



GETTING STARTED IN VENTURE PHILANTHROPY IN ASIA

LEGAL FRAMEWORK PROFILE
for SINGAPORE

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INTRODUCTION TO THE
LEGAL FRAMEWORK AND
COUNTRY PROFILES

LEGAL FRAMEWORK PROFILE
for SINGAPORE

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About Business Families Institute @ Singapore Management University (BFI @ SMU):



SMU established BFI @ SMU to be Southeast Asia's first business family centric institute focused on addressing the needs of business families in the region through its vision to facilitate business families to think generations, think growth and think giving. BFI @ SMU intends to serve as an educational, engagement and research platform to bring together business families, drawing on the university's experience to offer insights on issues such as business succession and family ownership. Its mission is to engage and enable business family members to be active, committed and involved stewards, stakeholders and partners through learning and education.

More information at <http://bfi.smu.edu.sg/>

Where amounts in the reports have been converted from local currency to US dollars the following exchange rate have been used for reference: US\$1= SGD1.25 (source oanda.com average rate for CY 2013, midpoint interbank rate). The amounts will change based on actual exchange rates and changes to the underlying costs, fees and charges from the date of this report.

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INTRODUCTION TO THE LEGAL FRAMEWORK AND COUNTRY PROFILES

The country legal framework profiles are companion booklets to AVPN's "Getting Started in Venture Philanthropy in Asia - a practical guide to establishing and operating a venture philanthropy or social investment organisation". The guide explains the key operational issues and the separate country legal frameworks focus on legal issues to supplement the main guide. The guide and each country profile are available to download from www.avpn.asia/startVPO.

1. Overview of the Legal Framework

There are corporate law, charities law, tax law and possibly financial regulatory fund raising and fund management issues, arising at different levels of the venture philanthropy (VP) eco-system. Some venture philanthropy organisations (VPOs) want to attract foreign as well as domestic funds and so factors affecting the cross-border flow of funds in the VP eco-system are critical considerations to these VPOs. As VP investments cover the spectrum from charities to social enterprises, the analysis of funds flows from top level funders to VPOs as intermediaries, and to social purpose organisations (SPOs), needs to consider both donations and a range of other financial instruments. The flow in the return direction of social impact (monitoring and reporting) and financial return (in the case of social investment) is equally important.

Some Asian countries (e.g. Singapore and Hong Kong) are already major financial centres and want to attract regional or offshore philanthropic and social investment funds. They have well developed cross-border fund management laws and regulations and skilled investment practitioners that apply to these activities.

This introduction describes the framework used for each of the five country profiles that have been prepared with the pro bono support of leading law firms. These profiles are available for download in softcopy - see the end of the introduction.

2. The Three Level Perspective of the VP Eco-system

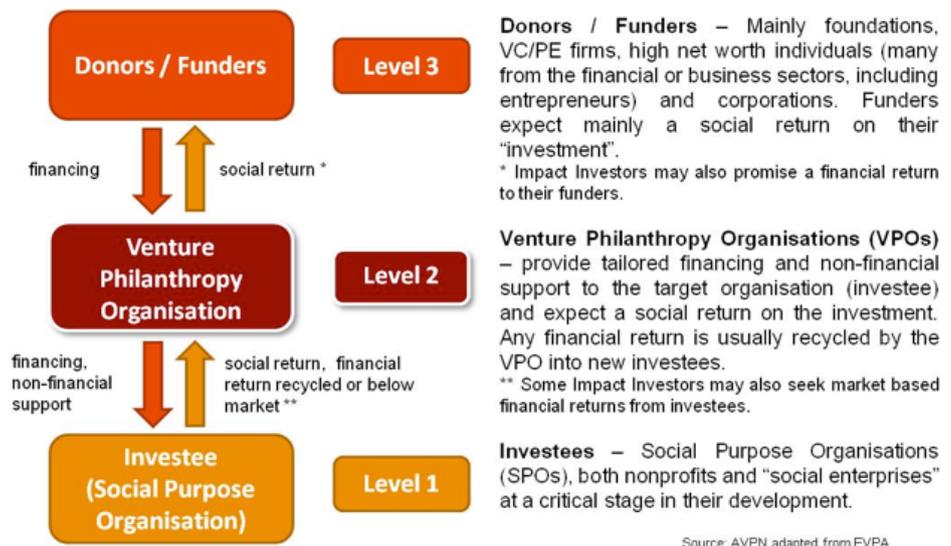
For this legal framework section and the stand alone country profiles our approach is to consider the venture philanthropy eco-system as operating on three same three levels in the main section of the AVPN report "Getting Started in Venture Philanthropy in Asia". The top level (Level 3) comprises the funders seeking social returns, the middle level (Level 2) comprises the VPO intermediaries that raise funds and deploy the funds through various VP strategies and the bottom level (Level 1) comprises SPOs seeking resources (financial, human and intellectual capital) to grow their activities.

These three levels represent a flow from end suppliers (level 3), through specialist intermediary suppliers (level 2) to the demand side (level 1) which serves a range of beneficiaries / customers / service users.

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This is shown in Diagram 1 as follows:

VPO funding model – three levels



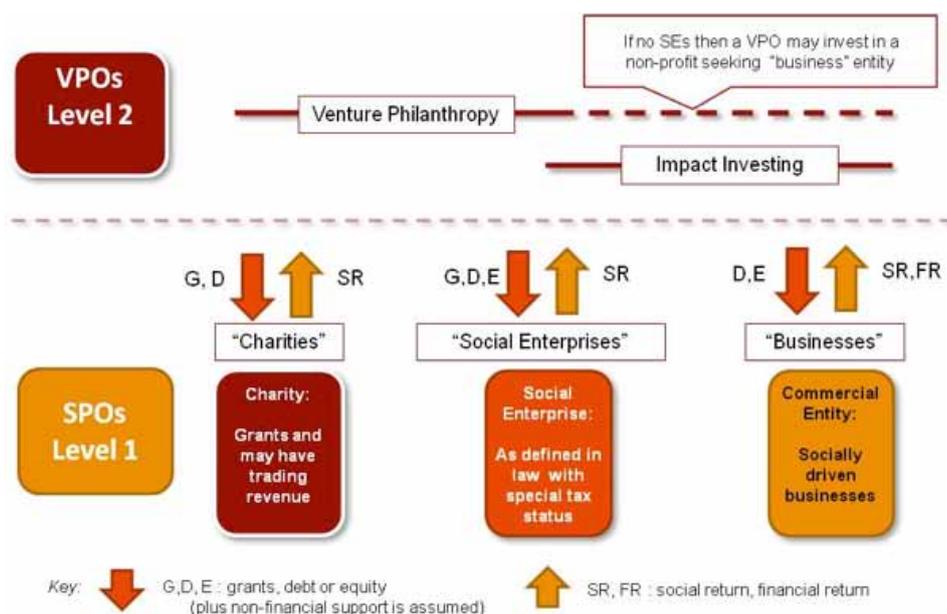
As the primary social impact is generated at the base of the eco-system and flows up, we start the analysis of legal entities at Level 1 which is the investee Social Purpose Organisations (SPOs) that are commonly available in each country. The choices of entity for VPOs at Level 2 of the eco-system are often similar to the entities used by SPOs at Level 1. The sources of funding flowing down from Level 3 may be donations/grants or, depending on the VPO strategy, other financial instruments such as debt and equity. Some VPOs at Level 2 may have a hybrid investment strategy in SPOs (i.e. grants, debt and equity) and so receive hybrid funding. VPOs decide whether they want to re-cycle financial return from their investee SPOs to fund their own costs and make new investments, and/or make distributions to their funders. A related choice is whether the VPO is a limited life organisation, raises new rounds of funding from time-to-time, or is intended as an evergreen vehicle that is self sustaining.

3.Choice of Entities for Social Purpose Organisations at Level 1

There are a wide range of legal entities that may be available for SPOs at Level 1 but these can be broadly grouped as Charities, Social Enterprises and Commercial Entities (or Businesses). In the five countries considered by this framework there are no separately defined legal entities that are “Social Enterprises” -that is entities that they have special tax status and are effectively a hybrid between a business entity and a charity.

A list and description of the main types of SPO in a country is a basic building block of the legal framework profiles in the country profile reports.

For each country profile, the simplified investee SPO choices and available financing instruments are shown in Diagram 2 below:



In some countries social businesses (and social entrepreneurs) may be attracting investment for only social return, or for a mix of social and financial returns. These entities are often commercial entities which have a social mission and may adapt their governing documents to prohibit distributions and/or restrict transfers of ownership so that they become social "impact first" or "impact only" organisations.

