

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1446/20-21  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/8/20

**Bills Committee on Limited Partnership Fund and  
Business Registration Legislation (Amendment) Bill 2021**

**Minutes of the second meeting on  
Tuesday, 24 August 2021, at 9:00 am  
in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon Christopher CHEUNG Wah-fung, SBS, JP (Chairman)  
Hon Starry LEE Wai-king, SBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Jimmy NG Wing-ka, BBS, JP  
Dr Hon Junius HO Kwan-yiu, JP  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai, JP

**Members absent** : Ir Dr Hon LO Wai-kwok, GBS, MH, JP  
Hon CHEUNG Kwok-kwan, JP

**Public Officers  
attending** : Agenda item II

Financial Services and the Treasury Bureau

Ms May CHAN, JP  
Deputy Secretary (Financial Services)1

Ms Estrella CHEUNG  
Principal Assistant Secretary (Financial Services)1

Inland Revenue Department

Mr Benjamin CHAN  
Deputy Commissioner (Tech) (Acting)

Mr KWOK Ying-wah  
Senior Assessor (Business Registration)

Hong Kong Monetary Authority

Mr Kenneth HUI  
Head (Market Development)

Companies Registry

Ms Fanny LAM  
Deputy Registry Manager (Public Search)

Department of Justice

Mr Henry CHAN  
Senior Assistant Law Draftsman

Miss Celia HO  
Senior Government Counsel (Acting)

**Clerk in attendance** : Mr Daniel SIN  
Chief Council Secretary (1)6

**Staff in attendance** : Miss Rachel DAI  
Assistant Legal Adviser 2

Ms Mandy LI  
Senior Council Secretary (1)6

Miss Judy YEE  
Council Secretary (1)6

Miss Yolanda CHEUK  
Legislative Assistant (1)6

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## Action

### **I. Confirmation of minutes of meeting**

(LC Paper No. CB(1)1180/20-21 -- Minutes of meeting held on 21 July 2021)

The minutes of the meeting held on 21 July 2021 were confirmed.

### **II. Meeting with the Administration**

LC Paper No. CB(3)731/20-21 — The Bill

File Ref.: ASST/3/1/10C(2020)Pt.1 — Legislative Council Brief

LC Paper No. LS87/20-21 — Legal Service Division Report

LC Paper No. CB(1)1217/20-21(01) (Restricted to members only) — Marked-up copy of the Bill prepared by the Legal Service Division

LC Paper No. CB(1)1217/20-21(02) — Paper on Limited Partnership Fund and Business Registration Legislation (Amendment) Bill 2021 prepared by the Legislative Council Secretariat (background brief)

LC Paper No. CB(1)1217/20-21(03) — Assistant Legal Adviser's letter dated 19 August 2021 to the Administration

2. The Bills Committee deliberated (index of proceedings attached at **Appendix**).

*[At 10:25 am, the Chairman ordered that the meeting be extended for 15 minutes to allow sufficient time for discussion. At 10:29 am, the Chairman ordered that the meeting be further extended for 15 minutes. Members agreed.]*

3. The Chairman concluded that the Bills Committee had completed the clause-by-clause examination of the Limited Partnership Fund and Business Registration Legislation (Amendment) Bill 2021 ("the Bill"). The Administration would advise on the proposed date for resumption of the Second Reading debate on the Bill in due course.

*(Post-meeting note: The Chairman of the Bills Committee reported the deliberations of the Bills Committee to the House Committee on 10 September 2021. The Second Reading debate on the Bill resumed at the Council meeting of 29 September 2021.)*

Follow-up action to be taken by the Administration

4. The Administration would provide a written response to the issues raised in the Assistant Legal Adviser's letter dated 19 August 2021 (LC Paper No. CB(1)1217/20-21(03)).

