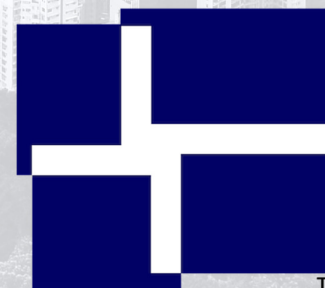




This guide has been prepared by the Zetland Fiduciary Group Limited and is intended for the information of clients or prospective clients. As such, it is designed to provide general information. The information set out is not, nor is it intended to be, exhaustive. Such information does not purport to be and is not legal, tax or other professional advice. Our aim has been to provide a broad overview. We will be pleased to offer more comprehensive and specific professional advice to individual clients depending on the situation.

Hong Kong New Limited Partnership Fund Law



A GUIDE FOR PRIVATE EQUITY FUNDS

Background

Hong Kong is currently the second largest private equity (“ PE ”) centre in Asia after Mainland China. It offers equity financing to predominantly private companies across Asia for local and regional start-up companies located within Australia, Singapore, India, Korea, Japan, South East Asia and Mainland China. However, there are no Hong Kong domiciled PE funds and most of the PE capital that is advised from Hong Kong is sourced from professional overseas investors domiciled in Delaware, the Cayman Islands, Luxembourg, Jersey and Mainland China.

An outdated legislation and lack of a specific PE fund regime that would provide the necessary clarity and certainty is to be blamed for the absence of Hong Kong domiciled PE funds. Even Mainland Chinese PE ventures favour the Mainland LP structure.



DEVELOPING HONG KONG AS A DOMICILE FOR PRIVATE EQUITY FUNDS

Hong Kong is well-placed to become a fund domicile for PE funds that have a primary investment focus within Asia. Hong Kong is centrally located within the region and neighbouring Mainland China, the largest Asian PE investment destination in Asia. Hong Kong has the largest single concentration of fund managers and advisers of any Asian city and a deep pool of professional service providers. Being able to consolidate the domicile of the PE fund vehicle and fund manager provides operational efficiency. China's outbound PE investment capital is growing rapidly with many leading mainland investors developing offshore operations. At the same time the financial market liberalisation in Mainland China is deepening. The Hong Kong stock exchange provides an attractive exit option for PE investors. Hong Kong is the largest offshore Renminbi funding centre for companies to raise Renminbi capital. Hong Kong has a wider network of Double Tax Agreements than offshore fund jurisdictions which are under increasing scrutiny.

The PE industry is a key driver in channelling capital into corporates, especially start-ups in the innovation and technology field in the Greater Bay Area.

Up until now, a Hong Kong domiciled fund could be established in the form of a unit trust or an open-ended fund company. These fund structures are more popular among public funds or hedge

funds, while it is more common for PE funds including venture capital (" VC ") funds to be established in the form of a limited partnership. The Limited Partnerships Ordinance (Cap. 37) was enacted almost a century ago and is not adequate to meet today's needs of investment funds. The Limited Partnership Fund Ordinance (Cap. 637) establishes a new limited partnership fund regime to enable private funds to be registered in the form of limited partnerships in Hong Kong. The ordinance will come into operation on 31 August 2020.



THE LIMITED PARTNERSHIP FUND (“LPF”) REGIME

A LPF is a fund that is structured in the form of a limited partnership for the purpose of managing investments for the benefit of its investors. A fund qualifying for registration under the LPF regime must be constituted by one general partner (GP) who has unlimited liability in respect of the debts and liabilities of the fund, and at least one limited partner (LP) with limited liability.

The LPF regime is a registration scheme administered by the Companies Registry. A fund set up in the form of a limited partnership registered under the Limited Partnerships Ordinance (Cap. 37) may be registered as an LPF if it meets the eligibility requirements under the Ordinance.

In line with industry standards elsewhere, the LPF will have no separate legal personality. The partners in a LPF, have freedom of contract in respect of the operation of the fund. 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, including the duty to:

- appoint an investment manager;
- 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.

A LP has the right to participate in the income and profits arising from the LPF only without any day-to-day management rights or control over the LPF ' s assets. At the same time, a LP will not be liable for debts and obligations of the LPF beyond the amount of its agreed contributions

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



KEY ELIGIBILITY REQUIREMENTS

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

1. be constituted by a limited partnership agreement;
2. have one GP and at least one LP:
 - i. a GP can be a natural person, a private Hong Kong company or an overseas company 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
 - ii. the LP must be a natural person, a company, a partnership or other entity;
3. not have all partners which are corporations in the same group of companies unless certain conditions are met;
4. have a registered office in Hong Kong; and
5. have an English name, a Chinese name or a name that includes both an English and a Chinese name. The name must include the words ‘ Limited Partnership Fund ’ or ‘ LPF ’ or ‘ 有限合伙基金 ’ if it has a Chinese name.

