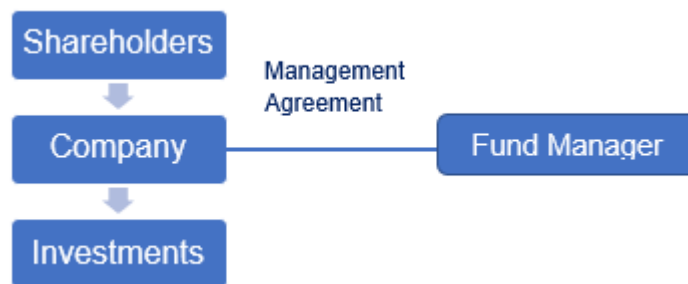




Fund Structures: Private Companies

Investment funds in Singapore can be established as limited partnerships, private limited companies, or variable capital companies. This article gives an overview of using a private company to establish a fund in Singapore.

A normal private limited company incorporated in Singapore, being a separate legal entity, results in liability for its debts and obligations resting on the company, with members liable only to the extent of any amount unpaid on their shares. Members are entitled to a share of any dividends, when declared. Dividends can only be paid out of profits. A private limited company is generally subject to strict accounting and auditing requirements.



Private limited companies are subject to restrictions on the modes and methods of returning capital to an investor. Buybacks of ordinary shares are limited to 20% of the issued ordinary capital of the company. These can be repurchased out of distributable profits or, if the company will still be solvent afterwards and looking forward 12 months, out of capital. Companies can otherwise only return capital to their shareholders if they follow one of the procedures in the Companies Act 1967 (Companies Act) to carry out a capital reduction, either with approval from the court or alternatively under a process that requires the directors to make a statutory solvency statement which looks forward 12 months and to file the statement and publicise the capital reduction by making a filing with the Accounting and Corporate Regulatory Authority of Singapore (ACRA). Private equity funds typically issue redeemable preference shares (RPS) to investors. Provided that the RPS are fully paid they can be redeemed out of the capital of a company if all the directors have made a solvency statement in relation to the redemption and the company has lodged a copy of the statement with ACRA.

A separate private limited company is typically incorporated as a fund manager. This company enters into an investment management agreement with the fund and is paid management fees and/or receives carried interest.

Composition of a Private Company Limited by Shares

The company is governed by the Companies Act. The company is owned by shareholders holding shares in the paid-up capital of the company. A company should have a minimum of 1 shareholder and a maximum of 50 shareholders. It should have a board of directors responsible for the day-to-day management of the business. The board of directors should comprise of at least one director, who may or may not also be a shareholder.



The company is a separate legal entity and is able to hold property in its own name. As it is a separate legal entity, it has rights and obligations which are separate from those of its shareholders and directors.

Returns and Interests

The shares in a private company limited by shares gives the shareholder a right to vote at shareholder meetings, receive dividends from the company's profits, and receive distribution of proceeds of the Company's assets upon winding up.

Liabilities

The shareholders of the company would not be impacted as the company, being a separate legal entity, would be liable for its debts, obligations and liabilities. If the company is unable to pay its debts, its members are only liable for the amount unpaid on shares. Usually, the liabilities of the company are to be met out of the company's assets.

Minimum Capital Requirements

In order to incorporate a private company limited by shares, the company has to have one share. There is no requirement to inject any specified minimum amount of capital in a company that is an investment fund.

Continuity in Law

The company would enjoy perpetual succession until it is wound up in accordance with the Companies Act. The rules on capital maintenance would apply to private companies limited by shares.

Taxation

The company would be taxed based on the prevailing corporate tax rate on profits. However, tax incentives available to current investment structures domiciled in Singapore are extended to private limited companies (13O and 13U tax incentives under the Income Tax Act 1947). Shareholders, on the other hand, do not pay tax on dividends due to the single-tier tax regime.

Note: The information in this publication is intended to provide a brief overview of the fund structuring options in Singapore. It is not intended to provide legal advice on the subject matter.