*(Post-meeting note: The Administration's reply was circulated to members on 27 August 2021, vide LC Paper No. CB(1)1265/20-21(01).)*

**III. Any other business**

5. There being no other business, the meeting ended at 10:53 am.

**Bills Committee on Limited Partnership Fund and  
Business Registration Legislation (Amendment) Bill 2021**

**Proceedings of the second meeting  
on Tuesday, 24 August 2021, at 9:00 am  
in Conference Room 3 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
<b>Agenda item I — Confirmation of minutes</b>			
001009 – 001144	Chairman	Opening remarks  Confirmation of minutes	
<b>Agenda item II — Meeting with the Administration</b>			
001145 – 001324	Chairman	The Chairman said that it was agreed at the last meeting that written views on the Limited Partnership Fund and Business Registration Legislation (Amendment) Bill 2021 ("the Bill") be invited by posting a notice on the website of the Legislative Council ("LegCo"). No submissions were received.	
001325 – 001754	Chairman Administration	Briefing by the Administration on the Bill	
001755 – 002650	Chairman Administration Assistant Legal Adviser 2 ("ALA2")	The Chairman said that ALA2 had raised a number of legal and drafting issues in her letter dated 19 August 2021 to the Administration (LC Paper No. CB(1)1217/20-21(03)).  The Administration responded that:  (a) the proposed general partner of a non-Hong Kong fund who applied for registering the fund as a limited partnership in Hong Kong, would be responsible for ensuring the truth of the information contained in the application. The Bill did not require the Hong Kong firm or the solicitor, who submitted the application on behalf of the proposed general partner, to verify the contents of the application and the statement referred to in the proposed section 82B(3)(c)(iii) of the Limited Partnership Fund Ordinance (Cap. 637);  (b) clause 10 of the Bill, which required a business registration certificate to be applied for non-Hong	

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		<p>Kong fund following its registration as a limited partnership in Hong Kong, would come into operation on 1 November 2021. Clause 29, which, in effect, would remove the foregoing requirement, would come into operation after 1 November 2021;</p> <p>(c) there were previous examples where certain provisions in a Bill would amend or repeal other provisions which were not yet in existence when the Bill was introduced, such as Schedule 8 to the Companies Bill (now enacted as the Companies Ordinance (Cap. 622)) and Division 11 of Part 15 of the Financial Institutions (Resolution) Bill (now enacted as the Financial Institutions (Resolution) Ordinance (Cap. 628)) ; and</p> <p>(d) the Administration considered that the current drafting style was a more direct and tidier approach than introducing a "sunset" provision to provide for the expiry of the proposed new section 82F(1) when Part 3 of the Bill came into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.</p> <p>The Administration advised that it would provide a written response to the issues raised in ALA2's letter.</p> <p><i>(Post-meeting note: The Administration's reply was circulated to members on 27 August 2021, vide LC Paper No. CB(1)1265/20-21(01).)</i></p>	
002651 – 003933	Chairman Mr Holden CHOW Administration	<p>Mr Holden CHOW noted that the proposed section 82E provided that a non-Hong Kong fund must be deregistered in its place of establishment within 60 days after the date of registration as a Limited Partnership Fund ("LPF") in Hong Kong. He asked:</p> <p>(a) how the period of 60 days was determined, and whether the relevant regulatory authorities in their places of establishment would hinder these funds from moving to Hong Kong;</p> <p>(b) for funds that were established and operating overseas, what the incentives were for them to move to Hong Kong; and</p>	

