

***SVCA*** *Singapore Venture Capital  
& Private Equity Association*

# *Setting up PE & VC Funds in Singapore*

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# Introduction

PE & VC funds are typically closed- end funds. Closed-end funds are pooled investment vehicles that generally invest in the following asset classes:

- |                     |                     |
|---------------------|---------------------|
| ■ private equity    | ■ venture capital   |
| ■ real estate       | ■ credit            |
| ■ natural resources | ■ distressed assets |
| ■ infrastructure    | ■ fund of funds     |
| ■ mezzanine         | ■ secondaries       |
| ■ debt              | ■ agriculture       |

Closed-end funds are funds where investors will (primarily or exclusively) not be allowed to redeem or withdraw from the fund at will. Investors will typically only receive a return on their investment after the end of the fund term (usually five to ten years) or in circumstances where any underlying investments are realised, through distributions by the fund.

Investments made by closed-end funds tend to be illiquid with no readily available market for such assets and the investments are generally made with a view to only profiting in the long term.

Closed-end funds are usually marketed to and invested into by institutional investors or high net worth individuals. At the initial stage, investors are only required to 'commit' a sum for investment. The sum is only drawn down when a capital call is made during the investment term of the fund.

# Regulation and Licensing

## *Licensing and registration of fund managers*

Managers of closed-end funds in Singapore are typically incorporated as private limited companies and will be required to be licensed as a capital markets services licence holder for fund management, registered as a registered fund management company or exempted under one of the licensing exemptions available under the Securities and Futures Act, Chapter 289 of Singapore (“**SFA**”) in order to be able to conduct the business of fund management.

“Fund Management” is defined under the SFA to mean undertaking on behalf of a customer (whether on a discretionary authority granted by the customer or otherwise):

- (a) the management of a portfolio of securities or futures contracts; or
- (b) foreign exchange trading or leveraged foreign exchange trading for the purpose of managing the customer's funds, but does not include real estate investment trust management.

The general categories of Fund Management Companies (“**FMCs**”) in Singapore are:

- (a) licensed fund management companies (“**LFMCs**”); and
- (b) registered fund management companies (“**RFMCs**”).

LFMCs are subdivided into three categories, namely the Retail LFMCs, the A/I LFMCs and the VC FMCs. Retail LFMCs carry on business in respect of all types of investors including, as its name suggests, retail investors. A/I LFMCs carry on business in fund management with “qualified investors” only.

“Qualified investors” include:

- o an accredited investor (as defined under the SFA);
- o an institutional investor (as defined under the SFA), other than a collective investment scheme
- o a collective investment scheme or closed-end fund, the units of which are the subject of an offer or invitation for subscription or purchase made only to accredited investors (as defined under the SFA), or investors in an equivalent class under the laws of the country or territory in which the offer or invitation is made, or institutional investors (as defined under the SFA), or both; and
- o a limited partnership, where the limited partners comprise solely of accredited investors (as defined under the SFA) or investors in an equivalent class under the laws of the country or territory in which the partnership is formed, or institutional investors (as defined under the SFA), or both.

Following a public consultation, the Monetary Authority of Singapore (“**MAS**”) effected a simplified regulatory regime (“**VCFM Regime**”) as of 20 October 2017, which should simplify and shorten the authorisation process for managers of venture capital funds (“**VC FMCs**”).



Under the VCFM Regime:

- (a) VC FMCs will not be required to have directors and representatives with at least 5 years of relevant experience in fund management; and
- (b) VC FMCs will also not be subjected to the capital requirements and business conduct rules that currently apply to other fund managers.

VC FMCs will, however, still be required to have at least two directors, at least one of whom should be full-time and resident in Singapore; and at least two full-time resident professionals and representatives, who may include the same persons who are serving as the directors.