4. Choice of Entities for Venture Philanthropy Organisations at Level 2

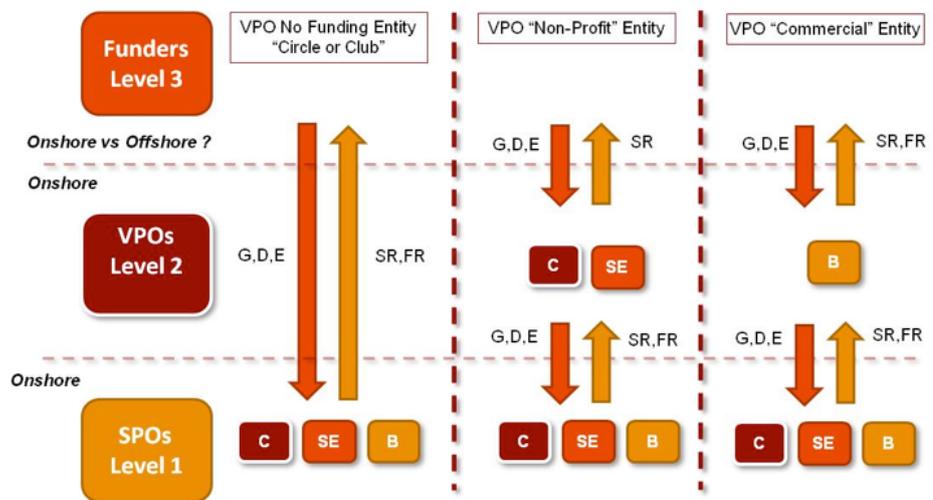
A VPO consists of a management team and a source of funding. These are often contained in a single legal entity but may be separated into a "fund" entity and an advisory (or consulting) entity.

Building on the SPO entity types and financial instruments that can be used to fund them, the legal framework country profiles consider three generic VPO operating models that are adapted and commonly used in Asia. The sponsors of a new VPO will likely choose a variation of one of these three models depending on the resources available to the VPO, its investment strategy and country of operation. The most important decision factor is whether the VPO wants to follow a grant approach, a social investment approach or a hybrid, i.e. whether the VPO will seek investee SPOs that provide both social and financial returns, and whether the VPO offer its funders both social and financial returns.

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The generic flows of funding and target social and/or financial returns are shown for the three models in Diagram 3 below:

Three basic VPO legal models for analysis



The three operating models (above from left to right) are:

- (1) A “virtual fund” where the fund itself is not a legal entity and the VPO operates as a consulting company. This model may be called a “social impact circle” or “social investor club” or simply a “venture philanthropy advisor). Examples include Dasra (India) and Asia Philanthropic Ventures (Singapore).
- (2) A VPO entity which only offers social return to its funders. This model may be called a “venture philanthropy fund” or a “venture philanthropy foundation” and is often a charity and/or foundation.
- (3) A VPO entity which offers both social and financial return to its funders and operates as an “investment fund” in the form of limited partnership or investment holding company, or other commercial entity, that can tax efficiently receive financial returns from SPOs and provide financial returns to its funders.

One of the main differences between more traditional venture philanthropy “investing” using grants and social investment is the promise and ability of the VPO to transmit a financial return from Level 1 to Level 3 through its activities at Level 2.

5.Executive Summary of the Five Countries Profiled

Given the depth and breadth of information provided by the various law firms for the five jurisdictions, it is useful to provide a high-level observation of some of the key highlights of each country’s legal landscape insofar as it relates to establishing a venture philanthropy organisation (VPO) in Asia.

Singapore

While there is no legal entity that is a hybrid between a charity and a traditional commercial entity in Singapore, the majority of charities and non-profit organisations in Singapore are established in the form of a company limited by guarantee (CLG) i.e. the liability of its members is limited by its constitutional documents to such amount as the members undertake to guarantee. While a CLG can accept donations and grants, it is unable to receive funding in the form of equity as it does not have share capital. Conversely, a CLG may accept debt funding insofar as it does not contravene the provisions of its constitutional documents although the receipt of debt funding may have implications under the Securities and Futures Act (SFA).

A CLG may be, in turn, registered and regulated as an approved charity in Singapore in order to enjoy full income tax exemption on income and receipts. In relation to the use of charities as a vehicle for venture philanthropy, the guidelines issued by the Office of the Commissioner for Charities (OCC) is relevant as it discourages charities from engaging in activities which exposes the charity's assets to significant risk. As such, although the investment of charity funds is not strictly prohibited, the OCC advises such charities to set up a separate business subsidiary for business activities where such business activities are not related to the primary purpose of the charity.

In relation to Level 2 VPOs in the form of CLGs or otherwise, the restriction is that they cannot distribute profits to its stakeholders (be they founders or members) if the VPO is a registered charity or entities that have special charitable status. Although a VPO may be able to pay interest on loans taken from its members, this is subject to any restrictions provided in its constitutional documents. Further, as a non-profit VPO is supposed to carry out wholly charitable purposes, it is unlikely to be able to make either an offer of securities or carry on business as a regulated activity, both of which will trigger the relevant financial regulatory restrictions or the Moneylenders Act. For these reasons, it is also unlikely to be able to give loans to Level 1 SPOs and expect returns thereon.

Hong Kong

The legal position in Hong Kong is very similar to that of Singapore in that most charitable organisations are CGLs. As a general observation, most charities in Hong Kong are funded by donations and grants. Debt funding is uncommon (and will depend on any restrictions contained in the constitutional documents) and equity funding is generally inapplicable given that most charities are CGLs, societies or set up as a trust. Similar tax exemptions apply to both Singapore and Hong Kong for Approved Charities that continue to have a charitable purpose. In the context of the proposed VPO models which imply a flow of funds to and/or from a profit-driven commercial entity, this may breach the on-going charitable purpose compliance requirement.

In relation to the "No Funding" Entity Model, this is often the simplest model as there is no intermediate VPO entity and the funding will flow directly from the funder to the SPO. However, funders providing funding to the Level 1 SPO through debt may trigger the requirements of the Money Lenders Ordinance (MLO). Another complication is that the constitutional documents of the Level 1 SPO (assuming that it is an Approved Charity for tax reasons) may and probably should prohibit the distribution of income. Therefore, financial returns to a funder may not be permissible. In relation to the Level 2 VPO "Non-Profit" Model, there are additional twin complications of (a) whether a Level 2 VPO that is an Approved Charity would be permitted to provide funding to a Level 1 SPO, and (b) whether a Level 2 VPO that is an Approved Charity can provide a financial return to the Level 3 Funders. In order to overcome these impediments, the Level 2 VPO "Commercial" Entity Model may be the most viable structure if the flow of financial returns is imperative although such an entity would not have the tax benefits accorded to the an Approved Charity.

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China

In China, entities that are able to carry on charitable activities usually take on one of these three structures: social organisations, foundations and private non-enterprise entities. Briefly, a social organisation is membership-driven, whereas foundations are not-for-profit organisations funded by assets donated for public welfare purposes and, lastly, private non-enterprise entities are social institutions established with private capital for the purpose of providing social services. Not-for-profit organisations in these three forms are prohibited from distributing financial returns to their members and sponsors. Further, for these three types of organisations, the key issues center on the legality of the source of funding as well as the use of funds.

As with Singapore and Hong Kong, these not-for-profit organisations in China are usually funded by donations and grants. Further, as these charitable structures do not have share capital, equity funding is not an option. As for debt funding, even where there is no explicit prohibition in the constitutional documents, they do not typically borrow as a matter of practice to fund their charitable activities. To understand this situation further, if these organisations attempted to be a Level 2 VPO “Non-Profit” Entity, the major impediment would be that in China, only banks and qualified financial institutions are able to extend loans. As such, if the Level 2 VPO wanted to extend a loan to a Level 3 SPO, it could only do so through the entrusted loan model where the Level 2 VPO provides funds to a financial institution that is qualified to conduct lending, and that financial institution would extend the loan to the Level 3 SPO as the lender.

Japan

Charities in Japan are broadly categorized as (a) non-profits, (b) associations (2 types) and (c) foundations (2 types), all of whom enjoy varying tax benefits on their charitable or authorised activities subject to compliance with applicable requirements. However, these entities are not permitted to distribute profits to their members and/or they are not permitted to return funds to their members or contributors. That said, the legal profile suggests that these entities are permitted to accept debt funding except that for non-profits, they cannot facilitate the profit of a particular person (in this case, it would presumably be the lender). Interestingly, only associations and foundations may accept equity funding although for foundations, equity funding can only be done at incorporation and not subsequently.

The analysis for Level 2 VPO “Non-Profit” Entities is relatively simple as it is generally accepted that charitable organisations in Japan are prohibited from distributing profits and the legal profile implies, by extension, that such charitable entities are not permitted to provide funds to Level 1 SPOs. Further, as with the other jurisdictions, the potential triggering of the Money Lending Business Act is such that it would not be practicable for charitable organisations to apply for the licenses in order to extend loans to the relevant Level SPOs. Further, the legal profile suggests that any return of funds (whether debt or otherwise) by the Level 2 VPO “Non-Profit” Entity would be fraught with obstacles which is understandable as the establishment of VPOs is still a relatively new development in Japan.

