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

Purpose

This paper reports on the deliberations of the Bills Committee on Limited Partnership Fund and Business Registration Legislation (Amendment) Bill 2021 ("the Bills Committee").

Background

2. At present, an investment fund may be established in Hong Kong in the form of a limited partnership. However, there is no statutory mechanism to facilitate foreign funds set up in the form of limited partnerships to re-domicile to Hong Kong. In line with the Administration's on-going efforts to encourage fund formation and operation in Hong Kong and to develop Hong Kong into a preferred fund domicile, the Administration proposes to create a fund re-domiciliation mechanism for non-Hong Kong funds set up in the form of limited partnerships to re-locate to Hong Kong. In July 2019, the Administration conducted an industry consultation on introducing a limited partnership fund ("LPF") regime. The industry supported the introduction of a re-domiciliation mechanism for LPFs.

**The Limited Partnership Fund and Business Registration Legislation
(Amendment) Bill 2021**

3. The Administration introduced the Bill to the Legislative Council ("LegCo") at its meeting of 7 July 2021. The Bill seeks to:

- (a) amend the Limited Partnership Fund Ordinance (Cap. 637) to

introduce a mechanism for the re-domiciliation of funds set up outside Hong Kong in the form of limited partnerships so as to become LPFs under Cap. 637;

- (b) amend the Business Registration Ordinance (Cap. 310) and the Business Registration Regulations (Cap. 310A) to provide for simultaneous business registration ("BR") applications on registration of LPFs; and
- (c) provide for related matters.

4. Details of the major provisions of the Bill are set out in paragraph 20 of the relevant LegCo Brief (File Ref: ASST/3/1/10C(2020)Pt.1 dated 29 June 2021), and paragraphs 5 to 12 of the Legal Service Division Report on the Bill (LC Paper No. LS87/20-21).

Commencement

5. The Bill, if passed, would come into operation on 1 November 2021 save and except that Part 3 (relating to simultaneous BR applications of LPFs) would come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

The Bills Committee

6. At the House Committee meeting held on 9 July 2021, Members agreed to form a Bills Committee to scrutinize the Bill. Hon Christopher CHEUNG Wah-fung was elected Chairman of the Bills Committee. The membership list of the Bills Committee is in the **Appendix**.

7. The Bills Committee has held one meeting with the Administration and invited written views from the public. No written submissions have been received.

Deliberations of the Bills Committee

8. Members of the Bills Committee generally support the Bill on account of the objectives it seeks to achieve. The major issues and concerns raised by members during the scrutiny of the Bill are summarized in the ensuing paragraphs.

Justifications for and benefits of introducing the re-domiciliation mechanism

9. Members have queried, for funds that are established and operating overseas, what the incentives are for them to move to Hong Kong. Some members observe that many funds are already operating in Hong Kong whether or not the proposed re-domiciliation regime is introduced. They have queried the implications of not implementing the proposed re-domiciliation regime.

10. The Administration explains that there are, in fact, many funds that are registered in other jurisdictions but are operating in Hong Kong. Given the international trend or for compliance with the Organisation for Economic Co-operation and Development ("OECD")'s requirements, the funds are expected to move "onshore" to where their substantial activities are conducted. They may find moving to Hong Kong a viable option as Hong Kong has a competitive environment, and the cost of operating in Hong Kong is comparatively lower. The Administration therefore considers 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 considers 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.

11. Members have asked if the Administration has assessed 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 is passed. The Administration responds that estimates are not available as the funds in question are not registered in Hong Kong. However, the Administration is aware that in 2020-2021, more than 100 newly established funds in Cayman Islands have recruited Hong Kong or Mainland fund managers. This indicates that many overseas registered funds are focusing their investment in the Asian markets and they would be the potential funds that will be re-domiciled to Hong Kong.

