Hong Kong's new limited partnership regime for funds

Towards a broader asset & wealth management ecosystem

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Introduction

On 20 March 2020, the Hong Kong SAR Government gazetted the Limited Partnership Fund Bill (the Bill), introducing a new registration regime for limited partnership funds (or LPFs) to be set up and operate in Hong Kong. This Bill has been a long time coming and was alluded to in the 2020/21 Budget delivered by the Financial Secretary in February. With the unified tax exemption and open-ended fund company regime already in place, and the anticipation of the carried interest tax concession coming in 2020/21, the introduction of an LPF regime is another big step towards building a more extensive asset and wealth management ecosystem in Hong Kong.

Why now?

Over the past decade, the Government has introduced measures to enhance Hong Kong's competitiveness as an international asset and wealth management centre and fund domicile hub. The measures recognise the sector's fast pace of change, and that the governing law did not cater to the diversity of the fund industry in particular the rapid rise of alternative investments. Alternative asset classes including private equity, venture capital, real estate and infrastructure funds are predicted to be the fastest growing asset classes in Asia.[1] Traditionally these funds have been using partnership structures in offshore jurisdictions such as the Cayman Islands, but the recent regulatory changes including requirements for heightened economic substance and fund registration have prompted managers to consider using local fund structures. This Bill is therefore very timely and we expect that this regime would be a catalyst to boost the onshoring of alternative fund platforms in Hong Kong.

Key features of the LPF regime

Constitution & registration: An LPF structured as a limited partnership is not in itself a legal person. Rather, it is a registration scheme used for the purpose of managing investments for the benefit of its investors. An LPF has to, (among others):

- Have at least two partners (i.e. one general partner (GP) and (at least) one limited partner (LP))
- be constituted by a limited partnership agreement
- have a registered office in Hong Kong
- have an investment manager appointed by the GP (which can be the GP itself) to carry out day-to-day investment management functions
- be registered with the Registrar of Companies

The GP can be a Hong Kong incorporated company, a non-Hong Kong company registered in Hong Kong, a limited partnership (whether domestic or foreign), an LPF or an individual. The investment manager can be a Hong Kong resident above 18 years old, a Hong Kong incorporated company or a non-Hong Kong company registered in Hong Kong.

Contractual freedom among partners: The partners in an LPF have the freedom of contract in respect of the operation of the LPF subject to the provisions of the Bill, including admission and withdrawal of partners, organisation and governance of the LPF, investment scope and strategy, rights and obligations of partners, financial arrangements among the partners, custodial arrangements, etc.

Statutory obligations: the GP has the obligation to file an annual return to the Registrar of Companies on behalf of the LPF. The GP or investment manager is also required to maintain proper records of documents or information relating to the LPF's operation and transactions.

Migration: There will be a streamlined channel for funds looking to migrate from the existing Limited Partnership Ordinance (LPO) to the LPF regime. The migration would not result in any profits tax or stamp duty implications.

Tax & stamp duty: Like other funds, an LPF meeting the definition of a "fund" under the unified fund exemption regime can enjoy profits tax exemption in Hong Kong provided it meets the exemption conditions. In addition, given an interest in an LPF does not fall under the definition of "stock" for Hong Kong stamp duty purposes, an instrument under which the LPF interest is issued / transferred / withdrawn will not be chargeable to Hong Kong stamp duty.

[1] PwC: Asset and Wealth Management 2025: The Asian Awakening

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- We are pleased to see that the Government has responded to the industry's call for a modernised regime to cater for Hong Kong domiciled limited partnership funds and has presented the Bill to move this forward. The Bill has considered and incorporated several concerns raised by the industry, and strikes a good balance between the need for a robust framework and a simple and easy to implement regime.
- Of note, the Bill allows for an LPF to be a "fund-of-one", clarifies that there will not be any capital duty on the capital contributed by partners, provides a reasonable and balanced disclosure framework, and sets out the allowable activities that limited partners can perform without being regarded as involved in the management of an LPF. These positive features provides helpful and clear guidance to the industry.
- We expect that these changes would bring a wealth of opportunities to Hong Kong. Complementing the open-ended fund company regime, the LPF provides another common structure for alternative asset classes, and adds to the necessary infrastructure for attracting more investment funds and fund managers to Hong Kong. This would give market players more flexibility in structuring the fund vehicle and operations, and more importantly in aligning the domicile of the fund with commercial substance under the current international tax environment.
- A Hong Kong domiciled fund with substance in Hong Kong would set a good foundation for the fund to enjoy tax treaty protection.

What's next?

After the Bill is introduced into the Legislative Council, it is likely that a Bills Committee will be formed to scrutinise the Bill and seek comments from the stakeholders. Upon enactment of the Bill into law, the LPF regime will be effective from 31 August 2020.

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