VC FMCs operating under the VFCM Regime are only allowed to manage funds that:

- (a) invest at least 80% of committed capital in securities that are directly issued by unlisted business ventures that have each been incorporated for no more than 10 years at the time of initial investment;
- (b) invest up to 20% of committed capital in other unlisted business ventures that do not meet the requirements in item (a) above (i.e. they have each been incorporated for more than 10 years at the time of the initial investment, and/or the investment is made through acquisitions from other investors in the secondary market);
- (c) must not be continuously available for subscription, and must not be redeemable at the discretion of the investor; and
- (d) are offered to accredited investors and/or institutional investors (each as defined under the SFA).

RFMCs on the other hand are fund management companies that carry on business in fund management with no more than 30 “qualified investors” as defined under the SFA (of which not more than 15 may be funds or limited partnership fund structures).

Often managers of PE and VC funds operate as either A/I LFCMs or RFMCs, as these funds are typically offered to sophisticated and high net worth investors. Where the funds qualify as venture capital funds under the VCFM Regime, managers may opt to be licensed as a VC FMC.

### *Prospectus registration requirement*

Generally, a SFA-compliant prospectus is required to be registered with the MAS for offers of securities (such as interests in a fund) to persons in Singapore unless the offer is one which is specifically exempted from the prospectus registration requirements under the SFA.

The following are the prospectus registration exemptions which are commonly relied upon:

- (a) “50-offerees” private placement exemption (“**Section 302C Exemption**”);
- (b) exemption for offers made only to institutional investors (as defined under the SFA) (“**Section 304 Exemption**”);
- (c) exemption for offers made to accredited investors and certain other relevant persons (as defined under the SFA) pursuant to Section 305 of the SFA (“**Section 305 Exemption**”).

Briefly, the Section 302C Exemption and the Section 304 Exemption are self-invoking exemptions. The Section 302C Exemption can be relied upon provided that offers are not made to more than 50 persons in any 12 month period (subject to certain rules on aggregation).

Because of the restriction in the number of offers and the limited category of investors to which an offer can be made under the Section 302C Exemption and the Section 304 Exemption respectively, some managers choose instead to invoke the Section 305 Exemption which is available for closed-end funds constituted on or after 1 July 2013. Invoking this prospectus registration exemption will require a notification to the MAS via its online CISNet platform. Certain information on the fund will need to be provided during the notification process, including the structure of the fund, the type of fund, size of the fund, amount of funds offered in Singapore, information on the manager, the director of the responsible person, and custodian of the fund. The information memorandum of the fund will also be required to be submitted to the MAS for its records. There are also certain prescribed disclosures set out under the Sixth Schedule to the Securities and Futures (Offers of Investments) (Collective Investment Schemes) Regulations 2005 that will need to be included in the information memorandum of the fund, either directly in the body of the information memorandum, or by way of a Singapore 'wrapper'.

### *Licensing requirement for marketing of a closed-end fund*

The marketing of any collective investment scheme to persons in Singapore is regulated under the Financial Advisers Act, Chapter 110 of Singapore ("**FAA**"). The marketing of a collective investment scheme will have to be effected through:

- (a) a holder of a financial adviser's licence under the FAA; or
- (b) a person who is exempt from such licensing requirements under the FAA.

LFMCs and RFMCs may market the collective investment schemes that they manage.