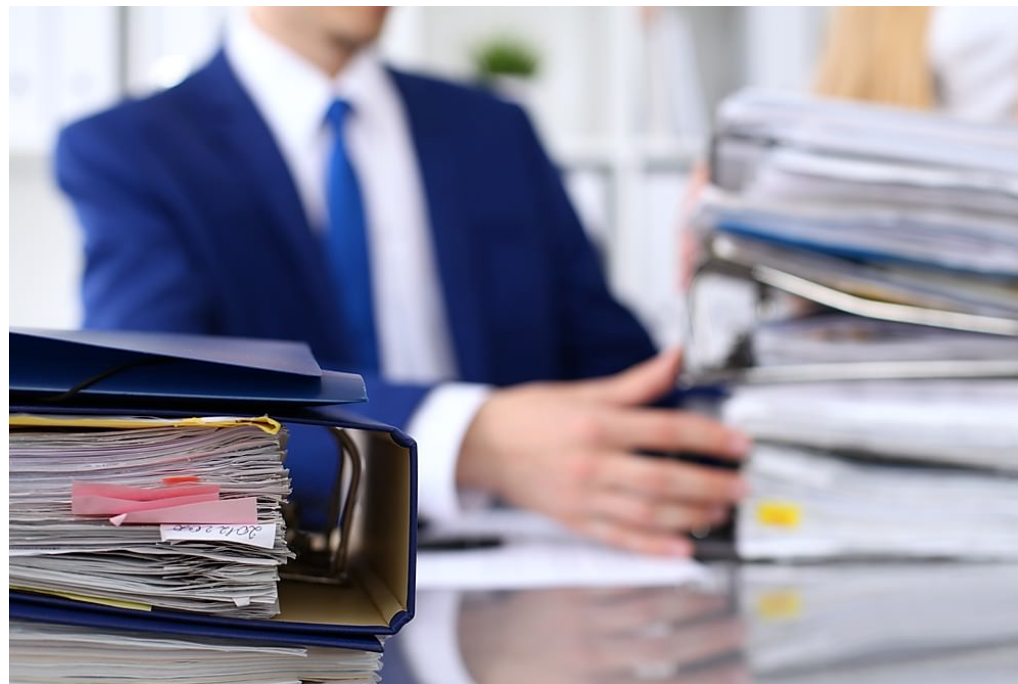


TAX EXEMPTION

Funds registered under the LPF regime will be able to avail of exemption from Hong Kong tax under the Unified Fund Exemption regime (“ UFE ”) in relation to profits from specified transactions.

Specified transactions refer to earnings resulting from dealing in securities, shares in private companies, futures contracts, foreign exchange contracts, deposits other than those made by way of a money-lending business, deposits made with a bank, certificates of deposit, exchange-traded commodities, foreign currencies, or OTC derivatives. The UFE became operative on 1 April 2019 under the Inland Revenue Ordinance. With that Hong Kong has a private equity fund exemption regime which allows funds to fully domicile onshore. Although the profits are tax exempt, compliance and accurate filings must still be adhered to and requires the understanding of the workings of the tax exemption regime by LPFs.

A further benefit of establishing funds with operations fully onshore in Hong Kong is that funds are able to meet substance requirements that overseas jurisdictions typically require in order to grant tax treaty benefits, such as on dividends and capital gains. Hong Kong ’ s growing list of comprehensive double tax treaties provides some of the lowest treaty rates with major jurisdictions.





SFC LICENSING REQUIREMENTS

A PE firm may be required to be licensed for one or more types of regulated activities depending on the types of business it conducts in Hong Kong.

For a PE fund constituted in the form of a limited partnership, including the new LPF regime, where the GP assumes ultimate responsibility for the management and control of the fund and in return would receive management fees, carried interest or other remuneration, it is generally required for the GP to be licensed for type 9 regulated activity (Asset Management) if it conducts fund management business in Hong Kong. However, a GP would not need to be licensed if all of the asset management functions have been delegated to an appointed investment manager which is a licensed or registered entity to carry on such regulated activity. The LPF can be used as a fund that is managed from anywhere, not just in Hong Kong. Whether or not an entity or a person is required to hold the appropriate SFC license depends on whether that entity or person carries out regulated activities in Hong Kong, rather than the domicile of the LPF.

A type 9 Asset Management license would generally allow incidental activities otherwise regulated under a type 1 license, such as the offering of co-investment opportunities and the marketing activities of the fund to be carried out by the PE firm. Such an exemption would apply insofar as the activities form an

integral part of the fundraising by the PE fund to secure capital to invest solely in its underlying assets.



