THE LAW SOCIETY OF SINGAPORE

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Our Ref: LS/10/REP/Committees/CPC/2021/jl

29 October 2021

Accounting and Corporate Regulatory Authority
#03-02, Revenue House
55 Newton Road
Singapore 307987

BY EMAIL ONLY
ACRA_Public_Consultation@acra.gov.sg

Dear Sirs,

CORPORATE PRACTICE COMMITTEE'S FEEDBACK TO ACCOUNTING AND CORPORATE REGULATORY AUTHORITY'S PUBLIC CONSULTATION ON PROPOSED AMENDMENTS TO THE LIMITED PARTNERSHIPS ACT

1. We refer to the Accounting and Corporate Regulatory Authority's ("ACRA") public consultation on Proposed Amendments to the Limited Partnerships Act ("the Consultation").

2. The Law Society of Singapore's Corporate Practice Committee 2021 has considered the Consultation paper and prepared the enclosed feedback for consideration. The said feedback is supported by the Council of the Law Society of Singapore.

3. If you have any questions or require further assistance on the matter, please contact the Representation Department by email at represent@lawsoc.org.sg.

4. Thank you.

Yours sincerely,

Gregory Vijayendran, SC
President, The Law Society of Singapore

The Law Society of Singapore's Corporate Practice Committee's ("CPC") feedback to the Accounting and Corporate Regulatory Authority's ("ACRA")
Public Consultation Exercise on Proposed Amendments to the Limited Partnerships Act released on 4 October 2021 ("Consultation Exercise")

	Issue	Comments of CPC	Recommendations of CPC
1.	The ACRA Consultation Paper ("CP") at Annex A Item 1 proposes to introduce a definition a "fund limited partnership" in the LP Act and for certain provisions of the LP Act to apply only to **fund limited partnerships** ("fund LPs"). ACRA proposes that the new definition of "fund limited partnership" follows that of the existing definition of "relevant limited partnership "as defined in R12 Limited Partnership Regulations ("LPR") viz. "relevant limited partnership" means a limited partnership established primarily for the purpose of establishing a fund for investment where the fund is managed by- (a) a general partner of the limited partnership who is a licensed fund manager; or	The requirement for a "licensed fund manager" should be broadened to include the prevalent fund management company i.e. a "registered fund management company ("RFMC")" under SFLCBR Schedule 2 paragraph 5(1)(i)). There seems no good reason to exclude such RFMC as such RFMC is vetted (though technically not "licensed") by the MAS and is allowed to manage investment funds in Singapore including the Singapore Variable Capital Companies (VCCs), the Private Unit Trusts and the ordinary Singapore Resident Fund Company. As the regulatory concerns as to fund managers permitted to manage VCCs is not dissimilar from the concerns about the managers of such Singapore Registered Limited Partnership, perhaps ACRA could consider using the definition of "permissible fund manager" found in section 46(2) of the Variable Capital Companies Act.	Consider using the definition of "permissible fund managers" found in s46(2) of the VCC Act instead of the excessively narrow "licensed fund manager".

	(b) a licensed fund manager appointed to manage the fund by a general partner with authority to appoint him to manage the fund. …"	[Extract of s46(2) VCC Act is set out below:-- "… 46(2) A manager of a VCC must be (a) a holder of a capital markets services licence for fund management under the Securities and Futures Act; (b) a Registered Fund Management Company; (c) a person mentioned in s99(1)(a), [s99(1)](b), [s99(1)](c) or [s99(1)](d) of the Securities and Futures Act; or (d) such person, or a person within such class of persons, as may be prescribed. …"]	
2.	ACRA received feedback that the current the current safe harbour provision in the LPA First Schedule ("Acts not regarded as Taking Part in Management of Limited Partnership") paragraph 2 " … Acting as an agent or employee of the limited partnership within the scope of the authority conferred by the partners" is ambiguous over the meaning of "the scope of authority conferred by the partners." In CP Annex B Item 1 the ACRA proposes to clarify this by inserting a proviso that this …"must not include carrying out management functions as an agent or employee".	Unfortunately the proviso adds uncertainty as to whether such acting as agent or employee falls within the safe-harbour as the words "management" is wide and could potentially cover any acts as agent or employee. As the industry would like greater clarity that such acting as agent or employee of the limited partnership should fall within a safe harbour and should not result in the limited partner incurring the unlimited liability of a general partner, this proposed proviso is problematic. It is suggested that where the limited partner is acting as agent or employee *within the scope of the agency or employment expressly or impliedly agreed with the limited partnership*, such acting	It is proposed that such safe harbour in paragraph 2 of the First Schedule be amended to read: " … Acting as an agent or employee of the limited partnership *within the scope of the agency or employment expressly or impliedly agreed with the limited partnership* …"