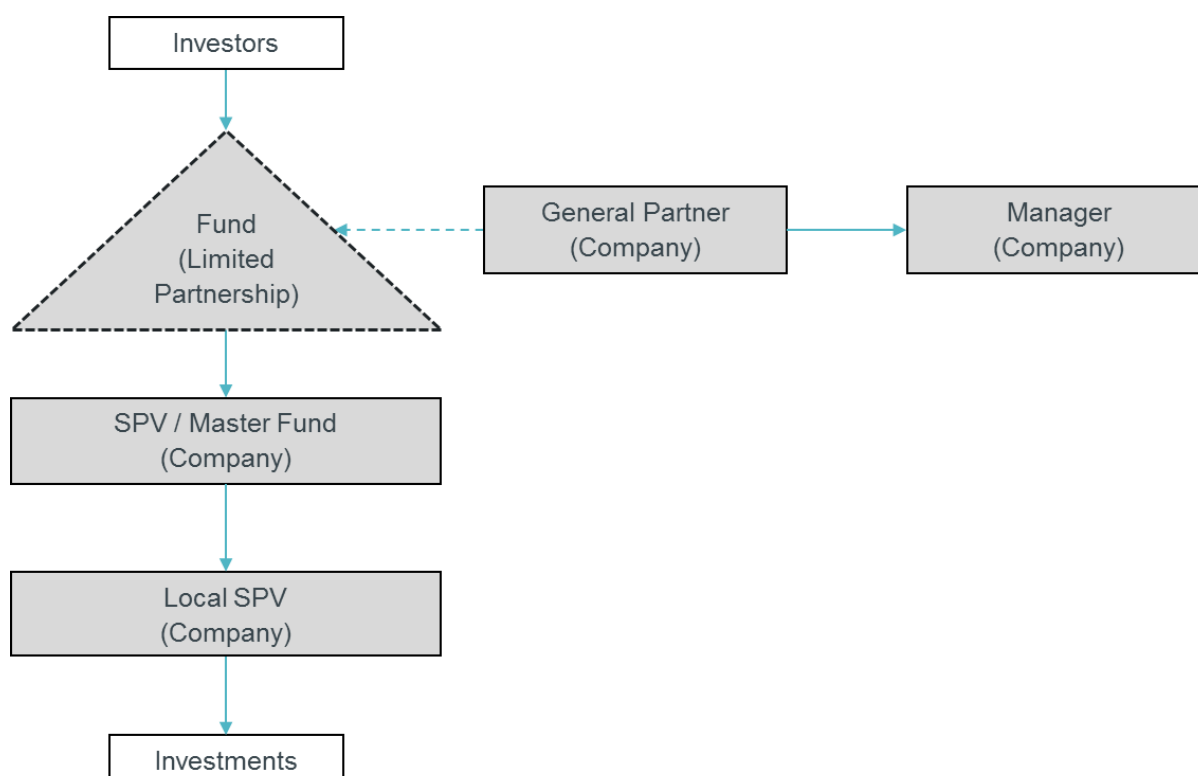
# Fund structures

Closed-end funds domiciled onshore in Singapore are usually structured as companies incorporated under the Companies Act, Chapter 50 of Singapore, or Singapore limited partnerships formed under the Limited Partnerships Act, Chapter 163B of Singapore. In the future, it is expected that closed-end funds may potentially also take the form of the proposed Singapore Variable Capital Company ("**S-VACC**").

Funds managed or advised by a manager in Singapore can comprise offshore legal vehicles too, and many are composed of a combination of offshore and onshore vehicles. These funds may also take the form of master-feeder structures: A feeder fund is an investment pooling vehicle into which investors would invest their moneys. The feeder fund would invest all or substantially all its assets into a master fund, the investment holding company that would make the investments.

Some typical fund structures are:

## 1. Limited partnership



Onshore funds may be structured as Singapore limited partnerships under the Limited Partnerships Act, Chapter 163B of Singapore. In the Cayman Islands, funds may be structured as exempt limited partnerships.

