



Hong Kong

March 2020

HONG KONG'S LIMITED PARTNERSHIP FUND BILL TO TAKE EFFECT ON 31 AUGUST 2020

Introduction

Hong Kong's Limited Partnership Fund Bill¹ was gazetted on 20 March 2020² and will allow funds to be set up as limited partnerships in Hong Kong.

The Limited Partnership Fund legislation aims to attract investment funds (including private equity and venture capital funds) to establish and operate in Hong Kong to further enhance Hong Kong's position as an international asset and wealth management centre.

The new limited partnership fund regime will provide an opt-in registration scheme administered by the Companies Registry to cater for the operational needs of investment funds while providing protection for investors.³

The Limited Partnership Fund Bill will be presented to the Legislative Council and is expected to become law on 31 August 2020.⁴

Limited partnership as a vehicle for private equity funds

Private equity funds (including venture capital funds) have gained popularity among investors and have become a key

impetus to the growth of asset and wealth management. Hong Kong's private equity industry is expected to continue to play a major role in channelling capital into companies, especially start-ups in the innovation and technology sector in the Greater Bay Area. As at the end of 2019, the total capital under management of some 560 private equity firms operating in Hong Kong was about USD 160 billion, putting Hong Kong's private equity industry second in Asia, after Mainland China. With an active initial public offering market for private equity-backed companies and proximity to Mainland China's major private equity deals, Hong Kong is considered to be in a good position to expand its private equity business.

At present, a fund can be established in Hong Kong either as a unit trust or an open-ended fund company under the Securities and Futures Ordinance. However, these fund structures are more popular among public funds and hedge funds. Private funds including private equity funds, on the other hand, are more commonly established as limited partnerships.⁵

What is a limited partnership?

In a limited partnership, the general partner, i.e. the operating person, has unlimited liability for the debts and liabilities of the fund, while the limited partner(s), essentially investors with limited liability, have freedom of contract in respect of the operation of the partnership.⁶

1 <https://www.legco.gov.hk/yr19-20/english/bills/b202003201.pdf>

2 <https://www.info.gov.hk/gia/general/202003/20/P2020031900607.htm>

3 <https://www.info.gov.hk/gia/general/202003/20/P2020031900607.htm>

4 See Preliminary of Part 1 of the Bill: <https://www.legco.gov.hk/yr19-20/english/bills/b202003201.pdf>

5 See paragraph 4 of the Legislative Council Brief: https://www.legco.gov.hk/yr19-20/english/bills/brief/b202003201_brf.pdf

6 <https://www.info.gov.hk/gia/general/202003/20/P2020031900607.htm>

Limited partnership fund

A limited partnership fund will be a fund that is structured as a limited partnership and used for managing investments for the benefit of its investors. A limited partnership fund is not a legal person.⁷

Registration of a limited partnership fund

In order for a fund to qualify for registration as a limited partnership fund:⁸

- a) the fund must have one general partner and at least one limited partner;
- b) the general partner must be a private company limited by shares incorporated in Hong Kong, a non-Hong Kong company registered with the Companies Registry of Hong Kong, a limited partnership (whether domestic or foreign), a limited partnership fund or an individual who is at least 18 years old;
- c) each limited partner must be an individual, a corporation, a partnership, an unincorporated body or any other entity;
- d) the fund must be constituted by a written agreement (i.e. limited partnership agreement);
- e) the fund must have a registered office in Hong Kong;
- f) the fund must have an investment manager appointed by the general partner to carry out the day-to-day investment management functions. The investment manager must be a Hong Kong resident over the age of 18 years, a Hong Kong company, or a non-Hong Kong company registered with the Companies Registry. A general partner meeting these criteria can appoint itself as the investment manager;
- g) the fund must have an independent auditor appointed by the general partner to audit its financial statements annually;
- h) the fund's general partner must appoint a person (**Responsible Person**) to carry out anti-money laundering/counter-terrorist financing functions as stipulated under Schedule 2 to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615 of Laws of Hong Kong) (**AMLO**) so that the limited partnership fund can meet the standards set by the Financial Action Task Force. The Responsible Person must be an authorized institution, a licensed corporation, an accounting professional or a legal professional;⁹ and
 - i) if the general partner has no legal personality because it is another limited partnership fund or a non-Hong Kong limited partnership without legal personality, the limited partnership fund must have an authorized representative with a legal personality to be responsible for the management and control of the limited partnership fund. Only the following persons can be an authorized representative:¹⁰
 - a Hong Kong resident who is at least 18 years old;
 - a company; or
 - a registered non-Hong Kong company.