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		<p>(c) how many funds currently operating in Hong Kong but registered elsewhere would seek to move to Hong Kong under the proposed re-domiciliation mechanism if the Bill was passed.</p> <p>The Administration advised that:</p> <p>(a) the requirement of the Organisation for Economic Co-operation and Development ("OECD") had prompted an international trend that a fund to be registered and maintain its core business operations in the same place, and that many other jurisdictions had implemented similar re-domiciliation mechanisms to attract funds to be set up there. The Administration did not consider that other jurisdictions would likely create hurdles for a fund to deregister and seek re-domiciliation elsewhere;</p> <p>(b) reference had been drawn from various jurisdictions that had put in place similar re-domiciliation mechanisms when preparing the legislative proposal. The requirements and application procedure, including the proposed requirement for the in-coming fund to deregister in its place of establishment within 60 days of its registration as a LPF in Hong Kong, were similar to the re-domiciliation mechanisms in other jurisdictions, for example, the Cayman Islands. The Bill provided that on application by the general partner in the LPF, the Registrar of Companies ("the Registrar") might extend the 60-day period;</p> <p>(c) many funds were registered in other jurisdictions but were operating in Hong Kong. Given the international trend for compliance with OECD's requirements, the funds were expected to move "onshore" to where their substantial activities were conducted. They might find moving to Hong Kong a viable option as Hong Kong had a competitive environment, and the cost of operating in Hong Kong was comparatively lower. The Administration considered that the opportunity should be taken to introduce the proposed re-domiciliation regime to attract non-Hong Kong funds to re-locate to Hong Kong; and</p> <p>(d) estimates were not available as the funds in question were not registered in Hong Kong.</p>	

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		<p>Mr Holden CHOW commented that Hong Kong had a competitive edge for conducting off-shore Renminbi business. In addition to attracting foreign registered funds to re-domicile to Hong Kong, Mr CHOW suggested that the Administration should offer more incentives to encourage these funds to operate Renminbi-based asset management businesses.</p> <p>The Administration advised that in 2020-2021, more than 100 newly established funds in the Cayman Islands had recruited Hong Kong or Mainland fund managers. This indicated that many foreign registered funds were focusing their investment in the Asian markets and they would be the potential funds that would be re-domiciled to Hong Kong.</p>	
003934 – 004600	Chairman Administration	<p>The Chairman enquired about:</p> <ul style="list-style-type: none"> <li>(a) whether the fund had to pay taxes in both places during the 60-day period after a non-Hong Kong fund had been registered as a LPF under the proposed re-domiciliation regime and before the fund had been deregistered in its place of establishment;</li> <li>(b) whether an application for registration as a LPF in Hong Kong would be considered if it was made by a fund that was established in a jurisdiction subject to counter-sanctions under the Mainland's anti-sanctions legislative proposal; and</li> <li>(c) whether the Administration had made an updated estimate on the number of job opportunities that might be created after the Bill had come into effect, and whether the Administration would encourage the re-domiciled funds to make use of the professional services offered by small local firms so that a wider sector of the community could benefit from the proposed re-domiciliation regime.</li> </ul> <p>The Administration explained that:</p> <ul style="list-style-type: none"> <li>(a) whether the non-Hong Kong fund needed to pay tax in its place of establishment would depend on the corresponding tax regime. The non-Hong Kong fund would not be subject to Hong Kong's profit tax before it had become a tax resident of Hong Kong. Even when the fund had become a Hong Kong tax resident, it might benefit from the</li> </ul>	

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		<p>various tax concession and tax exemption measures that had been introduced in recent years in favour of funds;</p> <p>(b) further details on the implementation of the relevant law were awaited; and</p> <p>(c) the proposed re-domiciliation regime would help attract non-Hong Kong funds to set up and operate in Hong Kong. This could create new business opportunities for the asset and wealth management sector and generate demand for related professional services, including legal, accounting and fund administration services. According to an industry survey, around 2 500 job opportunities might be created if the competitiveness of Hong Kong as an onshore private equity hub was enhanced as a whole. The Administration was ready to play an active role to explain to the relevant sectors the new re-domiciliation regime and promote the use of local professional services by these in-coming funds.</p>	
<p><b>Clause-by-clause examination of the Bill</b>            [The Bill (LC Paper No. CB(3)731/20-21)]            [Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)1217/20-21(01))]</p>			
<p>004601 – 005512</p>	<p>Chairman Administration Mr Holden CHOW Mr Paul TSE</p>	<p><b>Part 1: Preliminary</b></p> <p><u>Clause 1 – Short title and commencement</u></p> <p><u>Clause 2 – Enactments amended</u></p> <p><b>Part 2: Amendments to Limited Partnership Fund Ordinance (Cap. 637) relating to Re-domiciliation of Funds Set up outside Hong Kong</b></p> <p><u>Clause 3 – Section 2 amended (interpretation)</u></p> <p><u>Clause 4 – Section 5 amended (references to general partner)</u></p> <p>Members raised no questions.</p> <p><u>Clause 5 – Section 7 amended (eligibility)</u></p> <p>Mr Holden CHOW's enquiry and the Administration's response on the eligibility of a fund to be registered as a LPF.</p>	

