Hong Kong new Limited Partnership Regime - Goodbye offshore, Hello Hong Kong?

Hong Kong's Legislative Council passed the long-awaited Limited Partnership Fund Bill 9 July 2020, with the Limited Partnership Fund Ordinance ("**LPFO**") set to take effect 31 August 2020.

Why is this significant? Because prior to the LPFO, there is no suitable investment vehicle for establishing a limited partnership for private equity ("**PE**") funds, which is a common structure globally for institutional investors. This is one key reason why PE funds in the region have always been domiciled in the Cayman Islands.

It is thus no overstatement that the LPFO enhances Hong Kong's chance of being Asia's premier PE funds hub, particularly as the city is also proposing a tax concession for carried interest issued by PE funds.

Regional rivalry

Not surprisingly, Hong Kong's regional rival in the financial services stakes, Singapore, has also upped its PE game.

Enter its Variable Capital Company ("**VCC**") platform, launched 15 January 2020 to offer more operational flexibility when structuring PE funds. The VCC appears to have gathered much traction and differs from Hong Kong's open-ended fund company ("**OFC**") in that it can be used by PE fund managers.

Even before the VCC, Singapore's Limited Partnerships Act was revised in 2010 to cater to investment funds, though PE fund managers there continued to favour the Cayman Islands' exempted limited partnership regime for reasons of familiarity.

This typically means using a master-feeder fund structure, under which a Singapore-incorporated feeder fund is owned by a Cayman Islands limited partnership that acts as the pooling master fund. By domiciling the fund entity in Singapore, the fund is thus able to benefit from Singapore's extensive double tax treaty network. The VCC has taken it a step further as Singapore targets PE investments.

Hong Kong vs the Incumbent

Notwithstanding regional developments, a rising number of fund managers in Hong Kong have asked about the LPFO and if it might finally be time to domicile their funds onshore in the Fragrant Harbour.

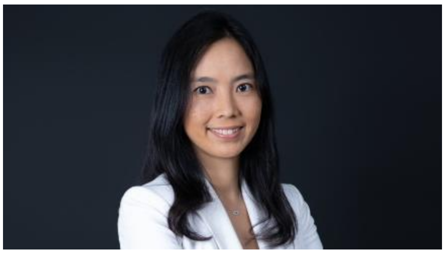
The table below goes some way to answer that, as we delve into a comparison between Hong Kong's LPFO regime and the one in the Cayman Islands that has been the default pick in the past two decades for many of the world's fund managers.

While time will tell if significant action shifts to these shores, there is little doubt Hong Kong is headed in the right direction. With China developing its southern Greater Bay Area - to integrate and fully realize the potential of a megalopolis of nine cities and the two special administrative regions of Macau and Hong Kong – the LPFO regime arrives at an opportune moment as investors look to raise funds from and/or to invest in the region.

	Hong Kong	**Cayman**
Registered Office	A Limited Partnership Fund ("**LPF**") must have a registered office in Hong Kong.	An Exempted Limited Partnership ("**ELP**") registered in the Cayman Islands must have a registered office in the Cayman Islands. If the general partner ("**GP**") is a foreign registered company, or a foreign registered partnership, it will also require corporate administration support.
Legal Personality	Does not have separate legal personality	Does not have separate legal personality
Eligibility	Must have one GP and at least one LP	Must have at least one GP and one LP
Management	The GP bears the ultimate responsibility for the management and control of the LPF.	The GP is responsible for the management of the ELP.
Investment Management	Must appoint an investment manager (can be the GP)	No such requirement
Auditors	Must appoint an independent auditor	Must appoint a Cayman Islands Monetary Authority approved auditor
Custody	Duty to ensure proper custody of assets	The assets of the ELP are held or deemed to be held by the GP on statutory trust as an asset of the ELP.
Liabilities of the GP and LP	In the event that the assets of the LPF are inadequate to satisfy the claims of its creditors, the GP will be liable for all debts and obligations of the LPF. The LPs liability will generally be limited to the amount of the partner's agreed contribution, except as may be provided by the limited partnership agreement ("**LPA**") (provided they do not take part in the management of the LPF).	In the event that the assets of the ELP are inadequate to satisfy the claims of its creditors, the GP will be liable for all debts and obligations of the ELP. The LPs will generally not be liable for the debts and obligations of the ELP except as may be provided by the LPA (provided they do not take part in the conduct of the business of the ELP).
Annual Return	The GP must file a specified annual return form with the Registrar of Companies.	The ELP must file with the Registrar of the Exempted Limited Partnership an annual return signed by or on behalf of a GP.
AML Officers	The GP must appoint a "responsible person" to carry out anti-money-laundering / counter-financing of terrorism functions for the LPF.	The GP must appoint natural persons as AML compliance officer (AMLCO), money laundering reporting officer (MLRO) and deputy money laundering reporting officer (DMLRO).
Registers (confidentiality)	The name of the LPF, the GP and the investment manager or the authorised representative will be in the public register that is available for public inspection, but not information about the LP.	The Registrar maintains a record of each limited partnership and registered ELP and all statements filed in relation to the ELP. Only limited information is publicly available on payment of a fee.
Migration and Re-domiciliation	An existing partnership established under the existing LPO can be registered as an LPF, subject to meeting the relevant requirements. The LPFO however does not provide a	An existing partnership established in any other jurisdiction may apply to be registered as an ELP. ELPs are also able to deregister and transfer out of the Cayman Islands into

	mechanism for limited partnership funds established in other jurisdictions to re-domicile to Hong Kong.	another jurisdiction under processes set out in the ELP Law.
Termination	An LPF may be dissolved in accordance with the fund's LPA without the need of a court order, though court-ordered dissolution is still available under certain prescribed circumstances.	An ELP shall be voluntarily wound up according to the LPA, and unless otherwise specified in the LPA, the provisions of Part V of the Companies Law of the Cayman Islands dealing with liquidations and the Company Winding Up Rules shall be deemed to apply to the winding up and dissolution of an ELP.

Get in touch



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