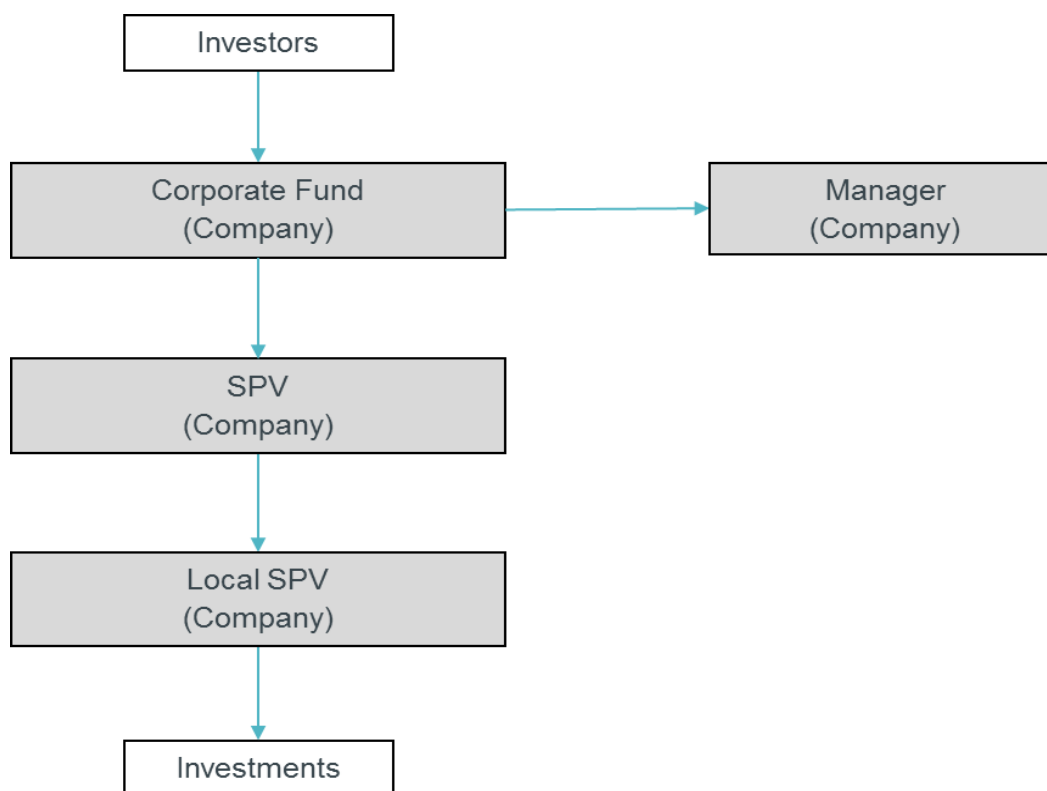
Limited partnerships operate with two or more partners – general partner(s) and limited partner(s). The general partner will typically be involved in the day-to-day operations of the

limited partnership, while limited partners are typically prohibited from engaging in the management of the limited partnership. The general partner is subject to unlimited liability for the debts, obligations and liabilities of the limited partnership, whereas limited partners are normally only liable to the extent of their respective capital commitments.

Limited partnerships are often a preferred choice for closed-end funds.

Investors would make a capital commitment and contribute their pro rata share of capital contributions upon a capital call.

