

Newsletter

Financial Services

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Reform of Hong Kong MPF operations: an electronic platform and trustee fees

Pauline Woo

The Mandatory Provident Fund Schemes (Amendment) Ordinance 2020 (**Amendment Ordinance**) was gazetted on 24 July 2020 and came into effect on the same day. The Amendment Ordinance amends the Mandatory Provident Fund Schemes Ordinance (**MPFSO**) to: (i) empower the Mandatory Provident Fund Schemes Authority (**MPFA**) to establish a wholly owned subsidiary (**eMPF Platform Company**) to facilitate the establishment of the eMPF platform, and (ii) revise the level of annual registration fee (**ARF**) payable by the trustee of an MPF scheme from nil to 0.03% of the NAV of the MPF scheme, with effect from 1 October 2020. A trustee must not pass on the ARF to an MPF scheme.

eMPF Platform Company

The establishment of an eMPF Platform Company forms part of the MPFA's initiative to establish the eMPF platform, a centralised electronic platform that will facilitate the standardization and automation of MPF scheme administration processes. It is expected that the eMPF platform will enhance the operational efficiency of MPF schemes, and achieve cost savings, thereby providing more room for reduction in the administration fee of MPF schemes. Furthermore, the eMPF platform is expected to facilitate other MPF reform initiatives such as full portability of member benefits among MPF schemes, and abolition of the arrangement of offsetting severance payments and long service payments against MPF accrued benefits.

The tender period for the eMPF platform project ended on 29 April 2020. The MPFA will conduct a comprehensive review of the MPFSO for the implementation of the eMPF platform.

ARF

The level of ARF is revised with the aim of helping the MPFA attain financial sustainability. The ARF will start to apply in respect of an MPF scheme if the immediate preceding financial period ends on or after 1 October 2020, at the rate of 0.03% of the NAV of the MPF scheme as at the end of that period. The ARF is payable by the trustee of an MPF scheme, and the trustee is prohibited from passing on the ARF to the MPF scheme and its members. The MPFA intend to review the ARF level from the seventh year of introduction with a view to achieving full cost recovery in the long run.

A new Hong Kong structure for private equity funds: limited partnership funds

Su Cheen Chuah

The Limited Partnership Fund Ordinance (**LPFO**), which provides for registration of eligible funds as limited partnership funds (**LPFs**) in Hong Kong, will come into operation on 31 August 2020.

The enactment of the LPFO is a very welcome development, and is part the Hong Kong government's stated aim to enhance the competitiveness of Hong Kong in becoming a preferred centre for international asset and wealth managers in Asia. The LPF features as outlined under the LPFO are in line with those of limited partnership structures in other jurisdictions. The LPFO contains provisions which (i) allow flexibility in capital contributions and distribution of profits, (ii) allow the parties in a LPF to freely contract according to their commercial intentions, (iii) provide for a simple registration process with the Registrar of Companies; and (iv) provide a straightforward and cost-efficient dissolution mechanism.

New fund structure

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 does not provide an attractive framework. Its restrictive provisions with respect to capital contributions and distribution of profits, the lack of contractual flexibility of the partnership and the absence of a straightforward dissolution mechanism has discouraged fund managers from establishing PE fund vehicles in Hong Kong. The LPFO seeks to address these concerns.

With regards to PE funds, the government's commitment to strengthen Hong Kong's competitive edge in the asset management space is evidenced by a multi-pronged approach: in addition to the introduction of the LPF regime, the Financial Secretary's budget earlier this year announced the possibility of tax concessions for carried interest, and an industry consultation in relation to the details is underway.

Fund managers, in particular those who have an office and a team based in Hong Kong, will now have a viable option to establish their PE funds in the form of a limited partnership in Hong Kong, as an alternative to other offshore jurisdictions such as Delaware and the Cayman Islands.

The key features of the LPFO are set out in our publication [*A new structure for PE funds in Hong Kong*](#) dated 27 March 2020.

Going forward

The LPF regime will be seen by PE industry stakeholders as a positive step towards bringing Hong Kong's active PE market onshore, particularly as the industry is anticipating attractive tax concessions on carried interest to complement the LPF regime.

Mainland China briefing: CSRC issues consultation papers on new measures for managers of public funds

Shanshan Liu and Faye Meng

On 31 July 2020, the China Securities Regulatory Commission (**CSRC**) issued consultation papers on *Measures for the Supervision and Administration of Public-offered Securities Investment Fund Managers* (the **Measures**, available [here](#) in Chinese) and *the Provisions on Issues concerning the Implementation of the Measures for the Supervision and Administration of Public-offered Securities Investment Fund Managers* (the **Implementation Provisions**, available [here](#) in Chinese).

