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Opening remarks

Speakers' Profiles

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JOEL SEOW is counsel in the Investment Funds practice in Sidley's Singapore office. Joel has extensive experience advising sponsors in Asia on the establishment of private investment funds across various asset classes and jurisdictions, with a particular focus on private equity funds, venture capital funds, real estate funds, infrastructure funds and hedge funds.

Joel has also worked on various non-traditional private investment fund setups such as fund platform structures, hybrid funds, club deals and openended illiquid funds. He has worked with institutional and non-institutional LPs from Asia, Europe and the U.S., including financial institutions, pension funds, corporations, family offices and fund of funds, on their investments into private funds, both as LP counsel and across the table as GP counsel.

Joel is recognized as an "Up and Coming" lawyer in the Investment Funds (Singapore) category in *Chambers Asia Pacific* 2018, with clients described him as "very practical in knowing his client's needs," and that "he makes things brief and simple." In *Chambers Asia Pacific* 2017, clients praised him as a lawyer who "always goes the extra mile to make sure things are done properly," noting that "his follow-up and responses are detailed and timely." He was also recognized by *Legal 500 Asia Pacific* 2017 as a next generation lawyer and by *Who's Who Legal* as a leading lawyer in Private Funds (Formation). Joel was also named among *Private Funds Management's* (pfm) "30 under 40" list in 2017, a list of the top 30 private fund lawyers under the age of 40 around the world.



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YEE SHENG CHIAM is an associate in the investment funds practice group in Sidley's Singapore office and has experience in private equity fund and hedge fund formation and corporate regulatory matters.

Apart from transactional work, Yee Sheng also advises clients on the licensing and ongoing regulatory requirements of operating a fund management business in Singapore, as well as assisting with the submission of fund management license applications to the Monetary Authority of Singapore.

Prior to joining Sidley, Yee Sheng worked at a leading Singapore law firm and has experience in capital market transactions and general corporate and commercial matters.

Yee Sheng is fluent in English and Mandarin.

Background to the S-VACC

- On March 16, 2016, Indranee Rajah, Senior Minister for Law and Finance of Singapore, announced that the Monetary Authority of Singapore ("MAS") was working on introducing a "new regulatory framework for open-ended investment companies". Rollout was targeted within the next 12 months.
- One year later, on March 23, 2017, Lawrence Wong, Minister for National Development and Second Minister for Finance of Singapore, announced that MAS had launched a public consultation on a new corporate structure called the Singapore Variable Capital Company, essentially a Singapore-domiciled investment company, which can operate both as an open-ended and closed-end fund entity.

Rationale for the S-VACC

- To complement Singapore's existing corporate structure under the Companies Act of Singapore (Cap. 50) with one that is tailored for both retail and private investment funds
- Encourage asset managers to further consolidate their operations in Singapore by domiciling more of their funds in Singapore alongside their fund management activities
- Goal is to develop Singapore as a centre for both fund management activities and investment fund domiciliation

Key Features of the S-VACC

1. General

- The S-VACC will be governed by a new S-VACC Act to be administered by the Accounting and Corporate Regulatory Authority of Singapore ("ACRA").
- The S-VACC structure can only be used as a vehicle for collective investment schemes ("CIS") and can be structured as an open-ended or closed-end fund.
- MAS has stated that the S-VACC is intended to cover a wide variety of funds, including retail funds, real estate funds, infrastructure funds, hedge funds, etc.
- Only S-VACCs incorporated under the S-VACC Act can use the term "S-VACC" in their names and hold themselves out as S-VACC.
- An S-VACC must have at least two members.

2. Flexibility to Vary Capital

- An S-VACC will be allowed to redeem shares and pay dividends using its capital, provided that shares are issued and redeemed at their net asset value ("NAV").
- An exception to this requirement for issuance and redemption of shares at NAV will be made for shares of closed-end funds listed on a securities exchange. These shares will be issued and redeemed in accordance with applicable listing requirements.