India

Various forms of social entrepreneurship models are used in India depending on their areas of operation and business requirements. Thus, social enterprises may opt for the revenue model, hybrid model or the venture capital model depending on the relevant financial viability and desired social outcomes. Interestingly, in India, a Level 1 SPO may be set up pursuant to Section 8 of the Companies Act (2013) as a not-for-profit company or pursuant to the Alternative Investment Fund Regulation (AIF Regulation) where an alternative investment fund (or a social venture fund) can be established or incorporated in India in the form of a trust, a company or a limited liability partnership.

However, these structures have inherent restrictions. For example, the aforementioned not-for-profit company is prohibited from distributing dividends to its shareholders. In comparison, the legal profile suggests that the aforementioned social venture fund may enjoy a “pass through” benefit under the relevant sections of the Income Tax Act such that income accruing to the social venture fund would be deductible in the hands of the investor. In comparing the various structures available to establish a VPO in the various countries, it appears that India’s albeit nascent development in this area is probably gaining the most traction at this point in time.

6. The Country Legal Framework Profiles (available for download)

Five country profiles covering the legal frameworks for China, Hong Kong, India, Japan and Singapore are available for download in PDF format. These were prepared on a pro bono basis by leading law firms based on a questionnaire designed by AVPN that addresses the key legal issues when establishing a VPO. The questionnaire uses the ecosystem framework and terminology described above that is consistent with the main section of the AVPN report “Getting Started in Venture Philanthropy in Asia”.

Each country profile is an overview and does not seek to address all the relevant legal, tax and regulatory issues in detail. New sponsors of a VPO should seek specific legal, tax and regulatory advice on the basis of their own circumstances before setting up their operating entity.

The reports are available for download from www.avpn.asia/startVPO .

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LEGAL FRAMEWORK PROFILE for SINGAPORE

AVPN Report - "Getting Started in Venture Philanthropy in Asia"
Legal Framework Section
Singapore Country Profile

This briefing paper for Singapore has been prepared for AVPN by Petrus Huang and Ron Cheng of Drew & Napier LLC. For more information please contact petrus.huang@drewnapier.com or ron.cheng@drewnapier.com. Nothing in this paper should be regarded as legal or tax advice, and recipients of this briefing paper should consult their own independent advisors. Any fees expressed to be payable or any provisions relating to the law is subject to change.

1 Country Scoping Questions

- 1.1 Do "Social Enterprises" exist as a legal entity in your country, as opposed to charities (or their equivalent, e.g. NGOs) and traditional commercial entities (e.g. companies and businesses)?

There is no legal entity that is a hybrid between a charity and a traditional commercial entity (such as companies and businesses) in Singapore. In particular, there is no legal entity which specifically caters to "impact investing" from a tax-efficient perspective. However, there is increasing recognition that there is such a need in Singapore.

- 1.2 Is the relevant legislation and regulation of SPOs at the national government (i.e. federal) level or are there substantial State or other lower-tier laws and regulations (including tax) that apply?

There is no concept of federalism in Singapore. Therefore, the laws of Singapore are applicable throughout the entire country.

2 Level One Questions

- 2.1 List in the following table the relevant entities/structures of SPOs that exist in your country:

 Relevant Charity Entities	 Relevant SE Entities [If applicable]	 Relevant Commercial Entities
1. Public company limited by guarantee ("CLG")	N.A.	1. Private limited company
2. Trust		2. CLG
3. Society		3. Sole proprietorship
		4. Partnership/Limited Partnership
		5. Limited liability partnership
		6. Trust
		7. Society

2.2 For each of the entities in 2.1 (or the most relevant if the list is extensive) please provide:

1. Brief description (definition) of the general legal nature of the entity/structure
2. The main considerations when seeking to establishing such an entity (e.g. time taken, regulatory approvals or filings needed, complexity of documentation, etc)
3. Main ongoing compliance requirements once established
4. Benefits / considerations for choosing such an SPO (including tax)
5. Can the entity accept funding in the form of (i) donations/grants, (ii) debt, and (iii) equity ?

2.2 Relevant charity entities

Charities in Singapore are commonly established in one of the following forms:

- (a) a CLG (i.e. a company without a share capital) incorporated under the *Companies Act* (Cap. 50) ("**Companies Act**");
- (b) a society registered under the *Societies Act* (Cap. 311) ("**Societies Act**"); or
- (c) a trust.

Any institution set up for exclusively charitable purposes must apply for registration as a charity within three months of its establishment. In Singapore, a charity may or may not also be registered as an institution of public character ("**IPC**"). Different registration requirements and tax benefits apply to each of these statuses.

Please note that the descriptions of each of the entities listed below are not exhaustive and they do not deal with all applicable legal and tax implications arising under each entity.

2.2.1 Company limited by guarantee (i.e. CLG)

- (a) **Description.** The majority of charities and non-profit organisations in Singapore are established in the form of a company limited by guarantee rather than limited by shares, as no capital is required. A CLG is formed on the principle of having the liability of its members limited by the Memorandum of Association to such amount as the members undertake to contribute to the assets of the CLG. Therefore, upon liquidation of a CLG, a member's maximum liability to creditors of the CLG is that amount which he has agreed to guarantee, as stated in the CLG's Memorandum of Association.

A CLG has to be registered as a public company under the Companies Act. A CLG's Memorandum of Association sets out its structure and aim whilst its Articles of Association sets out the regulations by which the CLG is governed.

A CLG is typically used for trade associations, charitable bodies, professional and learned societies, religious bodies, incorporated clubs or other charitable, educational or other non-profit making ventures which want the advantages of limited liability.

- (b) **Procedure.** To establish a CLG, an application to register a new company needs to be made to the Accounting and Corporate Regulatory Authority (**ACRA**) of Singapore. It is governed by a set of memorandum of association and articles of association ("**M&AA**"). Upon successful registration, a Certificate of Incorporation is issued by ACRA. A CLG requires at least one director and one secretary who are ordinarily resident in Singapore. There are further requirements in the case of CLGs proposed to be registered with charity status.
- (c) **Ongoing compliance requirements.** In general, a CLG has to hold an annual general meeting in accordance with the Companies Act. Within one month thereof, a CLG has to submit to ACRA an annual return regarding the company's particulars (for example, the amount of indebtedness of the company in respect of charges, and any changes in the particulars of the company). A CLG has to maintain full and proper books of account and prepare audited financial statements to be presented to members at every annual general meeting. These accounting and other records must be maintained for a period of not less than 5 years from the end of the financial year in which the transactions or operations to which those records relate are completed.
- (d) **Benefits/considerations for choosing such an SPO.** The liability of the members of a CLG is limited to the amount that they have guaranteed as stated in the Memorandum of Association. The divisible profits of the company may only be distributed to members in their capacity as members. Furthermore, a CLG is entitled to tax exemption on income and receipts if (i) it is registered as a charity, (ii) it is a charity exempt from registration, or (iii) it obtains the status of an NPO (detailed under paragraph 2.2.7 below).
- (e) **Forms of funding that can be accepted.** A CLG can accept donations and grants. A CLG is unable to receive funding in the form of equity as it does not have a share capital. A CLG may accept debt funding insofar as it does not contravene the provisions of its M&AA. However, the receipt of debt funding may have implications under the *Securities and Futures Act* (Cap 289) ("**Securities and Futures Act**") and its related regulations.

2.2.2 Society registered under the Societies Act

- (a) **Description.** A society, as distinct from private limited companies, usually exists for non-profit purposes. Every society that is organised in, or carries on activities in, Singapore must be registered with the Registrar of Societies. Under the Societies Act, a "society" includes any club, company, partnership or association of ten or more persons, whatever its nature or object, but it excludes:

- (i) any company registered in Singapore or any company or association constituted under any written law;
 - (ii) any limited liability partnership;
 - (iii) any trade union or mutual benefit organisation registered or required to be registered under any written law relating to trade unions for the time being in force in Singapore, or any co-operative society registered as such under any written law;
 - (iv) any company, association or partnership, consisting of not more than 20 persons, formed for the sole purpose of carrying on any lawful profit-making business;
 - (v) any class, society or association of foreign insurers; or
 - (vi) any school or management committee of a school constituted in Singapore.
- (b) **Procedure.** Pursuant to the Societies Act, a society may either be a “specified society” (which is defined in the Schedule to the Societies Act) or not. A “specified society” qualifies for automatic registration with the Registry of Societies, unless there are certain inadequacies in its rules or if its purposes are unlawful, or prejudicial to public peace, welfare or good order in Singapore. The registration of a society that is not a “specified society” is administratively more cumbersome. There are also prescribed fees that need to be paid for the registration of a society.
- In addition to the requirement of at least ten members, a society must have at least three office-bearers (typically a president, secretary and treasurer). For certain types of societies (such as religious societies, groups that promote non-classical music or works, or any group whose object, purpose or activity is to advocate, promote or discuss civil and political rights), further restrictions apply to the committee members.
- (c) **Ongoing compliance requirements.** The president, secretary and treasurer of every registered society must ensure that proper accounts and records of the transactions and affairs of the society are kept to show and explain all the society’s transactions and to disclose, with reasonable accuracy, the financial position of the society at any time. The accounts of the society are required to be audited by the society’s auditor where the gross income or expenditure of the society does not exceed S\$500,000 in that financial year, or a qualified company auditor where the gross income or expenditure of the society exceeds S\$500,000 in that financial year. Annual returns will also have to be filed with the Registry of Societies. Within 60 days of the conclusion of any fund-raising appeal, a society must furnish to the Registrar of Societies a statement of accounts relating to the fund-raising appeal, which is audited by the society’s auditor.