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		<p><u>Clause 6 – Section 14 amended (appeal against Registrar's decision to refuse registration)</u></p> <p>Members raised no questions.</p>	
005513 – 010154	Chairman Ms Starry LEE Administration	<p>Ms Starry LEE supported the Bill in principle but she observed that many funds were already operating in Hong Kong whether or not the proposed re-domiciliation regime was introduced. She queried the implications of not implementing the proposed re-domiciliation regime.</p> <p>The Administration reiterated that the requirement of OECD had prompted an international trend that a fund to be registered and maintain its core business operations in the same place. They might find moving to Hong Kong a viable option as Hong Kong had a competitive environment, and the cost of operating in Hong Kong was comparatively lower. The Administration therefore considered that the opportunity should be taken to introduce the proposed re-domiciliation regime to attract non-Hong Kong funds to re-locate to Hong Kong. The Administration also considered that the proposed measure would bring more jobs and business opportunities to the local fund and professional services industries and would be beneficial to the local economy as a whole.</p> <p>Ms LEE further asked whether it was reasonable to require funds to be registered and conduct their main operations in the same place, as many of the financial transactions were now carried out online. She said that a fund could practically operate anywhere.</p> <p>The Administration advised that the requirements were imposed by OECD and they were mainly on base erosion and profit shifting consideration. While a fund could carry out transactions across geographical boundaries, many LPFs had specific investment strategies and they chose to be headquartered in specific places to take advantage of the investment opportunities there. The Administration's objective in the current legislative amendment exercise was to attract funds that focused on investment in the region, such as in the Mainland, to be based in Hong Kong.</p>	

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010155 – 010259	Chairman Administration	<p>Continuation of the clause-by-clause examination of the Bill</p> <p><u>Clause 7 – Section 41 amended (Registrar to issue certificate of change of name)</u></p> <p><u>Clause 8 – Section 44 amended (Registrar may change limited partnership fund's name in case of failure to comply with direction)</u></p> <p><u>Clause 9 – Section 65 amended (Registrar may send inquiry letter to general partner)</u></p> <p><u>Clause 10 – Part 7A added</u></p> <p><i>Part 7A: Re-domiciliation of Fund Set up in Form of Non-Hong Kong Limited Partnership</i></p> <p><i>Section 82A. Interpretation of Part 7A</i></p> <p>Members raised no questions.</p>	
010300 – 010639	Chairman Mr Holden CHOW Administration	<p><i>Section 82B. Application for registration of non-Hong Kong fund as limited partnership fund</i></p> <p>Mr Holden CHOW asked how a fund's operations would be affected if it had been registered as a LPF by the Registrar but failed to be deregistered in its place of establishment within 60 days after the registration date.</p> <p>The Administration said that the Bill provided that on application by the general partner in a LPF, the Registrar may extend the 60-day period. If, at any time during the period, the non-Hong Kong fund in question did not wish to be de-registered from its place of establishment, the Registrar could strike the name of the fund off the LPF Register. The fund's operations during the 60-day period would not be affected.</p>	
010640 – 010846	Chairman Administration	<p><i>Section 82C. Registration of non-Hong Kong fund as limited partnership fund</i></p> <p><i>Section 82D. Effect of registration of non-Hong Kong fund as limited partnership fund</i></p> <p><i>Section 82E. Deregistration in place of establishment</i></p> <p>Members raised no questions.</p>	