## 2. Company



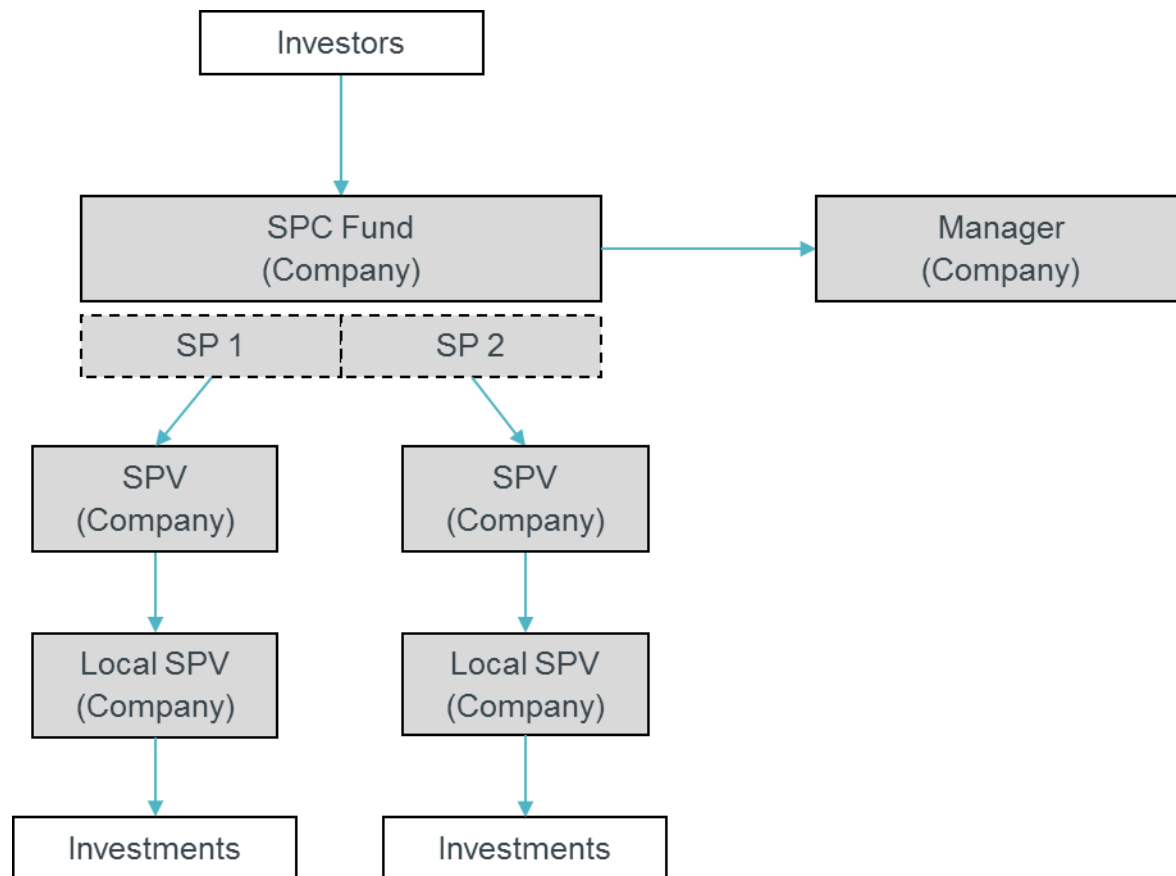
Some onshore funds are structured as private or public limited companies, which are incorporated in Singapore under the Companies Act, Chapter 50 of Singapore. In the Cayman Islands, corporate funds are incorporated as Cayman Islands exempt companies.

The company exists as a separate legal entity from its members, and as such is able to acquire assets under its name. Each shareholder will be liable for the unpaid sum on their shares.

Investors would typically make a capital commitment and contribute their pro rata share of capital contributions upon a capital call. Shares of the fund will be issued to each investor pursuant to their capital contributions. The fund will be managed by the fund manager appointed by the company.



### 3. Segregated Portfolio Companies



Segregated portfolio companies incorporated in the Cayman Islands differ from conventional companies in that the assets and liabilities may be allocated to segregated portfolios in a company. Allocated assets are not regarded as part of the company's general assets. As such, owners of segregated portfolios are granted exclusive rights to the proceeds of their respective allocated assets. Accordingly, assets in a particular portfolio will not be available to meet the debts and obligations of those from a separate portfolio. Similar to companies, the segregated portfolio company would appoint a fund manager to manage its investments.

Currently, such a corporate vehicle is not available in Singapore, although once the S-VACC regime comes into force, Singapore would have its own version of the same.

## Tax Considerations

A fund manager carrying on business in Singapore will generally be taxed on income that it derives from its fund management activities at the corporate income tax rate of 17%. However, a concessionary tax rate of 10% may apply instead if the fund manager applies and is approved by the MAS for the Financial Sector Incentive – Fund Management award. Generally, in order for a fund manager to qualify for the award, it should, among other things, employ at least three investment professionals and be licensed, registered or expressly exempted by the MAS from the licensing requirements to conduct fund management activities in Singapore.

Tax exemptions are also available for funds managed by a fund manager in Singapore. There are three main tax exemption schemes and under each tax exemption scheme, “specified income” derived from “designated investments” is exempt from tax.