3. Utility as an Umbrella Fund

- Sub-funds with segregated assets and liabilities can be created within the S-VACC.
- Incorporation will be required only for the S-VACC while sub-funds, each without a legal personality, will be constituted by registration with ACRA.
- ACRA will provide each sub-fund with a unique identification number.
- An S-VACC will be required to disclose, in documents in which its subfund is referred to, and in dealings with third parties prior to entering into oral agreements on behalf of its sub-fund, the following:
 - The name of the sub-fund.
 - The unique sub-fund identification number.
 - That the sub-fund has segregated assets and liabilities.
- The segregation of assets and liabilities of sub-funds will apply during insolvency i.e. in the event of a sub-fund's insolvency, each sub-fund may be wound up as if it were a separate legal person.

4. Governance

- An S-VACC must be managed by a licensed fund management company, a registered fund management company or an entity exempted under the Securities and Futures Act of Singapore ("SFA").
- An S-VACC must have at least one Singapore resident director and one director that is also a director of its appointed fund manager.
- All directors of S-VACCs must be fit and proper.
- To accord additional protection to retail investors, S-VACCs consisting of Authorised Schemes must have at least three directors, of which at least one director has to be independent of: (i) business relationships with the S-VACC; (ii) the fund manager of the S-VACC (and its related entities); and (iii) all substantial shareholders of the S-VACC.
- An S-VACC must have its registered office in Singapore and must appoint a Singapore-based secretary.

5. Meetings

- Annual general meetings ("AGMs") of an S-VACC may be dispensed with at the discretion of its directors, provided that the directors give at least 60 days' written notice to the shareholders.
- Shareholders with 10% or more of the total voting rights may require an AGM by giving 14 days' notice to the S-VACC.

6. Audit and Accounting

- An S-VACC must appoint an accounting entity to audit its accounts annually but it does not require an audit committee.
- Financial information of each sub-fund in an S-VACC must be kept separate, but must be prepared in accordance with a single accounting standard across all sub-funds.
- An S-VACC may prepare its financial statements using the International Financial Reporting Standards ("IFRS") or an applicable Accounting Standards Council Standard i.e. the Singapore Financial Reporting Standards or the forthcoming IFRS-identical Financial Reporting Standards. S-VACCs consisting of Authorised Schemes will be required to use the Recommended Accounting Practice 7, as is currently required for unit trusts under the CIS Code.
- The audited financial statements of an S-VACC must be made available to its shareholders but need not be made publicly available.

7. Anti-money Laundering and Countering Financing of Terrorism ("AML/CFT") Requirements

- An S-VACC must comply with AML/CFT requirements under the supervision of MAS.
- The S-VACC will be required to outsource the performance of AML/CFT duties to its appointed fund manager.

8. Register of Shareholders, Beneficial Owners and Nominee Directors

- An S-VACC will not be required to disclose its register of shareholders to the public. However, it must make the register available to supervisory and law enforcement agencies where necessary.
- In line with recent amendments to the Companies Act of Singapore (Cap. 50), an S-VACC will be required to maintain registers of its beneficial owners and nominee directors respectively. These registers will not be available to the public but must be made available to supervisory and law enforcement agencies where necessary.

9. Custodian Requirements

- An S-VACC consisting of an Authorised or Restricted Scheme must have an approved custodian that is an approved trustee under the SFA.
- The approved custodian's duties will mirror those of an approved trustee.
- For an S-VACC consisting of an Authorised Scheme, additional requirements apply to the approved custodian, namely, the approved custodian must (i) be independent of the S-VACC's fund manager and (ii) monitor the fund manager's compliance with the CIS Code.

10. Tax Treatment

- Existing tax incentives under sections 13R and 13X (the "Tax Exemption Schemes") of the Income Tax Act of Singapore will be extended to the S-VACC.
- The Goods and Services Tax remission for funds approved under the Tax Exemption Schemes will also be extended to the S-VACC.
- Under the Tax Exemption Schemes, S-VACCs can achieve tax neutrality provided that they derive only "specified income" from "designated investments".
- The 10% concessionary tax rate under the Financial Sector Incentive –
 Fund Management (FSI-FM) Scheme will be extended to approved fund
 managers managing S-VACCs approved under the Tax Exemption
 Schemes.
- In a nutshell, S-VACCs will enjoy similar treatment to current investment funds approved under the Tax Exemption Schemes.

