 11 per cent to S$119 billion and overall PE fund AUM grew by 47 per cent to S$136 billion.

Based on anecdotal evidence, the number of Singapore-based fund managers who described themselves as PE fund managers and were in the fundraising stage might be as high as 35 to 50. Certainly, managers seeking money to invest in real estate in mature and emerging Asian markets or seeking to invest in the growth of companies in the emerging market economies of Indonesia, Indo-China and South East Asia predominate on the fundraising scene. Typically, a real estate-focused PE fund may seek to raise between US$100 million and US$500 million, while a growth-investing PE fund may close a fund after raising as little as US$25 million up to a ballpark amount of US$200 million.

The reception given by potential limited partners (LPs) to fundraising by Singapore-based general partners (GPs) is no different from that seen elsewhere in the world. Fund managers with a successful track record of investing and delivering value are rewarded with 're-ups' by existing LPs, and could secure new LPs. Generally, they could raise a subsequent fund larger than their immediately preceding fund. The market in Singapore is marked by more first-time fund managers raising their maiden funds than would be the case in more mature markets. A first-time fund manager would usually see a seasoned PE professional who has left an established brand name tying up with an entrepreneur who has run a successful business and is seen to be a deal-maker. Access to proprietary deal flow is greatly prized by LPs, and a PE fund manager who has family or business connections that could generate a deal flow will not find it difficult to raise a fund on the back of its deal-making ability alone. Needless to say, the casualty rate among first-time PE fund managers is very high.

1 Low Kah Keong and Felicia Marie Ng are partners at WongPartnership LLP.

A first-time fund manager may achieve a small 'friends and family' raising within two to three months, followed by a second close to bring in high net worth investors and institutional LPs, which will take place between six and 12 months later. Two recent significant fundraising by Singapore-based PE fund managers are Axiom Asia Private Capital's US$1.028 billion fund to invest in buyout, venture capital, growth capital and other private equity funds and CapitaLand's US$1.5 billion fund to invest in prime integrated developments in gateway cities in China.

II LEGAL FRAMEWORK FOR FUNDRAISING

The predominant jurisdiction and legal form for a PE fund remain, as has been the case for many years, the Cayman Islands and the exempt limited partnership. The flexibility conferred by the limited partnership structure over the corporate structure is quite well known, and, in addition, the Singapore Companies Act imposes capital maintenance rules that make it restrictive to use the Singapore corporate structure as a vehicle for a PE fund. On the other hand, Singapore-based PE fund managers' predilection for the Cayman Islands jurisdiction probably stems from familiarity of use of the Cayman jurisdiction rather than any inherent advantage conferred by Cayman laws. Singapore passed its own Limited Partnerships Law in 2009, which, like the Cayman Limited Partnerships Law, is modelled on Delaware's. Despite this, there has been a slow take-up rate of the Singapore limited partnership form by Singapore-based PE fund managers.

A trend that has been developing is the use of a dual master-fund sub-fund structure, with a limited partnership acting as the pooling master fund and a Singapore-incorporated sub-fund that is wholly owned by the master fund deploying the capital into portfolio companies. This dual structure combines the benefits of the flexibility of the limited partnership with a range of tax-optimisation opportunities offered by the Singapore sub-fund.

Singapore's network of 81 comprehensive double taxation treaties (DTAs) can be utilised by a PE fund with substantial investments in jurisdictions that have entered into a DTA with Singapore. The following countries with high levels of economic development potential for foreign direct investment have signed a DTA with Singapore: China, India, Indonesia, Malaysia, Myanmar, the Philippines, Russia, South Africa, South Korea, Taiwan, Thailand and Vietnam.

Singapore has also entered into DTAs with OECD countries such as Australia, Canada, France, Germany, Italy, Japan, the Netherlands and the United Kingdom. An institutional fund manager domiciled in any of these OECD countries and sponsoring a PE fund domiciled in Singapore could employ the treaty benefits in a DTA to reduce the incidence of tax on fund management fees received.