Registered societies have to apply for permission before they can change its name or place of business, amend its rules, or use any flag, symbol, emblem, badge or other insignia.

- (d) **Benefits/considerations for choosing such an SPO.** A society is relatively simple to set up and maintain. However, since a society does not constitute a separate legal entity from its members, all members of the society will be liable for the debts of the society should its assets be insufficient to meet its liability. Furthermore, a society is not entitled to any tax exemption on income and receipts unless they are registered as charities.
- (e) **Forms of funding that can be accepted.** The Societies Act does not prescribe restrictions on the funding methods of a society, except that it must keep proper accounts of any fund-raising appeal. Therefore, a society can accept donations and grants. A society cannot receive equity funding, as it does not have a share capital. A society can accept debt funding insofar as it does not contravene the rules of the society. However, debt funding may trigger the application of the Securities and Futures Act and its associated regulations. Furthermore, there is potential unlimited liability on the members of the society in accepting the debt funding arrangement.

2.2.3 Trust

- (a) **Description.** A trust is an arrangement set out in a document (trust instrument), where a settlor would hand over certain property (trust property) to a group of persons (trustees) to administer the trust property for an intention specified in the trust instrument. In addition to the content of the trust instrument, the legal rights, duties, obligations and discretionary powers of the trustees are also prescribed at common law and by legislation. A charitable trust is a popular legal structure where a person would like to set aside certain assets for charitable causes and wishes the assets to be used in a structured manner. For example, a person can create a charitable trust to disburse funds for scholarships or medical expenses for the needy. It is a useful structure if the charity's primary purpose is to hold, invest and disburse funds.
- (b) **Procedure.** A trust is established by a trust instrument which sets out the manner in which the trust property should be dealt with by the trustees. There must be certainty as to the intent of the settlor, and the trust property must be capable of being ascertained. In the case of a charitable trust, it must promote a charitable purpose and it must not benefit any specific persons.
- (c) **Ongoing compliance requirements.** There is no documentary filing requirements in maintaining a trust. However, trustees are obliged to carry out their fiduciary duties in accordance with the trust instrument, and to keep an accurate account of their management of the trust property. If the trustee is carrying on business providing trust business services, it must comply with the requirements of the *Trust Companies Act* (Cap 336) as a licensed trust company or be exempted from such licensing requirements.

- (d) **Benefits/considerations for choosing such an SPO.** There are several classes of charitable trusts set up as funds which are considered to be tax-efficient in Singapore. These will be discussed in greater detail below. Although a trust is not a separate legal entity and trustees are consequently liable generally for any liabilities incurred by the trust, the *Trustees Act* (Cap 337) provides that a trustee shall be chargeable only for money and securities actually received by him, and be answerable and accountable only for his own acts, receipts, neglects or defaults. Additionally, trustees may be exempt from personal liability if the trust instrument so provides. Singapore courts generally construe such clauses restrictively.
- (e) **Forms of funding that can be accepted.** Funding in the forms of donations, grants and debt can be accepted, insofar as such acceptance does not breach the terms of the trust instrument or the purpose of the trust. Funding in the form of equity is not applicable for a trust as it does not have a share capital. However, the receipt of debt funding may have implications under the *Securities and Futures Act* and its related regulations.

2.2.4 Registered Charity – Special status

- (a) **Description.** Any of the above entities (i.e. a CLG, society or trust) may be registered as a charity in Singapore. Charities in Singapore are regulated under the *Charities Act* (Cap 37) ("**Charities Act**") and its associated regulations. Pursuant to the *Charities Act*, a "charity" refers to any institution, corporate or not, which is established for charitable purposes. Although the *Charities Act* is silent on what constitutes 'charitable purposes', there are four broadly accepted classes thereof, namely:
 - (1) the relief of poverty;
 - (2) the advancement of education;
 - (3) the advancement of religion; or
 - (4) any other purpose beneficial to community, such as (i) the advancement of health, (ii) the advancement of citizenship or community development, (iii) the advancement of arts, heritage or science, (iv) the advancement of environmental protection or improvement, (v) the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantages, (vi) the advancement of animal welfare, and (vii) the advancement of sport, where the sport advances health through physical skill and exertion(collectively, "**Charitable Purposes**").
- (b) **Procedure.** Pursuant to Rule 3 of the *Charities (Registration of Charities) Regulations*, an institution may be registered as a charity if the institution satisfies three conditions:

- (i) the institution was established for carrying out exclusively Charitable Purposes;
- (ii) the institution must have at least three governing board members, of whom at least two must be Singapore citizens or permanent residents; and
- (iii) the purposes of the institution must be wholly or substantially beneficial to the community in Singapore.

The following documents must be submitted as part of the application process:

- (i) signed copy of the governing instrument;
- (ii) certified statements of accounts for the last three financial years (if applicable); and
- (iii) a two-year plan for the charity's activities and fund disbursement.

Sector administrators are appointed to oversee the following categories of charities: arts and heritage, community, education, health, sports, social and welfare, and other charitable objectives. The sector administrator in charge of registration must also be satisfied that the proposed charity is not contrary to public interest. In determining if a proposed charity is contrary to public interest, the sector administrator may take into account one or more of the factors listed in Regulation 4(3) of the *Charities (Registration of Charities) Regulations* in determining whether to approve its registration.

- (c) **Ongoing compliance requirements.** In general, the governing board members of the charity must ensure that accounting records, annual statements of accounts, and annual reports are prepared. This duty is imposed under Part IV of the Charities Act.

There are two accounting standards that charities may opt for: the Charities Accounting Standard or the Financial Reporting Standards. Generally, the Charities Accounting Standard is targeted at smaller charities and the Financial Reporting Standards is targeted at larger charities which are also registered as companies. The Charities Accounting Standard may only be applied to financial periods beginning on or after 1 July 2011.

The annual reports must be prepared in accordance with Regulation 7 of the *Charities (Accounts and Annual Report) Regulations 2011* and, if the charity has a gross annual income exceeding \$500,000, Regulation 8 thereof. All charities must submit the annual report to the OCC or Sector Administrator within six months from the end of the financial year of the charity. Different audit requirements apply depending on the amount of the gross income or total expenditure (whichever is higher) of the charity in a financial year.

Furthermore, to ensure the streamlining and promotion of good governance, charities are encouraged to follow the Code of Governance for Charities and Institutions of a Public Character. The Code sets out recommended practices in areas like board governance, conflict of interest, strategic planning, programme management, human resource management and financial management and controls. Different guidelines apply depending on whether the charity has gross annual receipts of less than \$50,000 (Basic I Tier), between \$50,000 and \$10 million (Basic II Tier) and more than \$10 million (Basic II and Enhanced Tiers).

In the case of a large charity (i.e. with gross annual receipts of S\$10 million or more in each of its two immediate preceding financial years), it must meet the following requirements:

- (i) it must have at least 10 governing board members;
- (ii) its financial statements must be audited by auditors approved by the Commissioner of Charities/Sector Administrator; and
- (iii) its auditor must be changed every five years, with the approval of the Commissioner of Charities or Sector Administrator.

A charity is required to observe the 30/70 rule, which stipulates that the total fund-raising expenses of a charity for every financial year shall not exceed 30% of the total donations collected through the appeals in that year (the “**30/70 rule**”). The costs of goods sold by the charity for fund-raising purposes (and not for trading) are excluded from such calculation of total expenses. Trading, for these purposes, refers to the provision of goods and services in return for a payment, carried out on a regular basis with a view of making profits to fund the charity’s charitable causes.

- (d) **Benefits/considerations for choosing such an SPO.** Registered charities are not allowed to plough profits back up to their founders as distributions of profit.

The main benefit of being registered as a charity in Singapore is the enjoyment of a full income tax exemption on income and receipts pursuant to section 13(1)(zm) of the *Income Tax Act* (Cap 134) (“**Income Tax Act**”). This tax exemption automatically applies to all registered charities, regardless of whether the income of the charity is spent locally or overseas. Prior to 2008, all charities were required to spend at least 80% of their annual receipts on charitable objects in Singapore within two years (the “**80/20 Rule**”) in order to enjoy this tax exemption. The 80/20 Rule has been suspended since Year of Assessment 2008. Since a registered charity automatically enjoys full income tax exemption, there is no need for it to file income tax returns.

Another benefit of being registered as a charity is that the property tax on buildings in Singapore used exclusively for charitable purposes is tax exempt. Where only parts of a building are used for charitable purposes, partial exemption may be granted. Property tax exemption is also available where land

is used, will be developed or is being developed into a building for charitable purposes.

From the perspective of donors, it should be noted that only donations made to a charity with an approved IPC status are tax deductible. Not all registered charities have approved IPC statuses. For further information regarding IPCs, please refer to the next section.