12. Members have asked if the Administration has made an updated estimate on the number of job opportunities that may be created after the Bill has come into effect. They have also asked if 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 can benefit from the proposed re-domiciliation regime. The Administration responds that the proposed re-domiciliation regime would help attract non-Hong Kong funds to set up and operate in Hong Kong. This can 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. The

Administration remarks that according to an industry survey, around 2 500 job opportunities may be created if the competitiveness of Hong Kong as an onshore private equity hub is enhanced as a whole. The Administration is 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.

13. Some members have queried whether it is reasonable to require funds to be registered and conduct their main operations in the same place, as many of the financial transactions are now carried out online. A fund can practically operate anywhere. The Administration advises that the requirements are imposed by OECD and they are mainly on base erosion and profit shifting consideration. While a fund can carry out transactions across geographical boundaries, many LPFs have specific investment strategies and they choose to be headquartered in specific places to take advantage of the investment opportunities there. The Administration's objective in the current legislative amendment exercise is to attract funds that focus on investment in the region, such as in the Mainland, to be based in Hong Kong.

14. Members have commented that Hong Kong has a competitive edge for conducting off-shore Renminbi business. In addition to attracting overseas registered funds to re-domicile to Hong Kong, the Administration should offer more incentives to encourage these funds to operate Renminbi-based asset management businesses.

15. Members also asked whether an application for registration as a LPF in Hong Kong would be considered if it is made by a fund that is established in a jurisdiction subject to counter-sanctions under the Mainland's new anti-sanctions law. The Administration responded that further details on the implementation of the relevant law are awaited.

Regulatory control of non-Hong Kong fund seeking to be registered as limited partnership fund in Hong Kong

Verification of information in the application for the registration of a non-Hong Kong fund as a LPF

16. The proposed section 82B(3)(c)(iii) of Cap. 637 (Clause 10 of the Bill) provides that an application for the registration of a non-Hong Kong fund as a LPF must contain a statement. The contents of the statement are prescribed in the proposed section 82B(4). By the proposed section 82B(3)(d), the application must be submitted by a Hong Kong firm or a solicitor on behalf of the general partner in the non-Hong Kong fund who is named in the application as the person proposed to be the general partner in the LPF ("proposed general partner").

17. The Legal Adviser has sought clarification from the Administration on the party that would be responsible for making the statement and the role of the Hong Kong firm or the solicitor in the application for the registration of a non-Hong Kong fund as a LPF.

18. The Administration explains that the proposed general partner would be responsible for ensuring the correctness of the information contained in the statement. The requirement under the proposed section 82B(3)(d) which provides that the application must be submitted on behalf of the proposed general partner by a Hong Kong firm or a solicitor, is in line with the existing section 11(2) of Cap. 637 applicable to the setting up of a LPF in Hong Kong. The Bill does not require the Hong Kong firm or the solicitor to verify the contents of the application and the statement referred to in the proposed section 82B(3)(c)(iii) of Cap. 637. Section 95(1) of Cap. 637 (as amended by clause 11 of the Bill) provides that the applicant, i.e. the proposed general partner, must ensure the truth of the information contained in the application.

19. Members have expressed concern that, if the Bill does not require the information submitted by the applicant to be verified, investors may not be afforded sufficient protection, particularly when Hong Kong's regulatory authorities may not have information as to the financial background of the non-Hong Kong funds seeking to be registered as LPFs in Hong Kong.

20. The Administration explains that the legal requirements for registration of a non-Hong Kong fund as a LPF in Hong Kong are substantially the same as those applicable to the setting up of a LPF in Hong Kong. A LPF is subject to a set of regulatory requirements, which include filing an annual return to the Registrar of Companies ("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. Most of the non-Hong Kong funds seeking re-domiciliation to Hong Kong as LPFs are likely to be private equity funds that are not sold to the public but only to professional investors. Once these funds seek 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 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.

