Hong Kong introduces bill to revamp fund industry

In the 2019-2020 Budget, the Hong Kong government announced that it was studying the establishment of a limited partnership regime for private equity funds. Following a consultation exercise, a bill was gazetted in March 2020, which would allow funds in Hong Kong to be registered as limited partnership funds.

The concept of limited partnerships is not new, indeed, Hong Kong already has a Limited Partnership Ordinance. However, this was enacted over 100 years ago and, whilst suitable for professional firms, it is ineffective to cater to the needs of the modern funds industry. This new legislation is being introduced specifically to attract investment funds to Hong Kong and is expected to come into operation on 31 August 2020. The Limited Partnership Ordinance will continue to apply for non-fund limited partnerships.

Key Features and Eligibility Requirements

Under the new regime, a fund which meets the eligibility requirements can be constituted in the form of a limited partnership fund and be registered with the Companies Registry.

A fund will be eligible to register as a limited partnership fund ("LPF") if:

- it is constituted by a limited partnership agreement
- it has at least two partners, including at least one general partner ("GP") and at least one limited partner ("LP")
- the name of the fund ends with 'limited partnership fund' or 'LPF' in English or '有限合伙基金' in Chinese or
- the fund has a registered office in Hong Kong and a business registration certificate
- not all the partners in the fund are from the same group of companies

Partners – rights and obligations

The new legislation places certain requirements on the persons that can be GP's and LP's of a LPF.

The GP may be a natural person over 18 years old, a private Hong Kong company, a registered non-Hong Kong company, a limited partnership, another LPF or a non-Hong Kong limited partnership. The GP will have unlimited liability for the debts and obligations of the LPF, although, as the GP is itself a limited liability company, the liability of its members for the GP's debts would be limited.

The GP's express obligations under the new legislation include:

- a duty to ensure safe custody arrangements for the assets of the LPF
- obligation to appoint an investment manager to carry out day-to-day investment management functions. The investment manager must be a Hong Kong resident over 18 years old, a Hong Kong company or a registered non-Hong Kong company
- obligation to appoint an auditor to audit the LPF's accounts
- obligation to appoint a responsible person to carry out anti-money-laundering functions. The responsible person must be an authorised bank, a SFC-licensed entity, a licensed accountant or a licensed solicitor

- (only if the GP is itself a LPF) obligation to appoint an authorised representative to be responsible for the management and control of the LPF.

A LP may be natural person, a corporation, a partnership of any kind, an unincorporated body or any other entity. A LP will not be liable for the debts and obligations of the fund beyond its agreed contribution provided that it does not take part in the management of the fund. In this regard, the legislation includes a list of safe-harbours which, if done by a limited partner, would not in itself render a limited partner as taking part in the management of the fund. This list includes, among other things, acting as a director of the GP.

The LPs have no duties while enjoying rights to participate in the income and profits arising from the management of the assets and transactions of the LPF by the GP and the investment manager.

Fund operations

The GP will have ultimate responsibility for the management and control of a LPF.

If the GP and/or the investment manager carry out a regulated activity under the Securities and Futures Ordinance, it will need to be licensed by the SFC. The most relevant activity would be asset management, which is the activity of managing a portfolio of securities (except for Hong Kong-incorporated private companies). However, if the GP has delegated its asset management functions to a licensed entity, the GP itself would not require a licence. The LPF itself does not require a licence.

Registration Requirements

Application for registration must be submitted in prescribed form by a Hong Kong solicitor or firm on behalf of the GP. Upon registration, a certificate of registration will be issued to the LPF.

The Registrar of Companies will maintain a list of registered LPF's and maintain a publicly available database of documents delivered to the Companies Registry for registration.

The Registrar will have enforcement powers to ensure compliance with filing requirement.

Record Keeping

The GP or investment manager must maintain at the LPF's registered office:

- audited financial statements of the LPF
- a register of partners
- AML records of the LPF's customers, including LPs
- documents and records of the LPF's transactions
- records of the controllers of each partner

The records must be made available for inspection by officers of certain government agencies, but otherwise will not be publicly available. However, a LP may inspect the audited financial statements of the LPF.

In addition, the GP of a LPF must each year file an annual return of the LPF to the Companies Registry. The GP is also required to notify the Registrar of Companies in the event of a change of the LPF's particulars, including, but not limited to, its registered office, change of the GP and change in the particulars of GP.

Interests in LPFs will not constitute Hong Kong stock and transfers thereof will not be subject to Hong Kong stamp duty.

Striking Off, Deregistration and Dissolution

Generally, a limited partnership agreement would provide for a fixed term of a LPF, commonly 8 or 10 years. At the end of the term, the LPF would dissolve in accordance with the terms of the limited partnership agreement. The LPF may also come to an end earlier in certain circumstances.

The Companies Registry may strike off a registered LPF in certain circumstances, such as if it no longer meets the eligibility requirements or if it ceases to carry on business as a fund after two years. The partners may also, if they all agree, apply for the deregistration of a LPF. In addition, a LPF would be dissolved if the GP or (if applicable) the authorised representative can no longer act in such capacity and a replacement is not made within 30 days. Alternatively, a partner or creditor may apply to the court for a dissolution of a LPF in certain circumstances, such as where the business of the fund can only be carried on at a loss or the court is of the opinion that it would be just and equitable to dissolve the fund.

Migration to the Limited Partnership Fund Regime

Existing limited partnerships under the Limited Partnerships Ordinance may register to become a LPF.

Conclusions

The Hong Kong government is putting in substantial effort to attract investment funds to Hong Kong. This new legislation represents a significant step forward as it would allow the most common structure of an investment fund to be established and based in Hong Kong. Many of the features of this new legislation have similarities to equivalent provisions in other 'key' fund jurisdictions. We expect that many investment managers will take advantage of this new stand-alone regime to establish LPF's in Hong Kong.

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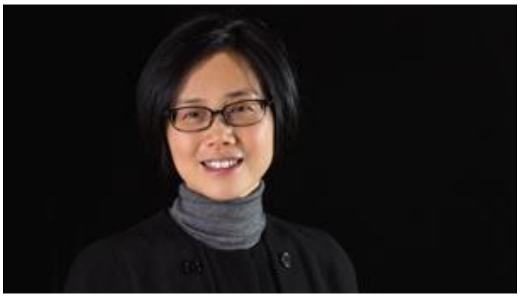

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