Furthermore, the income tax exemption afforded to charities applies only to the income of the charity itself. The exemption does not extend to dividends or other payments paid out of such exempt income by the charity.

In relation to the use of charities as a vehicle for venture philanthropy, the guidelines issued by the Office of the Commissioner of Charities (“OCC”) in a document titled ‘Guidance for Charities Engaging in Business’ is relevant. The OCC encourages charities not to engage in activities which expose its assets to ‘significant risk’. An assessment of the significance of the risk should include the following factors:

- (i) resources and future plans of the charity;
- (ii) nature of the business, the charity’s expertise in the business and the business environment; and
- (iii) viability and sustainability of the business.

Although the investment of charity funds is not strictly prohibited, the OCC advises such charity to set up a separate business subsidiary for business activities where such business activities are not related to the primary purpose of the charity. The OCC also advises an arms-length relationship between the two entities so as to protect the charity’s assets from the risks of business liability.

The business subsidiary of a charity would not enjoy the income tax exemption under section 13(1)(zm) of the Income Tax Act. In addition, a charity board must work in the best interests of the parent charity, even when making decisions related to its business subsidiary. Business profits generated by the business subsidiary cannot be used to further other non-charitable purposes or for personal gains; they must be ploughed back to the charity in the form of dividends to further its charitable purposes.

A charity with large reserves or endowment funds may invest its funds (as distinct from the type of funding it can receive) in financial instruments such as fixed deposits, equities and bonds to preserve the value of its funds or to generate income to support and further their charitable objects. However, the OCC requires that the charity board must ensure transparency in its investments and not be distracted from its core charitable purposes.

- (e) **Forms of funding that can be accepted.** This depends on the structure of the charity, that is, whether it is a CLG, society or a trust. It also depends on whether its governing instrument prohibits certain types of funding. For more information, please refer to the foregoing sections on each of these structures. It bears repetition that registered charities are not allowed to plough profits back up to their founders as distributions of profit. If a donation cannot be used, the charity must refund the donation or use the donation as approved by the OCC or Sector Administrators.

2.2.5 Institution of a Public Character (“IPC”) – Special status

- (a) **Description.** As stipulated in Regulation 3 of the *Charities (Institutions of Public Character) Regulations*, an IPC must be a charity, exempt charity, or any one of the following institutions:
- (i) a hospital not operated or conducted for profit;
 - (ii) a public or benevolent institution not operated or conducted for profit;
 - (iii) a public authority or society not operated or conducted for profit and which is engaged in research or other work connected with the causes, prevention or cure of disease in human beings, where the gift is for such activities;
 - (iv) a university or a public fund for the establishment, maintenance, enlargement or improvement of a university;
 - (v) an educational institution not operated or conducted for profit, or a public fund for the establishment, maintenance, enlargement or improvement of such an educational institution;
 - (vi) a public or private fund for the provision, establishment or endowment of a scholarship, exhibition or prize in a university, or an educational institution not operated or conducted for profit;
 - (vii) a public fund established and maintained for the relief of distress among members of the public;
 - (viii) a charitable institution or a body of persons or a trust established for charitable purposes only; or
 - (ix) an organisation not operated or conducted primarily for profit which is engaged in or connected with the promotion of culture or the arts or with the promotion of sports.
- (b) **Procedure.** The pre-requisites for applying for IPC status are that the activities engaged in by the institution are exclusively beneficial to the community in

Singapore as a whole and are not confined to sectional interests, and that half of its board of governing members are independent and half are Singapore Citizens.

An application for registering as an IPC can be made online and free of charge at the following website: www.charities.gov.sg. The following documents are required to be submitted as part of the application process:

- (i) governing instrument of the institution;
 - (ii) statement of Accounts for the last 5 years (if applicable);
 - (iii) annual report for the last 5 years (if applicable); and
 - (iv) particulars of board members.
- (c) **Ongoing compliance requirements.** A compliance list for IPCs is found in Part IV of the *Charities (Institutions of Public Character) Regulations*. Generally, IPCs must submit the following documents within 6 months of the close of each financial year:
- (i) audited financial statements (in accordance with the Charities Accounting Standard);
 - (ii) auditor's report on financial statements;
 - (iii) auditor's report on the use of donation moneys and whether such use is in accordance with the objectives of the IPC;
 - (iv) the fund-raising and expenditure plans of the IPC for the following financial year; and
 - (v) the annual report of the IPC.

All IPCs must submit an annual return of donations to the Sector Administrator. In addition, if the IPC is authorized to issue tax-deductible receipts, it must furnish the details of every tax-deductible donation received to the Comptroller of Income Tax.

In addition, large IPCs (i.e. with gross annual receipts of S\$10 million or more in each of its two immediate preceding financial years) are subject to the following requirements:

- (i) financial statements must comply with the Financial Reporting Standards;
- (ii) they must have at least 10 governing board members; and
- (iii) annual reports and audited financial statements must be posted online.

As with charities in general, IPCs are required to observe the 30/70 rule. Please refer to the preceding section on charities for the content of this rule.

- (d) **Benefits/considerations for choosing such an SPO.** The main tax benefit of an IPC, apart from the benefits available to charities in general, is that donors are allowed tax deduction for double the value of the donation. For donations made between 1 January 2009 to 31 December 2015, the tax deduction is enhanced to 2.5 times the value of the donation.
- (e) **Forms of funding that can be accepted.** This depends on the structure of the IPC, that is, whether it is a CLG, society or a trust. It also depends on whether its governing instrument prohibits certain types of funding. For more information, please refer to the foregoing sections on each of these structures.

2.2.6 Foreign Philanthropic Purpose Trust (“FPPT”) – special status

- (a) **Description.** An FPPT, as defined under Section 130 of the Income Tax Act, is essentially a special type of charitable trust where every one of its settlors is (i) an individual who is neither a Singapore Citizen nor resident in Singapore; (ii) a foreign company; (iii) another foreign trust; or (iv) any other person neither resident in Singapore nor constituted or registered under any written laws in Singapore. It must also meet at least one of the objectives required for a charity (i.e. one of the Charitable Purposes).
- (b) **Procedure.** To establish an FPPT, the basic procedures of establishing a trust must first be met. Although the FPPT must engage in one of the Charitable Purposes, it may or may not be registered as a charity in Singapore. There is no need to register itself with the OCC’s office so long as the source of their funds is foreign. This is notwithstanding the fact that such an FPPT may have beneficiaries which are local charities in Singapore. An FPPT can contribute to local causes or conduct local charitable work in Singapore regardless of its status. If it chooses to register itself as a charity, it would need to comply with the requirements of a charity (please refer to the preceding section on charities).

Ongoing compliance requirements. If it is registered as a charity, the FPPT must comply with the requirements applicable to charities (please refer to the preceding section on charities). In the case of an FPPT that is not registered as a charity in Singapore, if it intends to solicit funds from public or private donors in Singapore for foreign charitable causes, it is required to apply for a fund-raising permit. Additionally, unless the funds are solicited only from private donors, then at least 80% (or lower, subject to the OCC’s discretion) of the net proceeds received in response to the fund-raising appeal must be spent within Singapore. The 30/70 rule applies to an FPPT whether or not it is registered as a charity.

- (c) **Benefits/considerations for choosing such an SPO.** Under Section 130 of the Income Tax Act, regardless of whether an FPPT is registered as a charity in Singapore, it automatically qualifies for tax exemption on specified income from

designated investments made by a Singapore trustee company administering the FPPT, using any funds or assets in any foreign account of that FPPT. This exemption also extends to eligible holding companies established to hold the assets of the FPPT. The eligible holding company must be wholly-owned by the trustees of the FPPT, and its operations must consist solely of trading or making investments for the purpose of the FPPT.

- (d) **Forms of funding that can be accepted.** Funding in the forms of donations, grants and debt can be accepted, insofar as such acceptance does not breach the terms of the trust instrument or the purpose of the trust. Funding in the form of equity is not applicable for a trust as it does not have a share capital. If it is not registered as a charity in Singapore, its funding must be obtained from foreign sources (unless it has a fund-raising permit).

2.2.7 Approved Non-Profit Organisation (“NPO”) – Special status

- (a) **Description.** Organisations that are not registered or exempt from registration as a charity in Singapore may nevertheless enjoy similar tax exemptions if they obtain approval from the Economic Development Board to qualify as an NPO for the purposes of Section 13U of the Income Tax Act. In order to qualify as an NPO, the proposed organisation must not be established or operated for the object of deriving a profit. Its income and property may only be applied for the furtherance of its objects. They cannot be distributed to any shareholder, member, trustee or officer of the NPO except as reasonable compensation for services rendered. An NPO status may be granted for up to ten years, renewable at expiry for further periods of up to ten years each time, and may be further subject to other conditions.
- (b) **Procedure.** Applications should be made to the Economic Development Board. It is usual to consult the Economic Development Board for its preliminary view as to whether the organisation is a suitable candidate for the NPO incentive scheme, by providing information on the organisation’s non-profit objectives.
- (c) **Ongoing compliance requirements.** Any conditions or milestones stipulated by the Economic Development Board for the grant of the NPO status must be observed and satisfied. Depending on the objectives of the organisation, these conditions or milestones may include maintaining a minimum fund size, business spending, and conducting events in Singapore. The NPO status is subject to renewal.
- (d) **Benefits/considerations for choosing such an SPO.** This is a suitable vehicle for an organisation to obtain tax exemption on its income even if the organisation does not qualify to be registered as a charity. However, similar to a charity, there are limitations as to what can be distributed to shareholders, members, trustees or officers of the NPO.
- (e) **Forms of funding that can be accepted.** This depends on the structure of the NPO, that is, whether it is a CLG, society or a trust. It also depends on whether

its governing instrument prohibits certain types of funding. For more information, please refer to the foregoing sections on each of these structures.