Registration requirements and procedures

A fund wishing to register as a limited partnership fund must submit an application to the Registrar of Companies. It is an opt-in registration scheme which does not preclude overseas limited partnership funds from operating in Hong Kong in parallel to the limited partnership fund regime.¹¹

An application must be submitted by a registered Hong Kong law firm or a solicitor admitted to practise Hong Kong law in

⁷ Paragraph 9 of the Legislative Council Brief: https://www.legco.gov.hk/yr19-20/english/bills/brief/b202003201_brf.pdf

⁸ Paragraph 11 of the Legislative Council Brief: https://www.legco.gov.hk/yr19-20/english/bills/brief/b202003201_brf.pdf and the Bill

⁹ For definitions of "authorized institution" and "licensed corporation", please refer to the Banking Ordinance (Cap. 155 of Laws of Hong Kong) and the Securities and Futures Ordinance (Cap. 571 of Laws of Hong Kong) respectively. For definitions of "accounting professional" and "legal professional", please refer to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615 of Laws of Hong Kong).

¹⁰ See clause 23 of the Bill: <https://www.legco.gov.hk/yr19-20/english/bills/b202003201.pdf>

¹¹ See paragraph 12 of the Legislative Council Brief: https://www.legco.gov.hk/yr19-20/english/bills/brief/b202003201_brf.pdf and the Bill

Hong Kong on behalf of the fund. The application must contain the following documents/information¹² and a specified fee:

- a) the proposed name of the limited partnership fund;
- b) the name, address, identification number and signature of the proposed general partner;
- c) the proposed address of the limited partnership fund's registered office in Hong Kong;
- d) the fund's proposed investment scope and proposed principal place of business;
- e) the name and identification number of the proposed investment manager;
- f) the name and identification number of the proposed Responsible Person;
- g) a declaration and undertaking by the proposed general partner that the fund is intended to be set up as a limited partnership fund and meets the eligibility requirements, together with an acknowledgement that it is an offence to make a false, misleading or deceptive statement; and
- h) the name and contact information of the law firm/solicitor submitting the application.

Upon receiving an application, if the Registrar of Companies is satisfied that the application contains the documents/information required and the fee has been paid, it will register the fund as a limited partnership fund and issue a certificate of registration of limited partnership fund as proof of registration.

Register of limited partnership funds

The Registrar of Companies will maintain a register of limited partnership funds containing the documents/information submitted by a limited partnership fund in its application and any subsequent changes reported (the **Register**). The Register will be open for public inspection upon payment of a fee.

If there is any change in the particulars provided upon registration, the general partner of a limited partnership fund must notify the Registrar of Companies within a specified period of time, and pay a fee.

¹² See Schedule 1 of the Bill: <https://www.legco.gov.hk/yr19-20/english/bills/b202003201.pdf>

Obligations of general partner of a limited partnership fund

The general partner must file an annual return with the Registrar of Companies on behalf of the limited partnership fund. The return must include a declaration that the limited partnership fund has been in operation, or has carried on business as a fund, during the year and will be in operation, or will carry on business as a fund, in the following year, together with a fee.¹³

A general partner/investment manager will be required to maintain a proper record of the following documents/information in relation to the limited partnership fund's operation and transactions at the registered office of the limited partnership fund or any other place in Hong Kong made known to the Registrar of Companies:¹⁴

- a) the financial statements of the limited partnership fund audited by an auditor;
- b) a register of partners containing the particulars of the general partner and each limited partner (including their identities, contact information, total amount of capital contribution, etc.);
- c) records and documents obtained in the course of customer due diligence and files relating to every customer's account and business correspondence with the customer and any beneficial owner of the customer in accordance with section 20(1)(b) of Schedule 2 to the AMLO;
- d) documents and records of each transaction carried out by the limited partnership fund; and
- e) information on the controller of each partner in the limited partnership fund (for exchange of information purposes, as per the requirements of the OECD).

The financial statements of the limited partnership fund must be made available to all partners in the fund. While the above records will not be open for public inspection, they will be accessible by law enforcement officers as and when necessary.

¹³ See paragraph 17 of the Legislative Council Brief: https://www.legco.gov.hk/yr19-20/english/bills/brief/b202003201_brf.pdf and the Bill

¹⁴ See paragraph 18 of the Legislative Council Brief: https://www.legco.gov.hk/yr19-20/english/bills/brief/b202003201_brf.pdf and the Bill

The general partner must ensure that there are proper custody arrangements for the assets of the limited partnership fund.

The general partner must apply for a Business Registration Certificate for the limited partnership fund under the Business Registration Ordinance (Cap. 310 of Laws of Hong Kong) at the time of registration.

Contractual freedom among limited partners

The partners of a limited partnership fund will have freedom of contract in respect of the operation of the limited partnership fund. This covers admission and withdrawal of partners, organisation and governance of the limited partnership fund, investment scope and strategy of the limited partnership fund, the rights and obligations of partners, financial arrangements among the partners, custodial arrangement, etc.¹⁵

Safe harbour activities for limited partner(s)

A limited partner may conduct certain safe harbour activities, which will not be regarded as management of the limited partnership fund and will not therefore compromise its limited liability status in respect of the limited partnership fund.