PRIVATE COMPANY CARVE-OUT

While the term “securities” is given a wide definition in the SFO, investments in securities of private companies are expressly carved out. In applying this carve-out the SFC will consider the composition of the entire investment portfolio including any Special Purpose Vehicle and its underlying assets.





FAQs

What is a Limited Partnership Fund?

A LPF is a fund that is structured in the form of a limited partnership and will be used for the purpose of managing investments for the benefit of its investors.

Is a LPF a legal person?

No, a LPF does not have a legal personality.

Which legislation and rules govern LPFs?

The Limited Partnership Fund Ordinance (Cap. 637) provides for the registration of funds as limited partnership funds. It also provides for the operation, striking off, deregistration, dissolution and winding up of the registered funds. Some provisions of the Partnership Ordinance (Cap. 38) also apply to an LPF. The rules of equity and of common law are also applicable to partnerships. Proper advice should be sought in drafting a LPF agreement.

Is the registration of a LPF under the Limited Partnership Fund Ordinance compulsory?

No, this is an opt-in registration which does not preclude other funds from operating in Hong Kong in the form of a limited partnership in parallel to a registered LPF.

How can a fund be eligible to be registered as a LPF?

In general, a fund is eligible to be registered as an LPF if:

- i. the fund is constituted by a limited partnership agreement and the arrangements in the agreement do not contravene applicable law;
- ii. the fund has one general partner and at least one limited partner;
- iii. the fund ' s name complies with the requirements;
- iv. the fund has a registered office in Hong Kong to which communications and notices may be sent;
- v. the fund is not set up for an unlawful purpose; and
- vi. not all the partners in the fund are corporations in the same group of companies.

How can I register a fund as a LPF?

An application for registration of a fund as a LPF must be submitted in the specified Form LPF1 “ Application for Registration of Limited Partnership Fund ” to the Registrar of Companies together with the prescribed fees by a registered Hong Kong law firm or a solicitor admitted to practise Hong Kong law in Hong Kong on behalf of the proposed general partner in the fund.



Do I have to submit the agreement entered into among the partners for forming a Limited Partnership Fund to the Companies Registry on application?

No. The limited partnership agreement in relation to a limited partnership fund is not required to be submitted to the Companies Registry.

What can I obtain upon registration of a LPF?

The Registrar will issue a "Certificate of Registration of Limited Partnership Fund" upon registration of a LPF. The certificate of registration is conclusive evidence that the fund is a limited partnership fund.

How should a LPF be constituted?

An LPF must be constituted by one general partner and at least one limited partner under a written agreement.

What are the liabilities of the general partner in a LPF?

The general partner in an LPF has unlimited liability for all the debts and obligations of the fund.

What are the management responsibilities of the general partner in a LPF?

The general partner in an LPF has ultimate responsibility for the management and control of the fund. The general partner also has a duty to ensure that there are proper custody arrangements for the assets of the fund as specified in the limited partnership agreement of the fund.

What are the rights and liabilities of a limited partner in a LPF?

A limited partner in an LPF has the right to participate in the income and profits arising from the management of the assets and transactions of the LPF by the general partner in, and the investment manager of, the LPF. A LP does not owe any fiduciary duty to the general partner, or any other limited partner and does not have day-to-day management rights or control over the assets held by the LPF. A LP is not liable for the debts and obligations of the LPF beyond the amount of the partner's agreed contribution.

What is the responsibility of an investment manager of a LPF?

An investment manager of an LPF is responsible for carrying out the day-to-day investment management functions of the LPF.



Is a LPF required to report the particulars of its limited partners to the Registrar of Companies?

No. There is no requirement under the Limited Partnership Fund Ordinance (Cap. 637) for reporting the particulars of the limited partners in a LPF to the Registrar of Companies.

Are the profits of a LPF taxable in Hong Kong?

Funds registered under the LPF regime will fall under the Unified Fund Exemption regime in relation to profits from specified transactions and can avail of the tax exemption.

Does a LPF need to obtain a SFC license?

The LPF itself is not required to register with SFC or obtain a license. The GP or investment manager, if operating in Hong Kong, may need to hold the relevant license.



ABOUT US

Established in 1987 and headquartered in Hong Kong with offices around the world, Zetland Fiduciary Group is a business consultancy offering personal service and professional advice in the areas of company formation, trust settlement, accounting and tax.

Since inception Zetland has been working with a select group of individuals and corporations to achieve their objective in a cost-effective, private and conservative manner. Zetland 's structures aim to discreetly assist clients to implement global strategies that maximize returns and preserve wealth. Zetland is privately owned and operates independently, while maintaining a worldwide network of banking and finance associates, professional advisers, correspondents and local agents.

Zetland staff are experienced professionals including qualified lawyers, accountants, tax specialists and company administrators.





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