2.2.8 Grant-Making Organisation – Special status

- (a) **Description.** A grant-making organisation (i.e. grantmaker) is essentially a charity, foundation or endowment fund that is founded with private (family, corporate etc) money and does not raise funds from the public. It is only allowed to channel every tax deductible donation it receives to a designated IPC fund.
- (b) **Procedure.** The institution must make an application to the Inland Revenue Authority of Singapore to qualify as a grantmaker. This is pursuant to Regulation 3 of the *Income Tax (Grant-Making Philanthropic Organisations) Regulations 2009*. Additionally, the institution must be a registered charity, be exempt from such registration or be an approved NPO. As its scope of activities generally differs from that of typical charities, the OCC has indicated that certain regulatory requirements specific to charities will be waived in respect of grantmakers, which are as follows:
- (i) only one governing board member who is a Singapore citizen or permanent resident (which could be a corporate trustee such as a bank or a law firm) is required to be appointed to the grantmaker;
 - (ii) the grantmaker is expected to apply some (as opposed to all or substantially all) of its funds to benefit the Singapore public; and
 - (iii) the grantmaker is allowed to file their annual audited accounts with the OCC's office, instead of reporting through the charity portal based on a prescribed format. Nonetheless, a grantmaker must disclose any information to the OCC if requested.

Additionally, a grantmaker must meet the following criterion. It must:

- (i) be a non-profit and non-governmental organisation;
 - (ii) only derive its source of funds from individuals, families or for-profit companies (but not from the public);
 - (iii) be established to aid exclusively Charitable Purposes through the provision of grants; and
 - (iv) not be an IPC.
- (c) **Ongoing compliance requirements.** A grantmaker must, in addition to maintaining the abovestated conditions, satisfy and comply with the following non-exhaustive list of requirements:
- (i) it must channel every tax deductible donation to a designated IPC fund;

- (ii) it must disburse every tax deductible donation within five years from the date of receipt of such donation to an IPC;
 - (iii) it must keep comprehensive records pertaining to every tax deductible donation, including the name of each donor, the date of donation, the amount of donation received from each donor and the particulars of tax deduction receipt issued in respect of such donation, for a period of 7 years (or longer if the grantmaker is an endowment fund);
 - (iv) it must subject the designated IPC fund to an external audit annually and submit to the Comptroller the audited accounts of the designated IPC fund within one month of the date of the audit report; and
 - (v) it can only accept donations on terms that allow it to comply with these conditions and any other requirements of the relevant regulations.
- (d) **Benefits/considerations for choosing such an SPO.** Notwithstanding the relaxed standards for its registration as a charity, a grantmaker is subject to stringent compliance requirements. As its source of funds and permitted application of funds are highly restricted, it is generally only established in the form of a large foundation or endowment fund for a very specific charitable cause.
- (e) **Forms of funding that can be accepted.** This depends on the structure of the IPC, that is, whether it is a CLG, society or a trust. It also depends on whether its governing instrument prohibits certain types of funding. For more information, please refer to the foregoing sections on each of these structures. It should be recalled that its source of funding must be private.

2.2.9 International Charitable Organisation (“ICO”) – lowered requirements for registration as a charity

- (a) **Description.** An ICO is essentially a charitable organisation with a regional or global charter, involved in delivering some form of charitable aid or charitable services on a regional or global scale. In the Singapore context, it will usually operate from a locally registered office. It may or may not be registered as a charity, depending on whether its purpose is exclusively charitable. If its purpose is not exclusively charitable, the OCC recommends that the exclusively charitable functions of the ICO be separated from its non-charitable functions and the former be registered as a charity in Singapore as a local chapter of the ICO.
- (b) **Procedure.** If an ICO intends to operate in Singapore for exclusively charitable purposes, it should apply to register itself as a charity with the OCC within 3 months. Since an ICO may have difficulty meeting all the requirements required to register a charity given its regional or global characteristic, the OCC has indicated that it will consider being flexible about those requirements. In

particular, the OCC may waive the requirements that (i) two of the three governing board members of the ICO must be Singaporean Citizens or Permanent Residents of Singapore, and (ii) the ICO must contribute wholly or substantially to the community in Singapore.

The OCC has stipulated five requirements for an ICO to qualify for registration as a charity, namely:

- (i) they must have received tax-exempt status in countries outside Singapore;
 - (ii) they must have no political affiliation;
 - (iii) they must fulfil at least one of the Charitable Purposes;
 - (iv) they should have a regional or global charter;
 - (v) they should commit to meeting at least one of three targets which would benefit Singapore economically, namely:
 - (1) employing at least three staff within three years of setting up office in Singapore, with at least one of them being a Singapore Citizen or Permanent Resident, and the office must conduct at least two regional functions in a few areas;
 - (2) commit at least S\$1 million in annual business spending; and
 - (3) conduct activities in Singapore (such as regional or global conferences) that will generate at least 300 visitor-nights annually. Visitor-nights are defined as the number of foreign attendees multiplied by the event duration in days.
- (c) **Ongoing compliance requirements.** In the case of an ICO being registered as a charity in Singapore, the compliance requirements for a charity would similarly apply to an ICO (please refer to the preceding section on charities). Regardless of whether it is registered as a charity in Singapore, if it intends to solicit funds from public or private donors in Singapore for foreign charitable causes, it is required to apply for a fund-raising permit. Additionally, unless the funds are solicited only from private donors, at least 80% (or lower, subject to the OCC's discretion) of the net proceeds received in response to the fund-raising appeal must be spent within Singapore. The 30/70 rule applies to an ICO whether or not it is registered as a charity.

A set of audited Statement of Accounts must be submitted to the OCC's office within 60 days of the last day of the fund-raising appeal or within such extended period as may be allowed by the OCC.

- (d) **Benefits/considerations for choosing such an SPO.** If an ICO is registered as a local charity, the tax benefits of a charity would similarly apply to the ICO

(please refer to the preceding section on charities). The usual registration requirements of a charity are relaxed in the case of ICOs. The usual compliance requirements of a charity may be relaxed in the case of ICOs.

- (e) **Forms of funding that can be accepted.** This depends on the structure of the ICO, that is, whether it is a CLG, society or a trust. It also depends on whether its governing instrument prohibits certain types of funding. For more information, please refer to the foregoing sections on each of these structures.

2.3 Relevant commercial entities

In addition to the entities described above, the following are some commercial entities that are less suited for charities (as they are usually established with a view to profit):

2.3.1 Private Limited Company

- (a) **Description.** A private limited company is limited by shares with a maximum of 50 members and is registered as such under the Companies Act. The Memorandum of Association and the Articles of Association of a private limited company will generally state the objectives of the company, conditions and procedures in dealings with its shares (it must include a restriction on the right to transfer shares), alterations in its capital, procedure for modifying class rights, the rights and liabilities of shareholders and directors respectively, procedures for the calling and conduct of meetings, execution of documents, and other matters that pertain to a private limited company.
- (b) **Procedure.** Please refer to the preceding section on the incorporation procedures for a CLG, as they are similar.
- (c) **Ongoing compliance requirements.** A private company may, by a yearly resolution of all its members, dispense with the holding of annual general meetings. A private limited company has to submit to ACRA an annual return regarding the company's particulars (for example, the amount of indebtedness of the company in respect of charges, and any changes in the particulars of the company). It has to maintain full and proper books of account and prepare audited financial statements. These accounting and other records must be maintained for a period of not less than 5 years from the end of the financial year in which the transactions or operations to which those records relate are completed.
- (d) **Benefits/considerations for choosing such an SPO.** A member is generally not liable for anything more than the amount unpaid on his shares in the event that the company is wound up. This means that the member's personal assets cannot be used in payment of a company's debts. However, a private limited

company may not invite the public to subscribe for the company's shares or debentures, and may not invite the public to deposit money with the company.

- (e) **Forms of funding that can be accepted.** Funding in the forms of donations, grants, equity and debt are acceptable, insofar as such acceptance does not breach the terms of the Memorandum or Articles of Association. Note that the receipt of equity or debt funding may have implications under the Securities and Futures Act and its related regulations.

