

Hong Kong's New Limited Partnership Fund Ordinance



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The Limited Partnership Fund Ordinance (Cap. 637) (the Ordinance) came into effect on 31 August 2020. The Ordinance established a new limited partnership fund (LPF) regime to enable private funds to be registered in the form of limited partnerships in Hong Kong. A LPF does not have a separate legal personality, unlike a company.

The LPF is focused primarily on all sorts of private funds. Its intention is to provide a cost-effective alternative to the offshore funds structure used in Hong Kong for many years.

Key benefits of LPF

Benefits of a Hong Kong LPF include:

- Enjoyment of the Unified Profits Tax Regime - a unified profits tax regime for funds domiciled offshore and in Hong Kong.
- Tax concession at 0% tax rate for fund managers.
- No public disclosure of the limited partnership agreement or details of the limited partners.

- Relatively low cost to set up and operate.
- No requirement to comply with economic substance rules compared to offshore funds.

Eligibility criteria

A fund is eligible to be registered as an LPF if it fulfils these criteria:

- (a) is constituted by a limited partnership agreement (LPA) and the arrangements in the agreement do not contravene the Ordinance or any other applicable law;
- (b) has one General Partner (GP) and at least one Limited Partner (LP);
- (c) has an office in Hong Kong to which notices may be sent;
- (d) is not set up for an unlawful purpose; and
- (e) not all the partners in the fund are corporations in the same group of companies.

Registration

The Hong Kong Companies Registry administers the limited partnership fund regime.

Application must be in a specific form submitted to the Registrar of Companies by a Hong Kong law firm on behalf of the proposed GP of the LPF. Fix Registration fee of HK\$3,034 is payable.

Upon successful registration, the Registrar will issue a "Certificate of Registration of Limited Partnership Fund". The certificate of registration is conclusive evidence that the fund is a limited partnership fund. Registration process will normally take about one week.

Within one month of registration, the GP must apply for a business registration certificate for the LPF from the Business Registration Office, Inland Revenue Department, under the Business Registration Ordinance.

NOTE: There is no need to disclose the LPA to the Companies Registry.

Main parties to the LPF

General Partner

The GP has ultimate responsibility for the management and control of the LPF, a duty to ensure that there are proper custody arrangements for the assets of the fund and unlimited liability for all the debts and obligations of the fund.

The GP must be one of the following:

- A natural person at least 18 years old.
- A Hong Kong private company limited by shares.
- A registered non-Hong Kong company.

- A Hong Kong registered limited partnership.
- A limited partnership fund.
- A non-Hong Kong limited partnership with a legal personality.
- A non-Hong Kong limited partnership without a legal personality.

Authorised Representative

If the GP is a limited partnership, the GP must appoint a person as the authorised representative (AR) of the LPF. The AR must be either:

- A natural person at least 18 years old.
- A Hong Kong private company limited by shares.
- A registered non-Hong Kong company.

The GP and the AR are jointly and severally liable for all the debts and obligations of the LPF. They also have ultimate responsibility for the management and control of the LPF.

Limited Partners

The LPs are the investors of the LPF. The LP can be a natural person or a corporation, a partnership of any kind, an unincorporated body or any other entity.

The LPs have the right to participate in the income and profits of the LPF, owe no fiduciary duty to anyone in the LPF and are only liable to the debts of the LPF up to each LP's agreed contribution.

The LPs must not take part in the management of the LPF. If they do, they will become jointly liable with the GP for the debts and obligations of the LPF.

However, safe harbour rules exist in the Ordinance so that LPs can have limited controls without being regarded as taking part in the management of the LPF.

Investment Manager

An investment manager (IM) must be appointed for the LPF.

The IM is responsible for carrying out the day-to-day investment management functions of the LPF. However, the scope of the "investment management functions" is not defined in the Ordinance.

Under the Securities and Futures Ordinance (SFO), if the LPF invests in securities, the activities are carried out in Hong Kong and the IM has the ultimate investment management decision, then the IM must be regulated as Type-9 by the Securities and Futures Commission.

Responsible Person

A responsible person (RP) must be appointed.

The RP is responsible for carrying out anti-money laundering checks as set out in the Anti-Money Laundering and Counter-Terrorist Financing Ordinance.

The RP must be one of the following:

- An authorised institution i.e. a bank.
- A corporation licensed by the SFC.
- A Hong Kong qualified accountant.
- A Hong Kong qualified lawyer.

The GP may also be the RP if it is able to meet these conditions.

Administrator/Custodian

There is no specific requirement to appoint a regulated administrator or custodian.

However, the GP has an obligation to maintain safe custody of the assets of the LPF. The GP can do this itself or outsource this function.

Auditor

The GP must appoint a Hong Kong CPA to be the auditor of the LPF. The auditor must be independent of the GP and the IM. The LPF must be audited annually.

On-going obligations

Set out below are the main on-going obligations of the LPF:

- Annual audit of the LPF.
- On-going filing obligations to file changes to particulars filed with the Companies Registry.
- File annual return within 42 days after each anniversary of the date of registration of the LPF.
- Maintain the following records must be kept in the registered office of the LPF (or such other place as notified to the Companies Registry):
 - (a) the audited financial statements;
 - (b) a register of partners;
 - (c) records and documents obtained pursuant to compliance with the Anti-Money Laundering and Counter-Terrorist Financing Ordinance;
 - (d) documents and records of each transaction carried out by the LPF; and
 - (e) the controller of each of the partners in the LPF.

Deregistration

To dissolve the LPF, the GP may file a specific deregistration form with the Companies Registry.

The Companies Registry will publish the notice of deregistration in the Gazette. If no objection is received within 3 months, the LPF will be deregistered.

To apply for deregistration, the following conditions must be fulfilled at the time of the application:

- (a) all the partners in the LPF agree to the deregistration;
- (b) the LPF has no outstanding liabilities;
- (c) the GP is not suing or being sued as a partner in the LPF in respect of the affairs of the LPF in any legal proceedings; and
- (d) the LPF's assets do not consist of any immovable property situate in Hong Kong.

Conclusion

The new Limited Partnership Funds Ordinance offers a limited partnership regime in Hong Kong that is comparable to offshore funds. Its relatively low cost of establishment, freedom of the parties to define the terms of the LPA and lack of the obligation to fulfil economic substance requirements in offshore places should make it a good choice for regional PE funds especially those in multi-family offices.

It should also be attractive to those who want a Hong Kong domiciled fund. Being closed to China is not a panacea but for those who wish to avoid the long arms of the US sanction laws, it is certainly worth considering.