Treatment of non-Hong Kong funds accepting public investment in other jurisdiction(s)

21. Members note that other types of non-Hong Kong private funds may be able to be registered and operate in Hong Kong as LPFs through the proposed re-domiciliation mechanism and are not subject to the regulatory control of SFC. Members have expressed concerns whether the Administration is forgoing too many regulatory safeguards just for the purpose of attracting more non-Hong Kong funds to move to Hong Kong. They have also queried whether the benefits gained from the proposed re-domiciliation regime justify the forfeiture of regulatory control on the non-Hong Kong funds.

22. The Administration explains that many funds tend to align the destination of their portfolio management and back office operations and registration to meet the requirements of OECD. The Administration considers 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. Many overseas fund domiciles have introduced similar re-domiciliation mechanisms, and the Administration considers that Hong Kong should not adopt a more stringent regime than the other competing markets.

Effects of registration of non-Hong Kong funds as limited partnership funds

23. The proposed section 82D(2) provides that the registration of a non-Hong Kong fund as a LPF does not operate to create a new legal entity or prejudice or affect the continuity of the non-Hong Kong fund as a partnership established in its place of establishment. It would not affect any contract made, resolution passed, right, privilege, obligation or liability acquired, accrued or incurred by, to or on behalf of the non-Hong Kong fund, and would not render defective any legal proceedings commenced or continued by, on behalf of or against the non-Hong Kong fund.

24. Members have queried whether agreements or contracts made by the non-Hong Kong fund would be allowed to have effect in Hong Kong after it has been registered as a LPF under the amended Cap. 637, if some of the terms of the agreements or contracts contravene Hong Kong law.

25. The Administration explains that, while the re-domiciliation will not operate to affect any contract to which the non-Hong Kong fund is a party, the fund will become subject to Hong Kong law governing a LPF when it is registered in Hong Kong as a LFP. Any disputes arising from the enforcement of contracts

or agreements made before its registration, where they involve terms that are considered to be contrary to Hong Kong law, may have to be settled by the relevant court.

26. Members have expressed concerns 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 may arise rather than leaving it to the court to deal with any unforeseen issues. Some members have pointed out that the Administration should take precautions against non-Hong Kong funds which have carried out forgery or dubious transactions overseas before they are registered as a LPF in Hong Kong. If investors have incurred losses due to fraudulent practices of such a non-Hong Kong fund, the Administration may be criticized for negligence in regulatory supervision. There may also be demand for introducing compensatory measures to safeguard investor interests.

27. The Administration responds that non-Hong Kong funds should assess any legal and compliance risks when they decide whether to move to Hong Kong. It is difficult for the Administration to prescribe measures to deal with every possible circumstance. Many of the non-Hong Kong funds planning to be registered as LPFs in Hong Kong have already been operating in Hong Kong for some time. They should be aware of the Hong Kong legal practices and requirements. The Administration notes members' concerns and would exercise vigilance to ensure the smooth implementation of the proposed regime.

Deregistration of the non-Hong Kong fund in place of establishment

28. The proposed section 82E provides that a non-Hong Kong fund must be deregistered in its place of establishment within 60 days after the date of registration as a LPF in Hong Kong. The proposed section 82B(4)(d) provides that the general partner should acknowledge that the Registrar may strike the name of the LPF off the LPF Register if the non-Hong Kong fund is not so deregistered.

29. Members have queried how the period of 60 days is determined. A member has asked if the non-Hong Kong funds may experience hurdles created by the relevant regulatory authorities in their places of establishment when they seek to move to Hong Kong. The Administration explains that reference has been drawn from various jurisdictions that have 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, are similar to the re-domiciliation

mechanisms in other jurisdictions. The Administration considers the proposed arrangement practicable.

30. It is noted that the requirement of OECD has 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 have implemented similar re-domiciliation mechanisms to attract funds to be set up there. The Administration does not consider that other jurisdictions would likely create hurdles for a fund to deregister and seek re-domiciliation to elsewhere.