2.3.2 Sole Proprietorship

- (a) **Description.** A sole proprietorship is a business that is run by a single individual.
- (b) **Procedure.** To establish a sole proprietorship business, the individual (who will be the sole proprietor) must submit an application to ACRA to conduct business under a proposed business name. A name approval fee and a business registration fee must be paid to ACRA.
- (c) **Ongoing compliance requirements.** The certificate of confirmation of registration must be renewed on a yearly basis upon payment of a renewal fee.
- (d) **Benefits/considerations for choosing such an SPO.** The sole proprietor has absolute control over the registered business in terms of its policies, profits and capital investment. However, it should be noted that the sole proprietor has unlimited personal liability for all the liabilities of the business. Taxation is on the income received by the sole proprietor.
- (e) **Forms of funding that can be accepted.** Funding in the forms of donations, grants, and debt are acceptable. Note that the receipt of debt funding may have implications under the Securities and Futures Act and its related regulations. Funding in the form of equity is not applicable for a sole proprietorship as it does not have a share capital.

2.3.3 Partnership

- (a) **Description.** A partnership is an unincorporated association having no legal entity separate from its members. However, it is an association to carry on a business with a view to profit and is thus distinguishable from other voluntary unincorporated associations like clubs which are not associations for gain. A partnership is limited to a minimum of 2 members and a maximum of 20 members.
- (b) **Procedure.** To establish a partnership business, the partners (who may be an individual or a corporation) must submit an application to ACRA to conduct

business under their proposed business name. A name approval fee and a business registration fee must be paid to ACRA.

- (c) **Ongoing compliance requirements.** The certificate of confirmation of registration must be renewed on a yearly basis upon payment of a renewal fee.
- (d) **Benefits/considerations for choosing such an SPO.** Every member of a partnership bears unlimited liability for the partnership's obligations and debts. Furthermore, the members of a partnership are liable for the debts and torts committed by each partner in the ordinary course of business. Its benefits, however, include minimal formalities, low start-up costs and a high degree of privacy and control. Taxation is on the income received by the individual partners (and not the partnership). Partnerships are generally suitable for short or mid-term business projects.
- (e) **Forms of funding that can be accepted.** Funding in the forms of donations, grants, and debt are acceptable. Note that the receipt of debt funding may have implications under the Securities and Futures Act and its related regulations. Funding in the form of equity is not applicable for a partnership as it does not have a share capital.

2.3.4 Limited Partnership ("LP")

- (a) **Description.** An LP may be established by at least one general partner and at least one limited partner. A general partner shall be liable for all debts and obligations of the LP incurred while he is a general partner in the LP, whereas a limited partner shall not be liable for the debts or obligations of the LP beyond the amount of his agreed contribution. However, if a limited partner takes part in the management of the LP, he shall be liable for all debts and obligations of the LP incurred while he so takes part in the management as though he were a general partner. An individual or a corporation may be a general partner or a limited partner. Where every general partner of a LP is ordinarily resident outside Singapore, ACRA may require a local manager to be appointed. An LP is limited to a minimum of 2 members and a maximum of 20 members.
- (b) **Procedure.** To establish an LP, the proposed partners must submit and endorse an application to ACRA. A name approval fee and a business registration fee must be paid to ACRA.
- (c) **Ongoing compliance requirements.** Every LP must keep such accounting and other records as will sufficiently explain the transactions and financial position of the LP. These accounting records must be maintained for a period of not less

than 5 years after the completion of the transactions or operations to which they respectively relate.

- (d) **Benefits/considerations for choosing such an SPO.** An LP is a fairly new vehicle for doing business in Singapore. An LP is essentially a partnership which does not have a legal personality and thus cannot enter into contracts or hold property. It retains the internal flexibility of a partnership and has less onerous reporting requirements compared to companies. If there is no limited partner left in the LP, the registration of the LP will be suspended and the general partner(s) will be deemed to be registered under the Business Registration Act.
- (e) **Forms of funding that can be accepted.** Funding in the forms of donations, grants, and debt are acceptable. Note that the receipt of debt funding may have implications under the Securities and Futures Act and its related regulations. Funding in the form of equity is not applicable for a partnership as it does not have a share capital.

2.3.5 Limited Liability Partnership (“LLP”)

- (a) **Description.** An LLP may be established by any 2 or more persons (whether individual or body corporate) associated for carrying on a lawful business with a view to profit. However, there must be at least one manager who is ordinarily resident in Singapore, a natural person of at least 18 years of age and of capacity. The mutual rights and liabilities of a LLP and its partners shall be governed either by an agreement or the matters set out in the First Schedule to the *Limited Liability Partnerships Act* (Cap 163A).
- (b) **Procedure.** To establish an LLP, the proposed partners must submit and endorse an application to ACRA. A name approval fee and a business registration fee must be paid to ACRA.
- (c) **Ongoing compliance requirements.** Every LLP must lodge with ACRA an annual declaration by one of its managers whether it is or is not able to pay its debts as they become due in the normal course of business. Every LLP must keep such accounting and other records as will sufficiently explain the transactions and financial position of the LLP and enable profit and loss accounts and balance-sheets to be prepared from time to time which give a true and fair view of the state of affairs of the LLP. These accounting and other records must be maintained for a period of not less than 5 years from the end of the financial year in which the transactions or operations to which those records relate are completed.

- (d) **Benefits/considerations for choosing such an SPO.** An LLP has a separate legal personality from its partners, and therefore the partners are shielded from personal liability with respect to the liabilities of the LLP. However, a partner may be found personally liable in tort for his own wrongful act or omission. An LLP shares the organisational flexibility and tax status of a general partnership.
- (e) **Forms of funding that can be accepted.** Funding in the forms of donations, grants, and debt are acceptable. Note that the receipt of debt funding may have implications under the Securities and Futures Act and its related regulations. Funding in the form of equity is not applicable for a trust as it does not have a share capital.

2.3.6 Other tax incentive schemes

In addition to the tax incentives described in the previous section related to charitable entities, there are also various tax incentive schemes targeted at the fund management industry under the Income Tax Act. These fund management tax incentive schemes are set out as follows.

- (a) The Exemption of Income of Trustee of Qualifying Trust Fund Scheme under Section 13C of the Income Tax Act

It should be prefaced that this particular incentive scheme has lapsed with effect from 31 March 2014. However, trust funds with resident trustees and foreign investors may continue to qualify for an exemption under Section 13CA of the Income Tax Act, which exemption is set out under paragraph 2.3.6(b).

Prior to 31 March 2014, the scheme under Section 13C of the Income Tax Act exempts from tax the specified income derived by a “prescribed trust fund” in respect of designated investments arising from funds managed in Singapore by a “fund manager”.

A “prescribed trust” fund must be administered by a trustee who is resident in Singapore, a permanent establishment in Singapore or a Singapore citizen. Also, not more than 20% of the trust fund’s value can be beneficially held by a Singapore citizen, a Singapore resident individual, a Singapore resident entity, a permanent establishment in Singapore or a company not resident in Singapore which itself is more than 20% beneficially owned by Singapore citizens or resident individuals.

A “fund manager” means a company holding a capital markets services licence under the Securities and Futures Act for fund management or that is exempted under that Act from holding such a licence.

- (b) The Tax Exemption Scheme for Foreign Investors under Section 13CA of the Income Tax Act

This tax exemption scheme will be in force until 31 March 2019 unless it is revoked or further extended.

Under this scheme, specified income derived by a prescribed person from funds managed in Singapore by a fund manager or, with effect from 1 April 2014, a resident trustee, in respect of designated investments is exempt from income tax.

A prescribed person for the purposes of this scheme is a non-Singaporean individual, company or trustee of a trust fund. This scheme is unsuitable if a Singapore fund vehicle is preferred.

(c) The Qualifying Resident Fund Scheme under Section 13R of the Income Tax Act

This tax exemption scheme will be in force until 31 March 2019 unless it is revoked or further extended.

Under this scheme, specified income derived by an approved company from funds managed in Singapore by a fund manager in respect of designated investments is exempt from income tax.

The approved company cannot have 100% of the value of its issued securities beneficially owned by Singapore persons collectively at all times. In addition, where a Singapore resident non-individual investor in the company is above the investment limit (i.e. it owns more than a prescribed percentage of the fund vehicle), that investor will be liable to pay a penalty.

The definition of fund manager is the same as that under the Section 13C scheme, discussed earlier.

(d) The Enhanced Tier Resident Fund Scheme under Section 13X of the Income Tax Act

This tax exemption scheme will be in force until 31 March 2019 unless it is revoked or further extended.

The scheme exempts from tax the specified income of an approved person arising from funds managed in Singapore by a fund manager in respect of designated investments.

The Enhanced Tier scheme differs from the Qualifying Resident Fund scheme discussed above in three ways. Firstly, in addition to companies, the Enhanced Tier scheme is also applicable to fund vehicles (i.e. 'approved persons') set up in the form of limited partnerships and trusts. Secondly, there is no requirement for the fund to have participation by foreign investors. Even a fund which is 100% owned by Singapore persons may qualify for the tax exemption under this scheme. Thirdly, there is no investment limit imposed on resident non-individual investors. However, this scheme requires a minimum of S\$50 million of fund assets under management and at least S\$200,000 in expenses a year.