Some examples of safe harbour activities include serving on a board/committee of the limited partnership fund, advising or approving the general partner/investment manager on the business, accounts, valuation or assets of the limited partnership fund, taking part in a decision about the admission/withdrawal of any partner, the term of the limited partnership fund, the appointment of the investment manager, and changing the investment scope of the limited partnership fund.¹⁶

Dissolution of a limited partnership fund

Partners of a limited partnership fund will have the right to agree in the limited partnership agreement the conditions and procedures for the voluntary dissolution of the fund.¹⁷

After the fund is dissolved, the general partner must file a notification with the Registrar of Companies within a specified time. A limited partnership fund may be dissolved by the Court on application by a partner or creditor of the fund if:

- a) the Court is of the opinion that a partner in the fund has done any act or made any omission calculated to affect prejudicially the carrying on of the business of the fund;
- b) a partner in the fund: (i) wilfully or persistently commits a breach of the limited partnership agreement of the fund; or (ii) otherwise so conducts themselves in matters relating to the business of the fund that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with that partner;
- c) the business of the fund can only be carried on at a loss;
- d) the Court is of the opinion that it is just and equitable that the fund be dissolved;
- e) the general partner in the fund is mentally incapacitated (as defined by section 2(1) of the Mental Health Ordinance (Cap. 136)); or
- f) the fund's general partner becomes in any other way permanently incapable of performing their part of the limited partnership agreement.¹⁸

In addition, a limited partnership fund may be wound up by the Court if a winding up petition is presented to the Court against the limited partnership fund under certain conditions. In this case, a limited partnership fund will be wound up by the Court as an unregistered company in accordance with the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32).¹⁹

Migration of funds established under the Limited Partnerships Ordinance (Cap. 37 of Laws of Hong Kong) to the Limited Partnership Fund Ordinance

There will be a streamlined channel for qualified fund(s) already registered under the Limited Partnerships Ordinance to migrate to the limited partnership fund regime. Migration will be effected by submitting the documents/information set out

¹⁸ Clause 71 of the Bill.

¹⁹ Clauses 74 and 75 of the Bill.

¹⁵ See paragraph 22 of the Legislative Council Brief: https://www.legco.gov.hk/yr19-20/english/bills/brief/b202003201_brf.pdf and clause 16 of the Bill

¹⁶ See paragraph 23 of the Legislative Council Brief: https://www.legco.gov.hk/yr19-20/english/bills/brief/b202003201_brf.pdf and Schedule 2 of the Bill

¹⁷ Clause 70 of the Bill

under “Registration requirements and procedures” above, and the fund will preserve identity and continuity.²⁰ The migration would not have any profits tax or stamp duty implications.²¹

Tax and stamp duty treatment

Like other funds operating in Hong Kong, a limited partnership fund meeting the definition of “fund” under section 20AM of the Inland Revenue Ordinance (Cap. 112 of Laws of Hong Kong) (IRO), and subject to certain exemption conditions set out in the IRO, will be exempt from profits tax on transactions in qualifying assets specified in Schedule 16C to the IRO and transactions incidental to the carrying on of qualifying transactions.²²

As regards stamp duty, it is intended that the arrangements that apply to limited partnerships will apply to limited partnership funds.²³ An interest in a limited partnership fund is not a share, stock, debenture, loan stock, fund, bond or note issued by the limited partnership fund, nor is it a unit under a unit trust scheme. It does not fall within the definition of “stock” under section 2 of the Stamp Duty Ordinance (Cap. 117 of Laws of Hong Kong).²⁴

Accordingly, an instrument under which an interest in a limited partnership fund is contributed/transferred/withdrawn is not chargeable to stamp duty. However, a limited partnership fund may accept capital contributions in cash or in kind as provided in its limited partnership agreement. In-kind capital contributions in relation to the transfer of dutiable assets (such as Hong Kong stock or immovable property) will be subject to stamp duty. The distribution of profits and assets of a limited partnership fund to the limited partner(s) will also be permitted in accordance with the terms of the limited partnership agreement. Transfer of dutiable assets by a limited partnership fund to a limited partner will be subject to stamp duty.²⁵

²⁰ See paragraph 26 of the Legislative Council Brief: https://www.legco.gov.hk/yr19-20/english/bills/brief/b202003201_brf.pdf

²¹ See paragraph 26 of the Legislative Council Brief: https://www.legco.gov.hk/yr19-20/english/bills/brief/b202003201_brf.pdf and See clause 81 of the Bill

²² See paragraph 32 of the Legislative Council Brief: https://www.legco.gov.hk/yr19-20/english/bills/brief/b202003201_brf.pdf

²³ See paragraph 33 of the Legislative Council Brief: https://www.legco.gov.hk/yr19-20/english/bills/brief/b202003201_brf.pdf

²⁴ See footnote 7 of the Legislative Council Brief: https://www.legco.gov.hk/yr19-20/english/bills/brief/b202003201_brf.pdf

²⁵ Ditto.

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