For an investment fund domiciled in Singapore and making PE investments in a portfolio company incorporated in a country with a DTA with Singapore, the benefits are diverse. Advantages include the following:

a if a PE fund is domiciled in a jurisdiction that has no treaty with China, any investment by the fund in a Chinese company will be subject to withholding tax of 10 per cent on dividend payments to the fund. If the fund is domiciled in Singapore, owns at least 25 per cent of the equity interests in the Chinese company and submits a confirmation of tax residence issued by the Inland Revenue Authority of Singapore to the Chinese tax authorities, the withholding tax rate will be reduced to 5 per cent under the

China–Singapore DTA. As far as treatment of dividends is concerned, the China–Singapore DTA is as favourable as any other tax treaty signed by China with other jurisdictions, except for that with the Hong Kong Special Administrative Region;

b for an investment by a fund in a Chinese company without the benefits of a treaty, all divestment of the shares in the Chinese company will attract Chinese withholding tax of 10 per cent. If the fund is domiciled in Singapore and is a portfolio investor (i.e., it holds less than 25 per cent of the equity interests in the Chinese company), provided that the Chinese company does not derive more than half of its value from holding immoveable property in China, the right to tax the capital gains will be ceded to Singapore. Since Singapore does not impose any capital gains, the fund will not pay any capital gains tax at all in the divestment; and

c under the Singapore–Vietnam DTA, any gains made by a Singapore-resident entity from the assignment of shares in a Vietnamese company (other than shares of a Vietnamese company quoted on a recognised stock exchange of one or both of Singapore and Vietnam, deriving more than 50 per cent of their value directly or indirectly from immoveable property situated in Vietnam) will be exempted from capital assignment profits tax in Vietnam, as the right to tax this gain is ceded to Singapore. Due to the fact that Singapore does not have any capital gains tax, if a fund is a Singapore-resident entity, it will not pay any capital gains tax at all in the divestment.

While in structuring a fund the sponsor could interpose an intermediate holding company in Singapore between the fund and the jurisdiction where the investment is made, this does not guarantee that the Singapore intermediate holding company will be able to access the benefits of the DTA. Tax authorities in both developed and developing countries (such as India and China) are increasingly becoming vigilant of, and clamping down on, the practice of tax treaty shopping, and are demanding to see commercial substance in a foreign entity in a contracting state that is claiming benefits under a DTA.

Therefore, it is essential to be able to show that the direct holding company of an investment is not established in a country merely to take advantage of the DTA of its jurisdiction of incorporation. Unfortunately, when investment funds are involved, more often than not there is no commercial substance at all in the jurisdiction where the direct holding company is incorporated. If a fund is incorporated in Singapore and managed out of Singapore as well, it will definitely be easier to show there is commercial substance in the fund. For instance, the board of directors of the fund will not comprise only professional nominee directors, but will include officers actually and actively involved in the management of the fund.

As more countries put in place stricter general anti-avoidance rules to counteract tax treaty shopping, promoters of funds should pay close attention to creating substance when devising investment holding structures. Incorporating a fund as a limited liability company in Singapore that is managed by a Singapore-resident fund manager is one of the best ways to demonstrate commercial substance when planning to access the benefits of a Singapore DTA.

The market practice for the key terms in a PE fund is fairly consistent with the practices in London and New York, and most Singapore-based PE fund managers would accept terms aligned with the Institutional Limited Partners Association's (ILPA) Private Equity Principles, although there may be no overt agreement to adopt the ILPA template as a starting point. Similarly, the practice of making disclosures to LPs in offering documents is no different from that seen in London and New York.

Prior to the global financial crisis, most PE fund managers would have been able to get away with a 'deal-by-deal' carry structure, but a European-style waterfall distribution that minimises excess carry distribution is arguably the norm now.

Regarding fundraising, the PE fund manager will usually place the shares or interests to only high net worth and institutional investors. It will want to avoid the need to prepare a prospectus and to lodge the prospectus for registration with the MAS, and to do so, there are a few 'safe harbours' in the Securities and Futures Act (SFA) that can be relied on:

a where offers are made only to institutional investors as prescribed in the SFA; for example, insurance companies and pension fund managers;
b where the offers are made only to accredited investors (high net worth individuals and corporations with certain high net worth); and
c the 'private placement exemption', which is available if the offer is made to no more than 50 prospective investors in any 12-month period, subject to aggregation rules.

A first-time PE fund manager usually tries to solicit investors through his or her own contacts without a placement agent. More established PE fund managers typically hire a placement agent, such as a securities brokerage firm or a private bank. Asian family offices that entrust their funds to internationally renowned private banks for management are becoming an important source, if not the most capital source, of funding for Asian PE fund managers.

Under Singapore law, the fund's sponsor or promoter of a PE fund has no legal responsibility to the LPs other than those undertaken contractually. The GP of a Singapore limited partnership would have a fiduciary duty to the LPs and, unless conflicts of interest are duly disclosed to the LPs and consented to by them, the GP cannot derive a secret profit from its management of the fund or prefer its own interests to the LPs' collective interests.