	The restated paragraph 2 would apparently be as follows:- "2. Acting as an agent or employee of the Limited Partnership within the scope of the authority conferred by the partners PROVIDED THAT this must not include carrying out management functions as an agent or employee".	as agent or employee should fall within the safe harbour in paragraph 2 of the First Schedule.	
3.	Amendments to the Limited Partnerships Act.	The proposed amendments will give more flexibility to general partners and align Singapore's position with international fund jurisdictions like Cayman Islands and Delaware. From the policy perspective, investors who act as limited partners are generally protected through MAS' regulations if the Singapore limited partnerships are collective investment schemes regulated by MAS through the Code on Collective Investment Schemes which makes the Limited Partnerships Act immaterial. If the Singapore limited partnerships are exempt from MAS regulations because the limited partners are accredited investors, then aligning Singapore's position more closely with international fund jurisdictions should be also welcome by them.	Not applicable.

4.	Whether there is a need or demand to introduce a re-domiciliation framework for fund limited partnerships.	In favour of the proposals including the ability to "re-domicile" a fund partnership to Singapore, although the correct terminology might not be "re-domiciliation" but a "transfer of registration" since limited partnerships are not incorporated and have no separate legal personality from the partners to be considered as a domiciled entity.	It is proposed that the terminology of "re-domiciliation" to be amended to a "transfer of registration"
5.	Execution of Limited Partnership Agreement using wet-ink signatures and under seal.	The proposals seems to be to enhance the use of Singapore limited partnerships as fund vehicles, which seems the right way to go as that is the context in which limited partnerships have most utility. In that context, it could argued that the amendment of the Singapore Limited Partnerships Act is an opportunity to consider consolidating the common law as they apply to partnerships to require individuals and corporations (acting as partners) to execute deeds under seal. In practice, Singapore lawyers have advised overseas clients that the common law would require individuals and corporations when they execute legal constituent documents of a Singapore Limited Partnership (typically known as a Limited Partnership Agreement or LPA) to execute the document using wet-ink signatures and under seal. This due to the fact that a LPA customarily includes a power of attorney provision for the general partner to act on behalf	It is suggested that an equivalent of section 41B of the Companies Act could be introduced in the Limited Partnerships Act so that partners of a Singapore law governed LPA would be statutorily deemed to have executed the LPA as a deed as long as the signatories who signed the LPA are directors and/or company secretaries of the executing parties, without the overt requirement of a seal in tangible form being impressed on the physical document.

		of limited partners and the English common law position suggests that the donor of a power of attorney must execute the instrument as a deed in order to grant powers for the donee to execute deeds on behalf of the donor. To prevent the power of attorney provision to be rendered completely ineffective or limited in utility for the lack of proper formality of execution, it is prudent for a Singapore law governed LPA to be executed using wet-ink and as a deed despite the considerable logistical challenges of doing so when most people are working from home and away from their office, and cross-border travel is largely constrained. It is suggested that an equivalent of section 41B of the Companies Act could be introduced in the Limited Partnerships Act so that partners of a Singapore law governed LPA would be statutorily deemed to have executed the LPA as a deed as long as the signatories who signed the LPA are directors and/or company secretaries of the executing parties, without the overt requirement of a seal in tangible form being impressed on the physical document. It is also noteworthy that the Ministry of Social and Family Development has recently introduced statutory provisions to allow natural persons in Singapore to execute lasting powers of attorney in an electronic online format without the previous formality of executing them in writing as deeds	

		with a seal. The pertinent point was that the Government saw the need to have Parliament amend the Mental Capacity Act to allow electronic execution using secure electronic signatures and such a change could not be effected by policy or administrative measures alone. This reinforces the conviction among corporate lawyers that a statutory amendment is necessary to the Limited Partnerships Act in the same manner as the Companies Act was amended a few years ago to allow deeds to be signed by Singapore companies without the affixation of a common seal.	