Hong Kong Venture Capital and Private Equity Association
香港創業及私募投資協會

HK私投募資VCA

18 May 2014

Consultation on Open-ended Fund Companies
Financial Services Branch
Financial Services and the Treasury Bureau
24/F Central Government Offices
2 Tim Mei Avenue, Tamar,
Hong Kong

By email to: ofc@fstb.gov.hk

Dear Sir / Madam

Consultation on OFCs

The Hong Kong Venture Capital and Private Equity Association ("HKVCA") welcomes the opportunity to submit comments on the Open-Ended Fund Companies Consultation Paper.

Introduction

Hong Kong is the largest centre for Private Equity in Asia even though Hong Kong's tax structure has forced most investment vehicles ("funds") to be based offshore. HKVCA strongly supports the updating of tax, legal and regulatory structures in Hong Kong that will allow funds to come onshore.

Comments on OFC Consultation paper

The proposed Open Ended Fund Company ("OFC") structures are a welcome initiative that will encourage Fund Companies to be established in Hong Kong. In general, the Private Equity industry has a strong preference for using Limited Partnerships as its 'fund' vehicle, but there are occasions when OFCs will be used. We are therefore supportive of the proposed OFCs.

We also have some comments on specific issues:

1. HKVCA would like to see a similar updating to the Limited Partnership law in Hong Kong that would allow Private Equity firms to have an equivalent in best-in-class Limited Partnership framework.

2. For onshore funds to work effectively it would be beneficial for the exemption to apply to OFCs (or Limited Partnerships) that have their 'central management and control' in Hong Kong. It is

Room 2001, Wilson House, 19-27 Wyndham Street, Hong Kong
香港中環雲咸街 19-27 號威信大廈 2001 室
www.hkvca.com.hk

Tel: 852 2167 7518
Fax: 852 2167 5730

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important that such OFCs are considered to be tax residents of Hong Kong in order to enjoy the benefits of Hong Kong's Double Tax Agreements.

3. The investment scope for qualifying investments should be drawn as wide as is possible and should include investments in unlisted securities; both equity and debt. Ideally there should be no difference in possible investment scope for an onshore fund in comparison to an offshore fund being operated by a manager here.

4. It should be clear that transfers of ownership of shares or interests in the OFC (or Limited Partnership) should be free from stamp duties or transaction taxes.

5. For Private Equity firms, where there is often no custodian, it should not be mandatory to have a custodian.

6. For various historical reasons, few Private Equity firms have Type 9 licenses. It would help encourage adoption of OFC structures by Private Equity firms if there could be some discussion about alternative licensing/registration arrangements for Private Equity firms

7. If an OFC makes a non-qualifying investment, it should be clear that the non-qualifying investment should lose the exemption from Hong Kong taxation, but that the qualifying investments of the OFC should continue to benefit from the exemption.

8. OFCs should be flexible enough to be used by private equity strategies so OFCs should not have prescribed liquidity requirements for investor redemptions. Private equity funds may hold a mix of liquid and illiquid assets.

About HKVCA

HKVCA is a member-based trade association which was established in Hong Kong in 1987 currently with 293 members of whom 155 are Hong Kong based private equity managers across the full spectrum of the industry from venture capital, through growth capital and growth buyouts to institutional fund investors, fund of funds and secondary investors. HKVCA represents small teams investing in start-ups as well as 8 of the 10 largest global private equity firms.

Yours sincerely

John Levack
Vice Chairman of HKVCA