

Client Alert

Financial Services

27 March 2020

A new structure for PE funds in Hong Kong

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On 20 March 2020, the Hong Kong government published the Limited Partnership Fund Bill (Bill). The Bill will be subject to Hong Kong's usual legislative process. The government's aim is for it to be enacted by 31 August 2020.

Background

The main purpose of the Bill is to provide for the registration of eligible funds as limited partnership funds (**LPFs**) in Hong Kong. Under Hong Kong's current legal framework, a fund may be established in the form of a unit trust or an open-ended fund company. However, the preferred structure for private equity (**PE**) funds is the limited partnership, and Hong Kong's existing Limited Partnership Ordinance (**LPO**) does not provide an attractive framework. For Hong Kong's PE industry, the Bill is a welcome and highly anticipated development.

The government is committed to strengthening Hong Kong's competitive edge in the asset management space. With regards to PE funds, this commitment is evidenced by a multi-pronged approach: in addition to the introduction of a new LPF regime, the Financial Secretary's budget earlier this year announced tax concessions for carried interest issued by PE funds, and industry consultations in relation to the details are ongoing.

Below we describe some main features of the Bill, which provides for the registration of eligible funds as LPFs with the Registrar of Companies.

Key eligibility requirements

For a fund to be eligible to be registered as an LPF, it must:

- be constituted by a limited partnership agreement (**LPA**);
- have one general partner (**GP**) and at least one limited partner (**LP**):
 - the GP must conform with certain eligibility requirements, such as being a natural person, a private Hong Kong company or another acceptable vehicle. An overseas company can be a GP but, it would need to be registered as a non-Hong Kong company. A non-Hong Kong limited partnership with or without legal personality is also eligible to be a GP; and
 - the LP must be a natural person, a company, a partnership or other entity;
- not have all partners which are corporations in the same group of companies unless certain conditions are met;
- have a registered office in Hong Kong;
- have an English name, a Chinese name or a name that includes both an English and a Chinese name. The English name must include the words 'Limited Partnership Fund' or 'LPF' as its last three words. The Chinese name must contain '有限合伙基金' as its last six characters.

Key features, rights and liabilities

In line with industry standards elsewhere, the LPF will have no separate legal personality.

The Bill confirms that the partners in an LPF have freedom of contract in respect of the operation of the fund, and it lists the matters that are typically determined by an LPA.

There is no minimum capital requirement and there is no restriction on the investment scope and strategy of the LPF.

The GP will have unlimited liability for all the debts and obligations of the LPF and has ultimate responsibility for the management and control of the LPF. In addition, the Bill outlines a number of GP duties, including the duty to:

- appoint an investment manager which can be an individual, a Hong Kong incorporated company or a registered non-Hong Kong company. Thus, an overseas manager may be appointed but, it needs to be registered as a non-Hong Kong company and be appropriately licensed by the Securities and Futures Commission in Hong Kong if it carries on any regulated activity in Hong Kong;
- appoint an auditor;
- ensure proper custody of assets;
- appoint a responsible person to carry out AML measures;
- appoint an authorized representative if the GP is itself an LPF or is a non-Hong Kong limited partnership without a legal personality;
- file an annual return with the Registrar; and
- notify the Registrar of certain changes with regards to the LPF.

An LP has the right to participate in the income and profits arising from the LPF. LPs will not have day-to-day management rights or control over the LPF's assets. An LP will not be liable for debts and obligations of the LPF beyond the amount of its agreed contributions unless it takes part in the management of the fund, in which case the GP and the LP will both be liable for the all the debt and obligations incurred whilst the LP has participated in management.

The LPF can enjoy exemption from profits tax provided it meets the conditions of the existing funds exemption regime.

Migration of funds

The Bill provides a process for an existing fund established under the LPO to register as an LPF if it meets the eligibility requirements. The Bill does not provide a mechanism for limited partnership funds established in other jurisdictions to re-domicile to Hong Kong.

Registration process and confidentiality

The application for registration must be submitted on behalf of the GP by a Hong Kong solicitor or law firm. If the Registrar is satisfied the fund meets the eligibility and other requirements under the Bill, it will issue a certificate of registration.

The Registrar will maintain a register of LPFs and an index of the names of every LPF. The identity of the LP(s) will not be available in public register, but the relevant information must be maintained and made available to law enforcement agencies when required.

Next steps

The Bill will be introduced into the Legislative Council for first reading on 1 April 2020 with a view to it being passed by 31 August 2020. This development will be seen by PE industry stakeholders as a positive step towards bringing Hong Kong's active PE market onshore.

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