

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 12 June 2020**

**Legal Service Division Report on
Limited Partnership Fund Bill**

I. SUMMARY

- 1. The Bill**

The purposes of the Bill are to provide for the registration of funds as limited partnership funds ("LPFs"); to provide for the operation, striking off, deregistration, dissolution and winding up of the registered funds; and to provide for incidental and related matters.
- 2. Public Consultation**

The Administration conducted a four-week industry consultation on their preliminary proposals in July to August 2019. There was general support for the introduction of an LPF regime in Hong Kong which was considered a very positive and significant move in entrenching Hong Kong's position as a premier asset and wealth management hub. The Administration has taken into account the industry's feedback in drafting the Bill.
- 3. Consultation with LegCo Panel**

The Panel on Financial Affairs was consulted on 2 December 2019 and members supported the introduction of the Bill into the Legislative Council.
- 4. Conclusion**

The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce a new LPF regime for funds in Hong Kong, Members may consider studying the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 10 June 2020. Members may refer to the Legislative Council ("LegCo") Brief (File Ref: ASST/3/1/8C (2020) Pt.6) issued by the Financial Services and the Treasury Bureau on 18 March 2020 for further details.

Object of the Bill

2. The purposes of the Bill are to provide for the registration of funds as limited partnership funds ("LPFs"); to provide for the operation, striking off, deregistration, dissolution and winding up of the registered funds; and to provide for incidental and related matters.

Background

3. According to paragraphs 4, 6 and 7 of the LegCo Brief, a fund may currently be established in Hong Kong in the form of a unit trust or an open-ended fund company. These fund structures are, however, more popular among public funds or hedge funds. Meanwhile, it is more common for private funds to be established in the form of a limited partnership. As announced in the 2018 Policy Address¹ and the 2018-2019 Budget,² the Administration would examine the feasibility of introducing a limited partnership regime specifically for funds in Hong Kong. The Bill is now introduced to provide for an LPF regime in Hong Kong with a view to attracting investment funds to establish and operate in Hong Kong.

Provisions of the Bill

4. The Bill contains 122 clauses (in 10 Parts) and three Schedules. The key provisions of the Bill are summarized in the ensuing paragraphs.

Eligibility and registration of limited partnership funds

5. Under clause 7 of the Bill, a fund (see paragraph 7 below for its definition) would be eligible to be registered as an LPF, which would not have a legal personality, if:

- (a) the fund is constituted by a written limited partnership agreement;
- (b) the fund has one general partner ("GP") and at least one limited partner;

¹ See paragraph 114 of the 2018 Policy Address.

² See paragraph 85 of the 2018-2019 Budget.

- (c) the GP is a natural person who is at least 18 years old, a private company limited by shares incorporated under the Companies Ordinance (Cap. 622), a limited partnership registered under the Limited Partnerships Ordinance (Cap. 37), etc;
- (d) every limited partner in the fund is a natural person, a corporation, a partnership, an unincorporated body or any other entity;
- (e) the fund satisfies certain naming requirements; and
- (f) the fund has an office in Hong Kong, etc.

6. The Registrar of Companies ("Registrar") may, on application, register a fund as an LPF only if the eligibility requirements as stated in paragraph 5 above are satisfied, the application in the specified form contains the information specified in Schedule 1 to the Bill, and the application criteria as stated in the Bill are satisfied, e.g. upon payment of the relevant fees specified in Schedule 3 to the Bill.

Meaning of "fund"

7. Under clause 3(1) of the Bill, an arrangement in respect of any property would be a fund if, subject to clause 3(2):

- (a) the property is managed as a whole by or on behalf of the persons operating the arrangement ("operating persons"), and/or the contributions of the persons participating in the arrangement ("participating persons"), and the relevant profits or income are pooled;
- (b) the participating persons do not have day-to-day control over the management of the property; and
- (c) the purpose or effect, or purported purpose or effect, of the arrangement is to enable one or more operating persons and participating persons to receive profits or income, etc.

Under clause 3(2), an arrangement would not be a fund if the arrangement is operated by a person otherwise than by way of business, etc.

General liability, management responsibility and duties of general partner

8. Under clause 19 of the Bill, GP would have unlimited liability for all the debts and obligations, and ultimate responsibility for the management and control, of the fund. It is proposed that GP's duties would include:

- (a) appointing an investment manager to carry out the day-to-day investment management functions, and an independent auditor;
- (b) ensuring that there are proper custody arrangements for the assets of the fund;
- (c) filing an annual return with the Registrar, and a notification of change if there is a change in relevant particulars relating to the fund, including the withdrawal or removal of GP; and
- (d) keeping relevant records relating to the fund, and making them available for inspection by an officer of the Companies Registry, etc.