10. Tax Treatment (cont'd)

- The S-VACC will be treated as a single entity for tax purposes.
- Only one set of tax returns need to be filed, regardless of whether an S-VACC is set up as a standalone fund or as an umbrella structure with multiple sub-funds.

11. Others

Re-domiciliation:

- Foreign structures that are equivalent to an S-VACC will be permitted to redomicile as an S-VACC in Singapore.
- Examples include the Irish Collective Asset-management Vehicles of the Republic of Ireland and the Open-Ended Investment Companies of the United Kingdom.

Debentures:

An S-VACC will be allowed to issue debentures.

11. Others (cont'd)

- Winding-up regime:
 - The winding-up regime for S-VACCs will be based on the winding-up regime for companies incorporated under the Companies Act of Singapore.
 - To account for the unique nature of the S-VACC as an investment fund, there will be additional grounds for winding up:
 - The S-VACC is used to conduct business outside its permitted use as a vehicle for CIS only.
 - ii. The S-VACC does not have a licensed fund management company, registered fund management company, or an entity exempted under the SFA to manage its property.
 - iii. The S-VACC breached its AML/CFT obligations.

Timeline for the Launch of the S-VACC Regime

- Public consultation in March 2017
- Response to public consultation yet to be issued
- The S-VACC bill will be presented in the Singapore Parliament in Q3 2018 and will likely be implemented in late 2018 or early 2019

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Observations on the S-VACC

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- Two member requirement
 - Some master fund structures have only one feeder fund which may be the sole member of the master fund
 - Problematic for managed accounts or fund-of-one type arrangements.
 - MAS has subsequently stated that the S-VACC seeks to accommodate the master-feeder structure and confirmed that this problem will be addressed
- Shares may only be redeemed at NAV
 - There may be circumstances which require the redemption of shares at a value less than its NAV
 - For example, where the investor fails to advance its commitment and the fund seeks to impose default remedies against such investor or where certain tax or regulatory restrictions may limit the percentage participation of an investor.
 - Also, partly-paid shares cannot be redeemed. This will be problematic for funds that take several years for commitments to be drawn down and would require its shares to be wholly or partially redeemed before they are fully paid.

Observations on the S-VACC (cont'd)

Ring-fencing of Assets

- Are there sufficient safeguards for ring-fencing of assets and liabilities?
- S-VACCs will have a duty to ensure proper ring-fencing, and such duty will be implied in each S-VACC's constitution so as to provide shareholders an avenue to recover damages where there is a breach
- Would directors be personally liable for such breach? What steps must directors take to discharge such duty? Would such duty be overly onerous and deter individuals from becoming directors of S-VACCs?

Meetings of the S-VACC

- It is unclear in the case of an S-VACC comprising of sub-funds, whether this
 10% will be calculated at the sub-fund level.
- The 10% threshold to call an AGM could be too low.
- By comparison in the private equity context, typically at least support from 50%
 / 66.67% of investors is required to call a meeting of investors.

Observations on the S-VACC (cont'd)

Custodian Requirements

- Currently, there is no requirement to appoint a custodian for Restricted Schemes.
- The S-VACC regime imposes an additional burden by requiring a custodian for all S-VACCs consisting of Authorised or Restricted Schemes, which will include funds holding illiquid assets.

Conversion

 S-VACC Act does not provide for the conversion of domestic structures into S-VACCs. MAS is considering allowing this depending on market demand.

Observations on the S-VACC (cont'd)

- Unclear whether the withholding tax exemption on interest-related payments under the Tax Exemption Schemes will be extended to the S-VACC.
- Details of the tax framework will be finalized in October 2018.

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Questions?

SVCA Upcoming Events

26 April 26th Annual AGM & Networking Reception

SVCA Southeast Asia PE/ VC Conference – PE/ VC: Are the lines blurring?

October SVCA 26th Anniversary Annual Gala & Awards Dinner 2018



End

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