III REGULATORY DEVELOPMENTS

A fund's sponsor or promoter will invariably rely on one or more of the 'safe harbour' exemptions described above from registering a prospectus. As long as a safe harbour exemption is being relied on, there is no regulatory oversight of the fundraising process and the fund is not registered with any regulatory agency.

The available safe harbours are:

a where the offers are made only to institutional investors as prescribed in the SFA; for example, insurance companies and pension fund managers; and
b the 'private placement exemption', which is available if the offer is made to no more than 50 entities in any 12-month period, subject to aggregation rules.

If the sponsor or promoter of a fund is unable to rely on one of the above 'safe harbour' exemptions, and will be marketing a fund that is structured as a closed-ended fund, as is often the case for PE funds, it will need to note the recent regulatory change that took effect in July 2013, under which closed-ended funds will now be deemed and regulated as restricted collective investment schemes, if, *inter alia*, it falls within the definition of 'collective investment scheme' under Section 2(1) of the SFA; all or most of its issued units cannot be redeemed at the election of the unit holders; and it operates in accordance with an investment policy under which investments are made for the purpose of giving participants the benefit of the results of the investments, and not for the purpose of operating a business.

Any offer of units in such closed-ended funds must comply with the requirement to submit a notification and annual declaration to the MAS, as well as furnish an information memorandum that complies with specific disclosure requirements. The matters to be disclosed in an information memorandum issued in connection with an offer of units in such restricted closed investment scheme are:

a the investment objectives and focus of the scheme;
b the investment approach of the manager for the scheme;
c the risks of subscribing for or purchasing units in the scheme;
d whether the offer of units in the restricted scheme is regulated by any financial supervisory authority and, if so, the title and jurisdiction of the legislation under which the restricted scheme is regulated and the name and contact details of the authority;
e whether the manager for the scheme and, where applicable, the trustee or custodian, are regulated by any financial supervisory authority and, if so, the name and contact details of the authority;
f the name and place of incorporation or registration of the manager for the scheme and, where applicable, the trustee or custodian for the scheme;
g in the case of a restricted foreign scheme that is a corporation, its place of incorporation and business address;
h where applicable, the policy of the scheme regarding side letters that may further qualify the relationship between the scheme and selected investors, and the nature and scope of such side letters;
i where applicable, the past performance of the restricted scheme, or where information on the past performance of the scheme may be obtained;
j the details on where the accounts of the scheme may be obtained; and
k the fees and charges payable by the investors and by the scheme.

The only regulatory oversight in the fundraising process is the licensing of any person who carries out a fund management business in Singapore. *Prima facie*, any person who carries out a fund management business in Singapore needs to be licensed by the MAS or registered by the MAS as a fund manager. A person who provides investment advice relating to a portfolio of securities and who does not make any investment decision on behalf of any client will be regarded as a fund manager by the MAS and regulated as such.

A very significant regulatory development took place in Singapore on 7 August 2012, when a new regulatory regime for fund management companies (FMCs) was introduced. The new regulatory change has introduced a plethora of regulatory requirements that previously did not apply to fund managers in Singapore. There are now three categories of FMCs regulated by the MAS: registered FMCs, licensed accredited and institutional FMCs, and licensed retail FMCs.

Registered FMCs are FMCs whose AUM are not more than S$250 million and that serve not more than 30 qualified investors (of which not more than 15 are funds), which include closed-end funds and collective investment schemes. The underlying investors of such funds must be accredited investors or institutional investors, or both. FMCs that were previously known as exempt FMCs are now known as registered FMCs under the new regime.

Licensed accredited and institutional FMCs are licensed FMCs who serve only accredited and institutional investors. Where the licensed accredited and institutional FMCs manage funds such as collective investment schemes or closed-end funds, then the underlying

investors of these funds must also be accredited investors or institutional investors. Licensed accredited and institutional FMCs will only be able to commence business following the grant of their licence in fund management.

Licensed retail FMCs are licensed FMCs that serve retail investors.