The Measures and Implementation Provisions aim to revise and improve the old measures for fund management companies issued in 2012. The key amendments include: improving the approval process for fund management

companies, strengthening on-going supervision, optimising the public fund management licence mechanism, and enhancing the governance structure of fund management companies.

Since the removal of shareholding limits for fund management companies in mainland China on 1 April 2020, eligible foreign financial institutions may establish public-offered fund management companies as wholly foreign owned enterprises (**WFOE FMCs**). In this regard, foreign financial institutions who wish to establish WFOE FMCs need to closely follow the relevant requirements, especially the eligibility requirements for shareholders of WFOE FMCs, the requirements for actual controllers of WFOE FMCs, and the reporting obligations of foreign shareholders of WFOE FMCs. It is also worth noting that the Measures and Implementation Provisions have set out the requirements for private fund managers to apply for public-offered fund management licences.

The public consultation on the Measures and Implementation Provisions will end on 30 August 2020. We will monitor progress and share developments in the future.

Hong Kong SFC licensing and compliance hints

Rebecca Yip

WFH is not an excuse

If licensed companies allow their staff to work from home, they should ensure that letters or other correspondence sent to the office are being monitored and attended to regularly, especially invoices requiring payment or other mail which requires a response by a certain date. The same applies if the company has a voicemail box for a general telephone line.

Demonstrations on using the SFC online portal

As the SFC requires licensed companies and licensed individuals to file their notifications through the online portal, users can make reference to the [demonstration clips](#) available on the SFC's website if they don't know what to do. Please remember that individual notifications should only be submitted by the individual, and not by someone else on their behalf.

Know the RO before signing them up

Before a licensed firm hires a new responsible officer (**RO**), it should ask detailed questions about the applicant. As part of the assessment as to whether the applicant is fit and proper for the job, in addition to looking up the applicant's licence record at the SFC's public register and the job title at their current and former firms, the firm should also check if the applicant has any conditions imposed on their licence and why, and assess if they possess the specific experience necessary to carry out the new role.

Recent publications

[The Guangdong Government promulgated implementation plan of the "Opinions on Financial Support for the Development of the Guangdong-Hong Kong-Macao Greater Bay Area"](#)

[Hong Kong Stock Exchange proposes to enhance disciplinary regime to deter misconduct](#)

[The Madrid Protocol is finally on its way](#)

[Cross-Border Marriages: Connection substantial enough to divorce in Hong Kong?](#)

[The Financial Action Task Force \(FATF\)'s reports on risks of virtual assets](#)

[The Global Financial Markets Association's \(GFMA\) comments on challenges raised by "Global Stablecoin" Arrangements](#)

[The Hong Kong Institute of Monetary and Financial Research \(HKIMR\)'s paper on the adoption and innovation of Fintech in the banking industry](#)

The Hong Kong Monetary Authority (HKMA)'s Guidance for banks on Climate Risk Practices

APLMA/LMA/LSTA joint guidance papers on Green Loan principles and Sustainability Linked Loan principles
Updated Guideline on Minimum Criteria for Authorisation under the Banking Ordinance (the "Guideline") issued by the
Hong Kong Monetary Authority ("MA")

London Inter-Bank Offered Rate (LIBOR) reform

Non-US financial institutions may address risks of secondary sanctions in contracts

The Mainland proposed financial support measures for the development of the Greater Bay Area

COVID-19 outbreak and the Hong Kong construction industry

Arrangement for mutual service of judicial documents in civil and commercial cases between Hong Kong and Macao came
into force on 1 August 2020

How parties structure their relationship may affect tortious liability

Court held that jurisdiction clause in settlement agreement superseded arbitration clause in original agreement

Court set aside order to enforce arbitral award for material non-disclosure

Hong Kong Stock Exchange consults on paperless IPO and online display of documents

Boring but important: new law requires Applicant Type and Place of Incorporation on trade mark filing

Court allows service of court documents by access to online data room

Court Proceedings (Electronic Technology) Bill passed

CFA confirms no pre-existing legal relationship required for one to be an "agent" of another for bribery offences

Court permits and encourages banks to comply with disclosure orders by uploading documents to online data room

Can you get a Vesting Order for cyber fraud cases?

"Relaxing penalties"? Sounds like an oxymoron

Greater Bay Area introduces new Individual Income Tax incentives to attract foreign talent

Data protection authorities set out expectations in open letter to VTC companies

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