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010847 – 011411	Chairman Mr Paul TSE ALA2 Administration	<p><i>Section 82F. Business registration</i></p> <p>Discussion on the drafting approach with respect to clause 10 and clause 29</p>	
011412 – 011902	Chairman Administration	<p><u>Clause 11 – Section 95 amended (Registrar not responsible for verifying information)</u></p> <p><u>Clause 12 – Schedule 1 amended (information required in application for registration as limited partnership fund)</u></p> <p><u>Clause 13 – Schedule 3 amended (fees)</u></p> <p><b>Part 3: Amendments relating to Simultaneous Business Registration Applications of Limited Partnership Funds</b></p> <p><b>Division 1—Amendments to Business Registration Ordinance (Cap. 310)</b></p> <p><u>Clause 14 – Section 2 amended (interpretation and application)</u></p> <p><u>Clause 15 – Section 4 amended (official secrecy)</u></p> <p><u>Clause 16 – Section 5BA added</u></p> <p><i>Section 5BA. Simultaneous business registration applications of limited partnership funds</i></p> <p><u>Clause 17 – Section 5C amended (Registrar to perform certain functions in relation to simultaneous business registration applications)</u></p> <p><u>Clause 18 – Section 5D amended (notices in specified form)</u></p> <p><u>Clause 19 – Section 7A amended (refund of prescribed business registration fees, prescribed branch registration fees or levies)</u></p> <p><u>Clause 20 – Section 8 amended (information to be furnished)</u></p> <p><u>Clause 21 – Section 15 amended (offences)</u></p> <p><u>Clause 22 – Section 16 amended (exemptions)</u></p>	

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		<p><u>Clause 23 – Schedule 1 amended</u></p> <p><u>Clause 24 – Schedule 2 amended</u></p> <p><b>Division 2—Amendments to Business Registration Regulations (Cap. 310 sub. leg. A)</b></p> <p><u>Clause 25 – Regulation 3A amended (business particulars in relation to simultaneous business registration applications)</u></p> <p><u>Clause 26 – Regulation 4 amended (the register)</u></p> <p><b>Division 3—Amendments to Limited Partnership Fund Ordinance (Cap. 637)</b></p> <p><u>Clause 27 – Section 5 amended (references to general partner)</u></p> <p><u>Clause 28 – Section 82 amended (business registration)</u></p> <p><u>Clause 29 – Section 82F amended (business registration)</u></p> <p>Members raised no questions.</p>	
011903 – 012524	Chairman Dr Junius HO Administration	<p>Dr Junius HO expressed concern that, if the Bill did not require the information submitted by the applicant to be verified, investors might not be afforded sufficient protection, particularly when Hong Kong's regulatory authorities might not have the information as to the financial background of the non-Hong Kong funds seeking to be registered as LPFs in Hong Kong.</p> <p>The Administration explained that the legal requirements for registration of a non-Hong Kong fund as a LPF in Hong Kong were substantially the same as those applicable to the setting up of a new LPF in Hong Kong. Most of the non-Hong Kong funds seeking re-domiciliation to Hong Kong as LPFs were likely to be private equity funds that were not sold to the public but only to professional investors. Once these funds sought to accept public investment and operate as a public fund, they must first obtain the authorization of the Securities and Futures Commission ("SFC") and be subject to the regulation by SFC. The proposed re-domiciliation regime as implemented through the Bill would ensure the continuity of the funds' operation and</p>	