Different regulatory requirements apply to the different categories of FMCs. However, there are also requirements that apply to all FMCs regardless of the category they fall under, which are as follows:

a all FMCs shall at all times maintain a minimum base capital amount applicable to its fund management activities (as set out below), and are encouraged to maintain an additional capital buffer of the base amount. The following are the applicable minimum base capital requirements:
   - (i) for FMCs carrying out fund management in respect of any collective investment scheme offered to any investor other than an accredited or institutional investor, the base capital requirement is S$1 million;
   - (ii) for FMCs carrying out fund management (non-collective investment scheme) on behalf of any customer other than an accredited or institutional investor, the base capital requirement is S$500,000;
   - (iii) for FMCs carrying out fund management other than that described in (i) and (ii) above, the base capital requirement is S$250,000;

b all FMCs must have in place compliance arrangements commensurate with the scale, nature and complexity of their operations. The compliance function cannot be carried out by members of the investment team, and may be carried out by an independent and dedicated compliance officer from a related corporation of the FMC. The FMC may also outsource the compliance function to an external consultant who is able to provide meaningful onsite support to the FMC in Singapore;

c all FMCs must have in place an adequate risk-management framework commensurate with the type and size of investments managed by them. The risk management function must be segregated and independent of the portfolio management function, and the MAS further expects FMCs to be subject to adequate internal audits as conducted by an internal audit function within the FMC, an internal audit team from the head office of the FMC, or an outsourced third-party service provider;

d all FMCs must ensure assets under their management are subject to independent custody in the hands of regulated prime brokers, depositories and banks. This requirement does not apply to assets in the form of securities that are not listed for quotation on a securities exchange or interests in closed-end funds subject to making certain disclosures;

e all FMCs must ensure assets under their management are subject to independent valuation, which may be satisfied by having a third-party service provider (such as a fund administrator or custodian) performing the valuation or an in-house valuation function that is independent from the investment management function; and

f regarding their functions in respect of each fund or account they manage, all FMCs must make certain minimum-risk disclosures that include a valuation policy and performance measurement standards, the use of leverage and the definition and measurement of leverage.

For licensed FMCs, the MAS also requires their officers who perform the actual fund management duties to have a representative licence. In addition to the base capital

requirement, licensed FMCs shall at all times meet the risk-based capital requirement as set out in the Securities and Futures (Financial and Margin Requirements for Holders of CMS[2] Licences) Regulations. They must have 'financial resources' that are at least 120 per cent of their 'operational risk requirements' (both terms as defined in the Regulations). The MAS may impose a requirement to obtain professional indemnity insurance on licensed FMCs that manage monies from retail customers. The MAS may require, where appropriate, licensed FMCs to procure a letter of responsibility from their parent company.

Once an FMC receives a licence, it must receive prior approval from the MAS before it can replace its chief executive officer or appoint a new director, or undergo a change in control. A change of shareholders controlling 20 per cent of the share capital of the licensed FMC is considered as a change in control.

The above requirements do not apply to registered FMCs. Registered FMCs are only required to notify the MAS of the identities of their directors and substantial shareholders at the time of registering themselves with the MAS, and subsequently any change of the same. However, the MAS has the power to revoke a registration if it believes it is in the public interest to do so, and in such event the fund manager would either have to obtain a licence or cease its licensable activity in Singapore.

There is no withholding tax on dividend distributions by a PE fund to non-resident investors. If any interest or royalty is paid by a PE fund to non-resident investors, the withholding tax rates of 15 per cent and 10 percent apply respectively, but PE funds invariably never make any interest or royalty payments to their investors. However, a PE fund domiciled in Singapore is *prima facie* subject to corporate income tax on its income just like any Singapore-incorporated company.

It is important for any fund to achieve tax neutrality in the jurisdiction where it is domiciled. An investor or sponsor of a fund will not be willing to suffer a tax leakage by virtue of domiciling a fund in a particular jurisdiction, and that is precisely why most investment funds are still domiciled in offshore tax havens today. However, to take advantage of Singapore's comprehensive network of DTAs, a PE fund must be domiciled in Singapore as a company.

The authorities in Singapore are cognisant of this fact; hence, although Singapore tax-resident entities are subject to an income tax regime at the current rate of 17 per cent, there are special tax exemption schemes available to exempt Singapore-domiciled funds from virtually all incidence of income tax, except where the income is sourced from Singapore immoveable properties. Under the tax exemption schemes, it is immaterial whether the Singapore-domiciled funds invest in Singapore or foreign companies.

The latest tax exemption scheme for Singapore-domiciled funds is the 'Enhanced Tier Incentives'. This is available in parallel with an earlier tax exemption scheme called 'Basic Tier/Singapore Resident Fund Incentives'.