31. Some members have asked, during the 60-day period after a non-Hong Kong fund has been registered as a LPF under the proposed re-domiciliation regime and before the fund has been deregistered in its place of establishment, whether the fund has to pay taxes in both places. The Administration explains that whether the non-Hong Kong fund needs to pay tax in its place of establishment depends on the corresponding tax regime. The non-Hong Kong fund would not be subject to Hong Kong's profit tax before it has become a tax resident of Hong Kong. Even when the fund has become a Hong Kong tax resident, it may benefit from the various tax concession and tax exemption measures that have been introduced in recent years in favour of funds.

32. A member has asked what the status of a fund is and how its operations would be affected if it has been registered as a LPF by the Registrar but fails to be deregistered in its place of establishment within 60 days after the registration date. The Administration advises that the Bill provides that on application by the general partner in the LPF, the Registrar may extend the 60-day period. If, at any time during the period, the non-Hong Kong fund in question does not wish to be de-registered from its place of establishment, the Registrar can strike the name of the fund off the LPF Register. The fund's operations during the 60-day period would not be affected.

Drafting approach with respect to clause 10 and clause 29 – Need for a non-Hong Kong fund to apply for a business registration certificate

33. Clause 10 of the Bill seeks to add, among others, the proposed section 82F of Cap. 637 to provide for the circumstances under which the general partner in the non-Hong Kong fund must apply for a business registration certificate or notify the Commissioner of Inland Revenue of the registration of the LPF. However, clause 29 of the Bill seeks to repeal the proposed new section 82F(1). The Legal Adviser has sought clarification from the Administration on the legal basis for repealing a proposed provision that is subject to the scrutiny by LegCo and has yet to be enacted.

34. The Administration explains that under clause 1(2) of the Bill, clause 10, which adds the proposed section 82F of Cap. 637, will come into operation on 1 November 2021. Under clause 1(3), Part 3 of the Bill, which contains clause 29, will come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette, which in practice would be a date after 1 November 2021. Clause 29 seeks to repeal the proposed section 82F(1) of Cap. 637 because that section will no longer be applicable after the arrangement for simultaneous business registration applications of LPFs is implemented. If the Bill is passed by LegCo, section 82F(1) of Cap. 637 will be in existence when clause 29 takes effect to repeal that section.

35. The Administration further explains that there are previous examples of clauses in Bills seeking to amend or repeal other provisions that are not yet in existence when the Bill is introduced (but will be in existence when the amendment or repeal takes effect). For instance, 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)) each contains amendments to other provisions in the Bill itself.

36. The Legal Adviser has asked whether it would be more appropriate to add a "sunset" provision to provide for the expiry of the proposed section 82F(1) of Cap. 637 when Part 3 of the Bill comes into operation if the Administration's intention is that the proposed section 82F(1) of Cap. 637 would cease to be in force when Part 3 of the Bill comes into operation.

37. The Administration considers that the repeal approach in clause 29 (which is contained in Part 3 of the Bill together with other amendments necessary for implementing simultaneous business registration applications of LPFs) is a more direct and tidy approach in this case.

Proposed amendments to the Bill

38. The Bills Committee has completed scrutiny of the Bill. Neither the Bills Committee nor the Administration intends to propose amendments to the Bill.

Resumption of the Second Reading debate on the Bill

39. The Bills Committee supports the resumption of the Second Reading debate on the Bill at the Council meeting of 29 September 2021.

Consultation with the House Committee

40. The Bills Committee reported its deliberations to the House Committee on 10 September 2021.

Council Business Division 1
Legislative Council Secretariat
21 September 2021

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

Membership List

Chairman Hon Christopher CHEUNG Wah-fung, SBS, JP

Members Hon Starry LEE Wai-king, SBS, JP
Hon Paul TSE Wai-chun, JP
Ir Dr Hon LO Wai-kwok, GBS, MH, 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
Hon CHEUNG Kwok-kwan, JP

(Total : 9 members)

Clerk Mr Daniel SIN

Legal Adviser Miss Rachel DAI

* Change in membership is shown in **Annex to Appendix**.

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

Changes in membership

Member	Relevant date
Hon Wilson OR Chong-shing, MH	Up to 22 August 2021