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		<p>the proposed arrangement should be able to strike a balance between attracting non-Hong Kong funds to re-domicile to Hong Kong and protecting the interests of investors in Hong Kong.</p>	
<p>012525 – 013357</p>	<p>Chairman Mr Paul TSE Administration</p>	<p>Mr Paul TSE noted that other types of non-Hong Kong private funds might be able to be registered and operate in Hong Kong as LPFs through the proposed re-domiciliation mechanism and were not subject to the regulatory control of SFC. He expressed concern whether the Administration was forgoing too many regulatory safeguards just for the purpose of attracting more non-Hong Kong funds to move to Hong Kong. Mr TSE also queried whether the benefits gained from the proposed re-domiciliation regime would justify the forfeiture of regulatory control on the non-Hong Kong funds.</p> <p>The Administration considered it beneficial to Hong Kong's economy to attract these funds to be based in Hong Kong. Having more non-Hong Kong funds to move to Hong Kong would provide more job and business opportunities, promote the development of the local fund industry and provide additional funding avenues for local start-up companies. Separately, a LPF was subject to a set of regulatory requirements, which included filing an annual return to the Registrar, appointing an auditor to audit its financial account, maintaining proper record of its transactions for inspection by the regulatory authorities when necessary, etc.</p>	
<p>013358 – 014239</p>	<p>Chairman Dr Junius HO Administration</p>	<p>Dr Junius HO expressed support for the Bill but was concerned about the regulatory control of non-Hong Kong fund seeking to be registered as a LPF in Hong Kong.</p> <p>The Administration responded that many funds tended to align the destination of their portfolio management and back office operations and registration to meet the requirements of OECD. In fact, most of the non-Hong Kong funds seeking re-domiciliation to Hong Kong as LPFs were likely to be private equity funds that were not sold to the public but only to professional investors. As many overseas fund domiciles had introduced similar re-domiciliation mechanisms, the Administration considered that Hong Kong should not adopt a more stringent regime than the other competing markets.</p>	

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014240 – 015135	Chairman Mr Holden CHOW Mr Paul TSE Administration	<p>Mr Holden CHOW and Mr Paul TSE queried whether agreements or contracts entered into by the non-Hong Kong fund would have effects in Hong Kong after it had been registered as a LPF under the amended Cap. 637 in cases where there were conflicts between the law of its place of establishment and Hong Kong law applicable to such agreements or contracts.</p> <p>The Administration explained that, while the re-domiciliation would not operate to affect any contract to which the non-Hong Kong fund was a party, the fund would become subject to Hong Kong law governing a LPF when it was registered in Hong Kong as a LPF. Any disputes arising from the enforcement of contracts or agreements made before its registration, where they involved terms that were considered to be contrary to Hong Kong law, might have to be settled by the relevant court.</p> <p>Mr Paul TSE commented that the Administration should have thoroughly evaluated the risks and implications of registering non-Hong Kong funds as LPFs in Hong Kong and prescribe necessary policy measures to deal with possible problems that might arise rather than leaving it to the court to deal with any unforeseen issues.</p> <p>The Administration replied that non-Hong Kong funds should assess any legal and compliance risks when they decided whether to move to Hong Kong. It was difficult for the Administration to prescribe measures to deal with every possible circumstance. Besides, many of the non-Hong Kong funds planning to be registered as LPFs in Hong Kong had already been operating in Hong Kong for some time. They should be aware of the Hong Kong legal practices and requirements.</p>	
015136 – 015602	Chairman Dr Junius HO Administration	<p>Dr Junius HO pointed out that the Administration should take precautions against non-Hong Kong funds which had carried out forgery or dubious transactions overseas before they were registered as a LPF in Hong Kong. If investors had incurred losses due to fraudulent practices of such a non-Hong Kong fund, the Administration might be criticized for negligence in regulatory supervision. There might also be demand for introducing compensatory measures to safeguard investor interests.</p> <p>The Administration took note of Dr HOs' concerns, and said that it would exercise vigilance to ensure the</p>	

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		smooth implementation of the proposed regime.	
015603 – 015639	Chairman ALA2	The Bills Committee completed the clause-by-clause examination of the Bill.  ALA2 would study the written response to her letter dated 19 August 2021 when it was made available by the Administration, and further report to the Bills Committee on any issues identified if necessary.	
<b>Agenda item III — Any other business</b>			
015640 – 015738	Chairman Administration	Concluding remarks	

Council Business Division 1  
Legislative Council Secretariat  
25 October 2021