Under the Basic Tier Scheme, as long as the conditions set out below are met, the fund will be exempted from most forms of Singapore income tax, including the gains or profits realised from the acquisition and divestment of portfolio investments that might otherwise be taxable as trading income. It should be noted that the Scheme will not exempt the fund from income tax arising from the holding of Singapore immoveable properties or Singapore-sourced interest.

The conditions under the Basic Tier Scheme are:

2 Capital markets services.

a the fund must be a Singapore-incorporated company and Singapore tax-resident;
b the fund must not be 100 per cent beneficially owned by Singapore-resident persons;
c the fund must be managed or advised directly by a Singapore FMC and use a Singapore-based fund administrator if the administration is outsourced by the fund manager;
d the fund must incur at least S$200,000 in local business spending each year. The expenses can include the fund management fees; and
e the fund must not change its investment objective or strategy after being approved for this tax incentive scheme.

Another consideration arising from the Basic Scheme is that 'qualifying investors' of the fund will be effectively exempted from all Singapore tax on distributions made by the fund to them. However, there will be a punitive effect on 'non-qualifying investors', who shall be required to pay a financial amount to the Inland Revenue Authority of Singapore based on their share of the fund's income (as reflected in the fund's audited accounts) multiplied by the corporate income tax rate (currently 17 per cent). The following persons will be regarded as 'qualifying investors':

a any natural person investing in the fund;
b any *bona fide* non-Singapore tax-resident investor that does not have a permanent establishment in Singapore (other than a fund manager), or that has a permanent establishment in Singapore but does not use funds from its Singapore operations to invest in the fund;
c any person so designated by the MAS; and
d any person not covered above who does not (on his or her own, or with his or her affiliates) own more than 30 per cent of the fund's equity if the fund has fewer than 10 investors, or 50 per cent of the fund's equity if the fund has 10 or more investors.

Any person who is not a 'qualifying investor' shall be a 'non-qualifying investor'.

Under the Enhanced Tier Scheme, as long as the conditions set out below are met, the fund will be exempted from most forms of Singapore income tax, including the gains or profits realised from the acquisition and divestment of portfolio investments that might otherwise be taxable as trading income. It is important to note that the Scheme will not exempt the fund from income tax arising from the holding of Singapore immoveable properties or Singapore-sourced interest.

The conditions under the Enhanced Tier Scheme are:

a the fund must be a Singapore-incorporated company, trust or limited partnership, and Singapore tax-resident;
b the fund must have a minimum fund size of S$50 million in committed capital;
c the fund must be managed or advised directly by a Singapore FMC and use a Singapore-based fund administrator if the administration is outsourced by the fund manager;
d the FMC must employ at least three investment professionals;
e the fund must incur at least S$200,000 in local business spending each year. The expenses can include the fund management fees;
f the fund must not change its investment objective or strategy after being approved for this tax incentive scheme; and
g the fund must not concurrently enjoy other tax incentives.

The key difference between the Enhanced Tier Scheme and the Basic Tier Scheme is that all investors in the Enhanced Tier Scheme will be qualifying investors, and the fund manager of the fund will not have to establish which investors qualify and which investors do not. In practice, this has been a real bonus, as most legal and tax practitioners find it cumbersome to explain the pitfalls of being a non-qualifying investor under the Basic Tier Scheme, which has led to many fund sponsors not embracing the benefits of the Basic Tier Scheme enthusiastically.

IV OUTLOOK

The climate for fundraising for PE funds is as challenging for Singapore-based PE fund managers as it is everywhere, with the impending slowdown in the Chinese economy casting a pall on deal-making in Asia. Despite this, some boutique PE fund managers who target investment in Indonesia and Myanmar are finding success in raising funds.

According to a survey jointly undertaken by PricewaterhouseCoopers and the Singapore Venture Capital Association, PE activity in South East Asia has been growing significantly. In recent years, many Asia-focused funds that had previously channelled their resources solely towards China and India to ride the trend of investments in these booming middle-income consumer markets have recalibrated and turned their attention to South East Asia.

The survey report concluded that Singapore in particular is attractive to PE fund managers because of several key qualities: it has an attractive tax regime and established financial infrastructure; it is increasingly a magnet for talent due to its reputation as a liveable global city; and it is a strategic location with easy access to the rest of South East Asia. According to the authors of the survey, these characteristics provide Singapore with an edge to serve as a regional hub for PE fund managers.