The definition of fund manager is the same as that in the Section 13C scheme, discussed above.

The scheme is difficult and expensive for a charitable client to comply as it requires a Singapore fund manager (approved by the Monetary Authority of Singapore) with at least three investment professionals, each with at least five years' investment-related working experience. Few charitable clients could afford the expense of such experienced investment professionals.

3 Level Two Questions

3.1 For the three VPO operating models please list the most relevant option choices for entities:

No Fund Entity "circle" or "club" [entity is for the team only]	VPO "non-profit" entity  Relevant C Entities		VPO "commercial" entity  Relevant Commercial Entities
N.A.	1. CLG	Where appropriate, these entities could be registered/incorporated as: (a) Charity (special relaxed requirements pertain to ICO and grantmaker); (b) IPC; (c) NPO; (d) FPPT	1. Private limited company
	2. Society		2. Limited liability partnership
	3. Trust		3. Fund (established as a private limited company or limited liability partnership)

3.2 No Fund Entity

3.2.1 **Financial Returns.** An SPO (at Level One) cannot distribute profits to its stakeholders if the SPO is a registered charity, an IPC, an NPO, or a grantmaker. An SPO may be able to pay interest on loans taken from members, provided its governing instrument does not prohibit such borrowings. For more information on the type of funding that an SPO may accept, please refer to the preceding sections pertaining to the different types of charitable or commercial entities.

3.2.2 **Financial Regulatory Restrictions.** Funders (at Level Three) must be careful not to breach the *Moneylenders Act* (Cap 188) ("**Moneylenders Act**"). The Moneylenders Act prohibits the "business of moneylending" in Singapore unless the funder/lender is authorised to do so by a licence, an excluded moneylender or an exempt moneylender. There is a "business of moneylending" if there is a system and continuity of moneylending activity.

An excluded moneylender includes (among other exceptions):

- (a) any person who lends money solely to corporations, LLPs, trustees or trustee-managers of business trusts or trustees of real estate investment trusts, or who carries on any combination of such activities or services; or
- (b) any person carrying on any business not having for its primary object the lending of money in the course of which and for the purposes whereof he lends money.

An exempt moneylender means any moneylender who has been granted an exemption under section 35 or 36 of the Moneylenders Act from holding a licence.

3.3 Non-Profit Entity

3.3.1 Financial Returns. A VPO (at Level Two) cannot distribute profits to its stakeholders if the VPO is a registered charity, an IPC, an NPO, or a grantmaker. A VPO may be able to pay interest on loans taken from members, provided its governing instrument does not prohibit such borrowings. For more information on the type of funding that a non-profit VPO may accept, please refer to the preceding sections pertaining to the different types of charitable entities.

3.3.2 Financial Regulatory Restrictions. As a non-profit VPO is supposed to carry out wholly charitable purposes, it is unlikely to be able to either make an “offer of securities” or carry on business in a “regulated activity” (both of which will trigger financial regulatory restrictions, and which are detailed in the next section). For the same reason, it is also unlikely to be able to give loans to SPOs and expect returns thereon.

3.4 Commercial entity

3.4.1 Financial Returns. A commercial entity (as a Level Two VPO) can distribute financial returns to its stakeholders subject to any applicable rules relating to share buybacks, capital reductions, declarations of dividends and liquidation. For more information on the types of funding that a commercial VPO may accept, please refer to the preceding sections pertaining to the different types of commercial entities.

3.4.2 Financial Regulatory Restrictions. Financial regulatory restrictions apply if a commercial entity:

- (a) makes an offer of securities (which includes any equity shares, debentures, or interests in an LLP); or
- (b) carries on business in any regulated activity (which includes dealing in securities, trading in futures contracts, leveraged foreign exchange trading, advising on corporate finance, fund management, real estate investment trust management, securities financing and providing custodial services for securities.)

In the case of an offer of securities, the commercial entity must either issue a prospectus or be exempted from such a requirement. Exemptions may apply if, *inter alia*:

- (i) the offer is of shares or debentures for nil consideration;
- (ii) the total amount raised by the commercial entity from the offer (and any closely-related offer) within any period of 12 months does not exceed S\$5 million;
- (iii) the offer (and any closely-related offer) is made to no more than 50 persons within any period of 12 months;
- (iv) the offer is made to institutional investors (as defined in the Securities and Futures Act);
- (v) the offer is made to accredited investors (as defined in the Securities and Futures Act); or
- (vi) the offer to any person is on terms that the securities may only be acquired at a consideration of not less than S\$200,000 for each transaction.

In the case of carrying on business in any regulated activity, the commercial entity must either obtain a capital markets services licence from the Monetary Authority of Singapore or be exempted from holding such a licence pursuant to the Securities and Futures Act or, more commonly the case, as set out in the *Securities and Futures (Licensing and Conduct of Business) Regulations*. As these rules are technical and highly detailed, specific legal advice should be sought.

4 Level Three Questions

These questions relate mainly to the cross-border implications of fundraising by the VPO.

4.1 Considering the three VPO business models and entities listed in 3.1 above:

1. Are there any restrictions on fundraising from onshore funders (as grants/donations, equity or debt)? If so describe the key restrictions if not already covered in 2.2.
2. Are there any restrictions on fundraising from offshore funders (e.g. foreign ownership laws, foreign exchange control, different tax treatment, withholdings)
3. Are there any foreign control or sponsor/promoter issues for the entities (e.g. limit on foreign directors or trustees)

4.1 Restrictions on fundraising from onshore funders. There are certain general rules that apply towards any fundraising activities in Singapore, regardless of whether it is an SPO, VPO or commercial entity conducting such activities. This section sets out some of the rules.

4.1.1 Securities And Futures Act and its Regulations

As stated in the preceding sections, SPOs or VPOs that conduct fundraising through the offer of securities in Singapore may trigger implications under the Securities and Futures Act and its associated regulations.

4.1.2 30/70 Rule

The 30/70 rule, as set out in Section 2.2.4(c), applies to any fund-raising activities in Singapore.

4.1.3 Fund-Raising Permit for foreign charitable purposes

If the fundraising is for any charitable, benevolent or philanthropic purpose connected wholly or partly with persons, events or objects outside Singapore (i.e. for foreign charitable purposes), the SPO or VPO must apply for a permit from the OCC not less than 30 days before the date on which the fund-raising appeal is to be held. The applicant must be an organisation (corporate or unincorporated) in Singapore, and not an individual person.

The OCC may refuse to grant the permit if:

- (a) an excessive proportion of the proceeds received is likely to be used for administrative expenses or as remuneration to persons conducting or participating in the fund-raising appeal or both;
- (b) the applicant, or any officer or member of an SPO or VPO, has been convicted of any offence necessarily implying a finding that they acted fraudulently or dishonestly, or if the grant of the permit would facilitate commission of an offence for which they are convicted;
- (c) the grant would be likely to facilitate the commission of an offence under any written law, or that any force, threat or compulsion is likely to be used in order to obtain any money, gain or reward in connection with the fund-raising appeal;
- (d) the fund-raising appeal is in aid of a charitable purpose or institution that is illegal, fictitious or objectionable on grounds of public policy;
- (e) the applicant or any officer or member thereof, is a member of an unlawful society;
- (f) it would be undesirable to grant such a permit;
- (g) the applicant has furnished false information to the OCC in the application for the permit.

Such a permit may be granted with or without conditions. As a general rule, the applicant for such a permit must undertake to apply 80% of the funds raised from the general public in Singapore through the fund-raising appeal on charitable objects in Singapore. The OCC may, in its discretion, lower this threshold. This general fund-raising rule is waived for private donations raised for foreign charitable causes or for appeals in aid of providing immediate disaster relief.

4.1.4 House to House and Street Collections Permit

A House to House and Street Collections permit (“**HHSC Permit**”) is required if the SPO/VPO promotes a collection by way of appealing to the public, made by means of visits from house to house or of soliciting in streets or other places or by both such means, for money or other property. The following types of collections do not require a HHSC Permit:

- (a) a private collection that is confined to friends or relatives;
- (b) an appeal confined through the telephone or other medium such as the internet and newspapers; or
- (c) sending out appeal letters by post.

An application for a HHSC Permit must be made to the Commissioner of Police.

4.1.5 Other licences

Other licences may need to be applied for, depending on the type of event that is being held at the fund-raising event. For example, a public entertainment or arts entertainment licence is required for any entertainment that is provided in any place to which the public or any class of public has access, whether gratuitously or otherwise.

- 4.2 Restrictions on fundraising from offshore funders.** The SPO, VPO or commercial entity that conducts fundraising activities overseas may be subject to the rules in the offshore jurisdiction in which it conducts such fund-raising activities. In addition, local charities, IPCs, FPPTs and NPOs must deal with such proceeds in accordance with the requirements as set out in Sections 2.2.4, 2.2.5, 2.2.6 and 2.2.7 respectively.



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