Rights and liabilities of limited partner

9. Under clause 26 of the Bill, a limited partner in an LPF:

- (a) would have the right to participate in the income and profits arising from the management of the assets and transactions of the fund by GP;
- (b) would not have day-to-day management rights or control over the assets of the fund; and
- (c) would not be liable for the debts and obligations of the fund beyond the amount of the partner's agreed contribution.

10. However, if a limited partner takes part in the management of the fund, the limited partner and GP in the fund would be jointly and severally liable for all the debts and obligations of the fund incurred while the limited partner so takes part in the management. Under clause 27(1) of the Bill, a limited partner would not be regarded as taking part in the management of the fund only because the partner conducts an activity set out in Schedule 2 to the Bill, which includes serving on the board of directors of any corporation providing management, consultation, custody or other services to the fund. Moreover, the fact that a decision that affects or relates to an LPF involves an actual or potential conflict of interest would not be of itself a reason to regard a limited partner who takes part in the decision as taking part in the management of the fund.

Contractual freedoms among partners

11. Under clause 16, the partners in an LPF (i.e. GP and limited partner(s)) would have freedom of contract in respect of various matters relating to the operation of the fund, including the admission and withdrawal of partners, and the powers, rights and obligations of the partners, etc.

Registrar must establish and maintain relevant register and index

12. The Registrar must (a) establish and maintain (i) the LPF Register which keeps records of the information contained in all relevant documents and certificates in relation to each LPF, and (ii) the LPF Index which has the names of every LPF, and (b) make the Register and Index available for public inspection.

Striking off/deregistration and dissolution/winding up of limited partnership funds

13. Parts 5 and 6 of the Bill seek to provide for the striking off/deregistration and dissolution/winding up of LPFs respectively.

Migration of fund registered under the Limited Partnerships Ordinance (Cap. 37)

14. Under clause 79 of the Bill, a fund set up in the form of a limited partnership registered under the existing Cap. 37 would be eligible to be registered as an LPF if it meets the eligibility requirements in clause 7 as stated in paragraph 5 above.

Offences and defence

15. Part 8 of the Bill seeks to create related offences. For instance, under clause 83, it would be an offence to claim that an entity is an LPF, when it is not, for soliciting investors to a business carried on by the entity. A person who commits this offence would be liable on summary conviction to a fine at level 6 (i.e. \$100,000) and to imprisonment for six months, or on conviction on indictment to a fine of \$1,000,000 and to imprisonment for two years. Under clause 89, in any legal proceedings against a person for an offence under the Bill, it would be a defence to establish that the person took all reasonable steps to avoid committing the offence.

Appeal against Registrar's decisions or directions

16. The Bill seeks to provide for appeal against certain decisions or directions of the Registrar. Under clause 14, for example, a person aggrieved by the Registrar's decision to refuse an application for registration as an LPF may appeal to the Court of First Instance. Under clause 45, an appeal against the Registrar's direction to change the name of an LPF may be made to the Administrative Appeals Board.

The Financial Secretary may make regulations

17. Under clause 92, the Financial Secretary may make regulations for the better carrying out of the purposes of the Bill. Such regulations would be subsidiary legislation subject to the negative vetting procedure of LegCo.

Other related and consequential amendments

18. Part 10 of the Bill seeks to make related and consequential amendments to various existing Ordinances and subsidiary legislation.

Commencement

19. The Bill, if passed, would come into operation on 31 August 2020.

Public Consultation

20. According to paragraph 38 of the LegCo Brief, the Administration conducted a four-week industry consultation on their preliminary proposals in July to August 2019. There was general support for the introduction of an LPF regime in Hong Kong which was considered a very positive and significant move in entrenching Hong Kong's position as a premier asset and wealth management hub. The Administration has taken into account the industry's feedback in drafting the Bill.

Consultation with LegCo Panel

21. As advised by the Clerk to the Panel on Financial Affairs, the Administration briefed the Panel on 2 December 2019 on the proposal to establish an LPF regime to attract investment funds to set up and operate in Hong Kong. Members discussed various issues including benefits and implementation details of the proposed LPF regime, competitiveness of the proposed regime vis-à-vis similar regimes of other jurisdictions, and investor protection measures under the proposed regime.

Conclusion

22. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Since the Bill seeks to introduce a new LPF regime for funds in Hong Kong, Members may consider studying the Bill in detail.

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