Looking ahead at the regulatory horizon, the Securities and Futures (Amendment) bill 2016 (the Bill) passed on 9 January 2017 introduces legislative amendments to the Securities and Futures Act (Chapter 289 of Singapore) (SFA) to implement policy proposals aimed at ensuring that the capital markets regulatory framework in Singapore keeps pace with market developments and is aligned to international standards and best practices.

The Bill will impact PE fundraising and PE funds in the following areas.

The definition of 'collective investment scheme' (CIS) is widened such that there is no need for pooling of investors' contributions and scheme profits for an arrangement to be regarded as a CIS, as long as the scheme is collectively managed. In collectively managed investment schemes, the investors cede day-to-day control over management of their property, and the MAS is of the view that these participants are exposed to the same risks as a traditional CIS. The operators of such schemes will need to be regulated for carrying out the activity of fund management under the SFA, and the offers of such schemes will subject to the prospectus requirements under the SFA.

The definitions of accredited investors (AIs) and institutional investors (IIs) is refined to better reflect categories of non-retail investors identified based on their wealth or income and financial knowledge respectively. The wealth criteria for an individual to qualify as an AI will be tightened such that the net equity of the individual's primary residence can only contribute up to S$1 million of the current S$2 million net personal assets threshold. Alternatively, individuals will be able to qualify as an AI if they have S$1 million of financial assets (net of any related liabilities). Individuals whose wealth is concentrated in their primary residence and have few liquid assets otherwise will no longer qualify as AIs. In addition, it

is contemplated that an 'opt-in' regime will also be introduced (via subsidiary legislation) to give investors who meet the prescribed AI wealth or income thresholds the choice of benefiting from the regulatory safeguards afforded to retail investors. The II definition will be widened to include persons professionally active in the capital markets, such as financial institutions regulated by foreign regulators, foreign central governments and sovereign wealth funds. However, statutory bodies, other than prescribed statutory boards, will no longer be deemed as IIs.

The definition of 'fund management' is widened. Fund management now includes 'managing the property of, or operating, a CIS' and extends to the management of a portfolio of capital markets products (i.e., any securities, units in a collective investment scheme, derivatives contracts, spot foreign exchange contracts for the purposes of leveraged foreign exchange trading, and such other products as the MAS may prescribe as capital markets products).

Appendix 1

ABOUT THE AUTHORS

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Low Kah Keong is the head of the asset management and funds practice, and is a partner in the corporate and mergers and acquisitions practice.

His main areas of practice are mergers and acquisitions, corporate finance, asset management and collective investment schemes.

In the arena of asset management, Kah Keong has acted for sponsors and fund managers of private equity funds, real estate funds, venture capital funds, hedge funds and regulated collective investment schemes. He advises on structuring, regulatory and licensing issues, and assists in structuring funds in a tax-optimised manner using the Singapore Tax Resident Fund Scheme. In his practice, he has also advised sovereign wealth funds and insurance companies in their capacity as limited partners.

Kah Keong is recommended as a leading practitioner in Investment Funds work in *The Legal 500: Asia Pacific*; *Expert Guides*; *Chambers Asia Pacific* since 2010 and *Best Lawyers in the area of Mutual Funds*. He is also recommended as a leading lawyer by *Asialaw Leading Lawyers* in the areas of investment funds (since 2013) and financial services regulatory in 2014.

He graduated from the National University of Singapore. He is admitted to the Singapore Bar and to the Roll of Solicitors of England and Wales.

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Felicia Marie NG is a partner in the asset management and funds practice.

Her main practice area lies in private investment funds. She regularly advises fund managers and sponsors in the establishment and structuring of hedge funds, real estate funds, venture capital funds and private equity funds as well as institutional investors and sovereign wealth funds as investors of alternative investment funds. She also advises clients on tax exemption schemes for Singapore resident funds as well as regulatory compliance and licensing issues relating to Singapore securities and financial advisory law.

Significant transactions that Felicia has been involved in include acting for Canada Pension Plan Investment Board in relation to its US$375 million investment representing a 25 per cent stake in Raffles City China Investment Partners III, with a fund size of US$1.5 billion; the sponsor and fund manager of Lion-OCBC Capital Asia Fund I, LP,

which is the first private equity fund established by OCBC Bank to invest in Singapore, Malaysia, Indonesia and China which raised S$550 million.

Felicia is a recommended lawyer in *The Legal 500: Asia Pacific* for the area of investment funds in Singapore. She graduated from the National University of Singapore and is admitted to the Singapore Bar.

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