The fund tax exemption schemes and their key features are as follows:

- The Singapore Resident Fund Scheme (Section 13R of the Income Tax Act, Chapter 134 of Singapore (“**ITA**”)): This is only available for onshore funds structured as companies.
- The Enhanced-Tier Fund Scheme (Section 13X of the ITA): This is available for both onshore and offshore funds but the minimum size of the fund must be at least S\$50 million.
- The Offshore Fund Scheme (Section 13CA of the ITA): This is only available for offshore funds and certain onshore funds organised as trusts. Unlike the Singapore Resident Fund Scheme and the Enhanced-Tier Fund Scheme, no application to the MAS for approval is required.

For tax purposes, the limited partnership is tax transparent, such that each limited partner will be taxed on their share of income from the limited partnership. For example, where the limited partner is an individual, such individual’s share of income from the limited partnership will be taxed according to his/her personal income tax rate. Where the limited partner is a company, such company’s share of income from the limited partnership will be taxed at the applicable corporate tax rate.

Singapore has entered into Avoidance of Double Taxation Agreements (“**DTAs**”) with more than 90 jurisdictions to relieve double taxation of income that is earned in one jurisdiction by a resident of the other jurisdiction. A DTA allows foreign income earned by a Singapore-domiciled fund company to be exempted from tax or to be subject to a reduced rate in the foreign jurisdiction. As such, many fund managers have opted to domicile their funds in Singapore to utilise Singapore’s extensive DTA network.

Whilst the limited partnership structure provides for certain benefits over a corporate structure, certain fund managers would opt to structure their closed-end funds as Singapore companies to utilise Singapore’s DTA network. The DTA framework is presently available only to Singapore resident companies, and as such has motivated certain fund managers to utilise a corporate structure as opposed to the conventionally preferred limited partnership. Alternatively, some fund managers would establish a corporate master fund with a limited partnership feeder fund.

## Key Service Providers

A number of key service providers will need to be appointed in order to establish a closed-end fund such as PE and VC funds. This may include legal and tax advisers, auditors, placement agents, and/or fund administrators. The appointment of recognised and reputable service providers may aid in enhancing the credibility of a fund, and therefore enhance fundraising efforts. Before a key service provider is appointed, there should be an assessment on the fund's required services, and a review and negotiation of the agreement of the selected service provider.

### **Legal and tax advisers**

Legal and tax advisers are necessary to advise on the structuring of the fund, terms of the fund, preparation of offering documents and agreements and to undertake negotiations on behalf of the fund with investors.

### **Placement agents**

Placement agents sometimes advise on the proposed commercial terms of the funds and its appeal to potential investors. They may also assist in the preparation of marketing materials of the fund, introduce potential investors to the manager, assist with investor due diligence and generally facilitate the relationship between the manager and the investors both during and after fund raising. Placement agents may also conduct due diligence on managers to measure the probability of success of the proposed funds and the attainability of target commitments.

Placement agents generally charge an up-front signing-on fee and a success fee, which is calculated as a percentage of the funds raised, although often this may be paid over time in a number of instalments.

### **Fund administrator**

The fund administrator will be responsible for carrying out the day-to-day operational tasks involved in administering the fund. These comprise the maintenance of records and accounts of the fund and assisting with the preparation of reports for investors. They are also involved in the preparation of certain aspects of the fund documentation and are able to advise on operational issues arising in a particular fund structure and how they can be resolved. The fees for the administrator are usually borne by the fund.

# Documentation

The following are some of the key fund documentation that will be necessary for the establishment of a closed-end fund such as PE and VC funds:

## **Limited Partnership Agreement**

Where the fund is structured as a limited partnership, this agreement is needed to set out the rights and obligations of each partner. Terms include those setting out investment objectives and restrictions of the fund, role and powers of a general partner, the terms for the formation of any advisory board or investment committee, the requirements for admission and rights of limited partners, the procedural requirements for meetings and voting, the terms for distributions as well as fees and expenses.

## **Constitution**

Where the fund is structured as a company, the constitution outlines the objectives of the company and the manner in which the company is governed. The constitution will set out the scope of business that may be undertaken by the company, the rights of shares issued by the company, restrictions on the transfer of shares, the requirements for a general meeting and the proceedings for such meeting and terms dealing with the appointment and removal of directors and meetings of directors.

