New Hong Kong Limited Partnership Regime for Funds

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Why is a new regime needed?

The *Limited Partnership Fund Bill*, which introduces a tailor-made limited partnership regime for attracting investment funds to establish and operate in Hong Kong, passed its third reading in the Legislative Council.

Historically a fund could be established onshore in Hong Kong in the form of a unit trust or an open-ended fund company. While these fund structures are popular for public offer or hedge funds, it is more common for private funds such as private equity funds to be established in the form of a limited partnership.

The new Limited Partnership Fund (LPF) regime in Hong Kong will provide an option for private funds to be established onshore in Hong Kong and structured in limited partnership form. The LPF regime is aimed at attracting fund managers to establish and operate investment funds onshore in Hong Kong and is a crucial piece of the puzzle in developing Hong Kong into a full-fledged fund service centre.

01 What is LPF?

An arrangement meeting the definition of "fund" that is structured in a limited partnership form registered in Hong Kong

02 Who can use it?

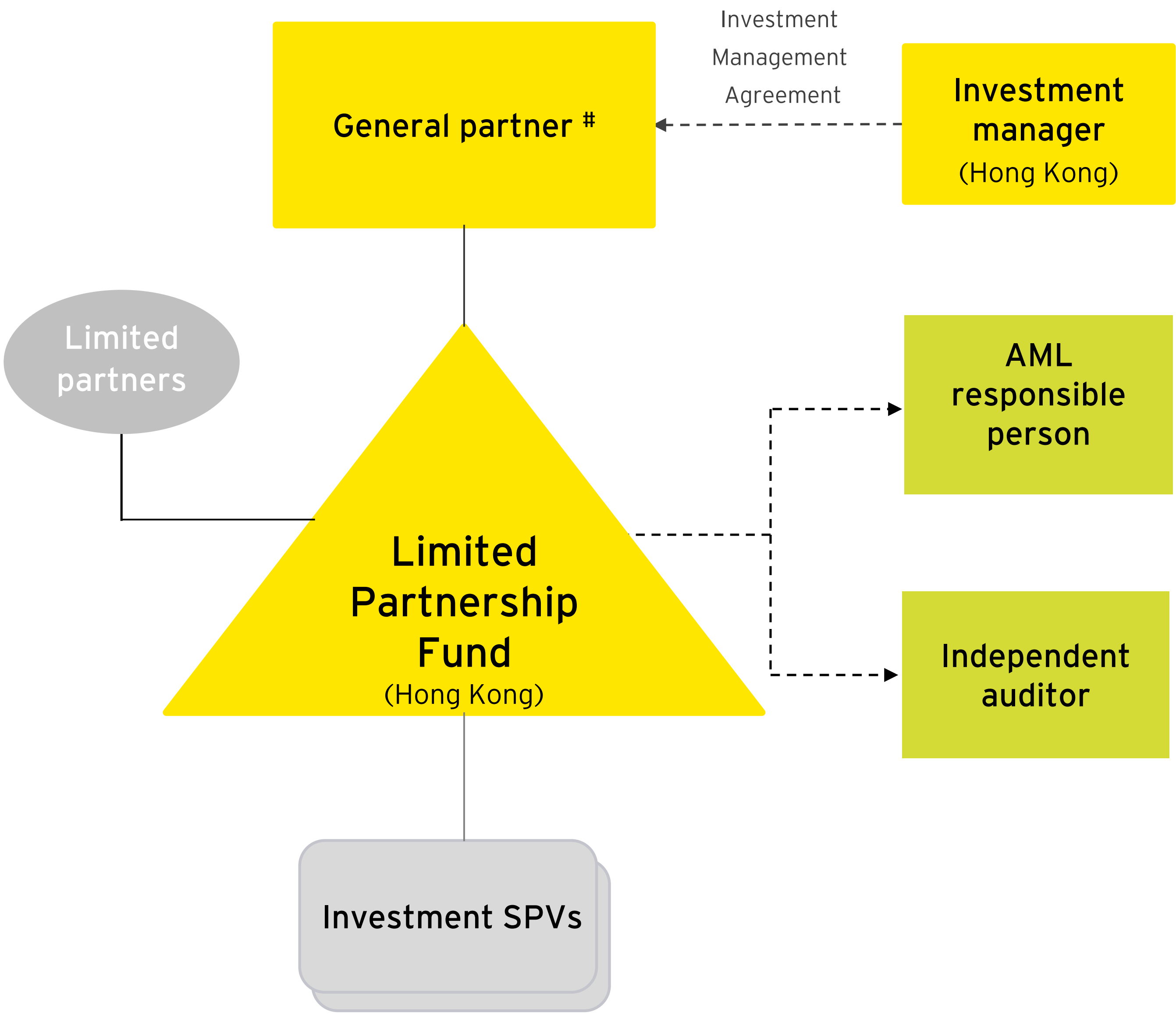
Largely, but not exclusively:

- Venture capital, private equity and buy-out funds
- Real estate funds
- Infrastructure and projects funds
- Special situations / hybrid funds
- Credit funds
- Funds that invest in digital assets, such as cryptocurrency and virtual assets

03 How will it be governed?

New legislation (Limited Partnership Fund Ordinance) has been passed in law

Streamlined fund structure using LPF



 # If the general partner of the LPF is (a) another LPF; or (b) a non-Hong Kong limited partnership without a legal personality, the general partner must appoint a person as the authorized representative of the LPF to be responsible for the management and control of the LPF. The authorized representative of the LPF should be (i) a Hong Kong resident who is at least 18 years old; (ii) a Hong Kong incorporated company; or (iii) a registered non-Hong Kong company. The authorized representative and the general partner in the LPF are jointly and severally liable for all the debts and obligations of the LPF. Also, both the authorized representative and the general partner in the LPF have ultimate responsibility for the management and control of the LPF.

What are the key features of the LPF regime?

Simple structure

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- Constituted by at least one general partner (GP) and one limited partner under a limited partnership agreement
- GP can be an individual, Hong Kong private limited company, registered non-Hong Kong company, registered LPF, limited partnership registered under the Limited Partnerships Ordinance (Cap. 37) (LPO) or foreign law

Not a legal person

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- No separate legal personality on par with major fund domiciliation centres (such as Cayman Islands)

Registration scheme

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- Apply to the Hong Kong Companies Registry for registration of the fund as a registered LPF
- Application must be submitted by a presentor (i.e. a registered Hong Kong law firm or a solicitor admitted to practice Hong Kong law)

Appointment of investment manager, auditor and responsible person

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- Must appoint an investment manager (who can be the general partner, being a Hong Kong resident individual over 18 years old or a corporation incorporated / registered in Hong Kong) to carry out day-to-day investment management functions
- Must appoint auditor to audit the financial statements
- Must appoint a responsible person to carry out the preventive anti-money laundering / counter-terrorist financing (AML/CTF) measures as stipulated under Schedule 2 to the AML/CTF Ordinance (Cap. 615)

Proper custody of assets

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- Must ensure proper custody arrangements for the assets of the fund

What are the benefits of the LPF regime?

Features on par with overseas fund domiciliation centres

- No restriction on investment scope
- Flexibility in capital contributions and distribution of profits
- Contractual freedom among partners
- Broad safe harbour activities for limited partners
- Straightforward deregistration and dissolution mechanism

Alignment of fund structure with place of management

- Aligns fund structures with the location where asset management activities take place enabling a streamlined fund structure
- Enhances substance of the fund for tax treaty relief
- May qualify as a Hong Kong tax resident and increased likelihood of obtaining Hong Kong tax residence certificate for Hong Kong SPVs

Investor protection

- Information about limited partners will be confidential and not available for public inspection
- Investors will be provided with clear protection under Hong Kong law

Nominal set up fee

- Nominal fee for registering a LPF with the Hong Kong Companies Registry
- 0.8% capital duty will not apply to contributions from limited partners

Tax and stamp duty treatment

- Hong Kong profits tax exemption under the Unified Funds Exemption regime provided certain conditions are met
- Interest in LPF is not a "stock" and no stamp duty will apply when an interest in LPF is contributed/ transferred/ withdrawn

Migration of funds registered under the LPO

- Streamlined channel for any funds already registered under the LPO

What's next?

- The Limited Partnership Fund Ordinance will come into operation on 31 August 2020.
- We warmly welcome the Government's initiative to establish the LPF regime in Hong Kong which will be beneficial to Hong Kong's development as a premier international asset and wealth management centre in the region.
- The Government has also announced in the 2020/21 Budget that a concessional tax arrangement regarding taxation of carried interest will be introduced starting from this year of assessment. It is expected that more details regarding the proposed tax concession, including the eligibility conditions and procedures, will be available in this July / August. This will for sure further increase the attractiveness of Hong Kong as a place for private equity funds to set up and operate.
- To allow broader usage of the LPF regime, the Government should consider providing other financial grants or subsidies to attract the use of LPF.
- The Government should also consider subsequently introducing provisions to permit the migration of existing offshore limited partnerships to Hong Kong.

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