## **Private Placement Memorandum (“PPM”)**

The PPM will disclose the fund’s investment objectives and restrictions, the structure of the fund, the service providers of the fund including the manager, the subscription and withdrawal terms of the fund, the fees and expenses payable by investors of the fund, risk factors associated with an investment in the fund and other material terms of the fund.

## **Subscription Agreement**

The subscription agreement sets out the terms of agreement pursuant to which an investor agrees to make a capital commitment to the fund.

## **Management Agreement**

The management agreement outlines the terms upon which the investment manager will be appointed by the fund to manage its assets.

## Some Key Terms

- Investment objectives and strategy

The investment objectives reflect the fund's financial goals. It may include long-term capital growth and targeted total returns. Investment strategies determine the allocation of funds and the management of resources to achieve its objectives.

- Capital Commitment

Amounts pledged by an investor (e.g. limited partner) to make capital contributions to the fund over a period of time.

- Capital Calls / Capital Contribution

The fund (or its general partner) reserves the right to demand, through a capital call, all or a portion of the capital commitment from investors. Capital commitments that have been funded are known as capital contributions.

- Investment / Commitment Period

An investment involves the purchase of assets intended for future wealth creation. A PE fund or a VC fund is usually permitted to call on capital from investors to engage in new investments within the investment/commitment period.

- Fund Term

The fund term typically begins on the date of formation and ends as stated in the partnership agreement or constitution. The length of a fund term is dependent on the investment strategies as different funds require varying periods to mature. This could range from 5 to 10 years with possible extensions (typically 1-year extensions).

- Closing Dates

An initial closing is the date where investors first make their commitments to the fund. A fund may have multiple closings.

- Subsequent Closing

Subsequent closings after the initial closing may be held to maximise the aggregate commitment sum.

- Reinvestment

Reinvestment is the usage of distributions earned from an investment to make further investments instead of distributing them to the investors.

- Default

An investor is deemed to have defaulted when he/she fails to make a capital contribution pursuant to a capital call.

- Withdrawals and Transfers

In a closed-end fund, investors are not entitled to freely transfer their interests or withdraw from the fund. This may only be done if it is permitted by the limited partnership agreement or constitution.

- Investment Committee

The investment committee consists of parties or persons, often the general partners and/or certain experts, who will be involved in the investment process.

- Advisory Committee

The advisory committee often comprises select investors or their representatives, who would assist to resolve issues relating to conflicts of interest.

- Management Fee

Amount paid for management and investment advisory services.

- Distributions

Distributions are the fund's return on investment to its investors, typically structured as a distribution waterfall.

- GP / Manager Clawback

A clawback is typically an obligation of the general partner to return, to the limited partners, profits in excess of the amount determined by the carried interest in the case of a limited partnership fund.

- Investor Giveback Obligation

Similar to clawbacks, the investor giveback obligation requires the return of distributions by investors in the event where the fund incurs liability (which should rightly be paid by the fund) after distributions have already been made.

- Suspension / Key Person Provisions

The key person provision typically allows investors to cease investing or dissolve the fund when certain key personnel no longer contribute to the business activity of the fund.



- Exclusivity / Successor Funds

Successor funds are usually established after the success of an initial fund. Investors may engage in an exclusivity arrangement with the fund manager to participate in the successor funds. This would restrict the manager from managing other investments which may prejudice the exclusivity arrangement.

- Co-Investment

Some funds would allow for certain co-investment rights to be afforded to strategic or cornerstone investors. For example, certain portfolio companies may be seeking more funding than the fund is prepared to invest, in which case, the fund may invite co-investors to participate in that particular portfolio company's round of investment.

This document is provided for information purposes only and does not constitute legal advice. Professional legal advice should be obtained before taking or refraining from any action as a result of the contents of this document.

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## Simmons & Simmons JWS

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