

II. REPORT

The date of First Reading of the Bill is 7 July 2021. Members may refer to the Legislative Council ("LegCo") Brief (File Reference: ASST/3/1/10C(2020)Pt.1) issued by the Financial Services Branch of the Financial Services and the Treasury Bureau ("FSTB") on 29 June 2021 for further details.

Object of the Bill

2. 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 limited partnership funds ("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 applications on registration of LPFs; and
 - (c) provide for related matters.

Background

3. Under the current LPF regime established under Cap. 637¹, an investment fund may be established in Hong Kong in the form of a limited partnership. However, there is no statutory mechanism to facilitate overseas funds set up in the form of limited partnerships to re-domicile to Hong Kong.

4. According to paragraphs 4 and 5 of the LegCo Brief, the industry has been calling for an early introduction of a fund re-domiciliation mechanism for attracting existing non-Hong Kong funds to be established and operate in Hong Kong. A task force led by FSTB, comprising members from the Hong Kong Monetary Authority, the Securities and Futures Commission and the Inland Revenue Department, has come up with the legislative proposals on re-domiciliation under the LPF regime with the objective of creating a fund re-domiciliation mechanism for non-Hong Kong funds set up in the form of limited partnerships to re-locate to Hong Kong.

Provisions of the Bill

5. The Bill contains 29 clauses (in three parts). The key provisions of the Bill are summarized in the ensuing paragraphs.

¹ Cap. 637 came into operation on 31 August 2020.

Proposed amendments to Cap. 637 (Part 2 of the Bill)

Re-domiciliation of funds set up outside Hong Kong

6. Clause 10 of the Bill seeks to add a new Part 7A (containing the proposed new sections 82A to 82F) to Cap. 637 to establish a re-domiciliation mechanism for a non-Hong Kong fund set up in the form of a limited partnership to be registered in Hong Kong as an LPF:

- (a) on an application made to the Registrar of Companies ("the Registrar") by a 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, the Registrar may register the fund as an LPF if the eligibility requirements in section 7 of Cap. 637 and the formality requirements in the proposed new section 82B(3)² are met, and issue a certificate of registration to the fund (proposed new sections 82B and 82C);
- (b) with effect from the registration date specified on the certificate of registration ("registration date"), the original partnership would continue in existence as an LPF, and would be taken to be an LPF to which Cap. 637 would apply (proposed new section 82D(1));
- (c) under the proposed new section 82D(2), the registration of a non-Hong Kong fund as an LPF would not:
 - (i) create a new legal identity or prejudice or affect the continuity of the non-Hong Kong fund as a partnership established in its place of establishment;
 - (ii) affect any contract made, resolution passed or any other thing done by or in relation to the non-Hong Kong fund;
 - (iii) affect any function, property, right, privilege, obligation or liability acquired, accrued or incurred by, to or on behalf of the non-Hong Kong fund; or
 - (iv) render defective any legal proceedings commenced or continued by, on behalf of or against the non-Hong Kong fund;
- (d) with effect from the registration date, all property of the original partnership would become the property of the LPF and, for tax purposes,

² Under the proposed new section 82B(3), the application must be in the specified form, contain the specified information, be delivered in the specified manner and submitted on behalf of the proposed general partner by a Hong Kong firm of solicitors or a solicitor, and be accompanied by specified fees payable for application and registration.

the registration of a non-Hong Kong fund as an LPF would not amount to a transfer of assets of the fund or a change in the beneficial ownership of the assets of the fund, such that no stamp duty implications would arise (proposed new section 82D(4));

- (e) the non-Hong Kong fund would have to be deregistered in its place of establishment within 60 days after the registration date (proposed new section 82E); and
- (f) within one month after the registration date, the general partner in the LPF would have to:
 - (i) apply for a business registration ("BR") certificate for the LPF, if the original partnership does not hold a valid BR certificate under Cap. 310 immediately before its registration as an LPF (proposed new section 82F(1)); or
 - (ii) notify the Commissioner of Inland Revenue ("the Commissioner") of the registration, if the original partnership holds a valid BR certificate under Cap. 310 immediately before its registration as an LPF (proposed new section 82F(2)).

7. Other clauses in Part 2 of the Bill seek to make related or consequential amendments to various provisions of Cap. 637; for example, clause 13 proposes to amend Schedule 3 to Cap. 637 to prescribe the fees payable in connection with the registration of a non-Hong Kong fund as an LPF.

Proposed amendments relating to simultaneous business registration applications of LPFs (Part 3 of the Bill)

8. Part 3 of the Bill contains proposed amendments relating to simultaneous BR applications of LPFs. The main provisions are summarized below.

Proposed amendments to Cap. 310

9. Division 1 of Part 3 of the Bill contains proposed amendments to Cap. 310. In particular, clause 16 seeks to add a new section 5BA to Cap. 310 to provide for simultaneous BR applications of LPFs such that a person who makes an LPF registration application under Cap. 637 would be required to pay BR fee and levy, and to submit relevant documents and information. The proposed new section 5BA also provides that if the requirements in relation to an LPF registration application are compiled with, a BR application is deemed to have been made in respect of the LPF.

10. Clause 20 of the Bill seeks to amend section 8 of Cap. 310 to prescribe the information in respect of an LPF required to be submitted to the Commissioner by the LPF or transmitted to the Commissioner by the Registrar.

Proposed amendments to Cap. 310A

11. Division 2 of Part 3 of the Bill contains proposed amendments to Cap. 310A. For example, clause 25 proposes to amend regulation 3A of Cap. 310A to prescribe the particulars in respect of the general partner and business of an LPF that would be required to be submitted or transmitted to the Commissioner.

Commencement

12. 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.

Public Consultation

13. According to paragraph 24 of the LegCo Brief, the Administration conducted an industry consultation on introducing the LPF regime in July 2019. The industry supported the introduction of a re-domiciliation mechanism for LPFs. According to FSTB, the feedback received has been taken into consideration when preparing the Bill.

Consultation with LegCo Panel

14. As advised by the Clerk to the Panel on Financial Affairs, the Administration briefed the Panel on 1 February 2021 on the legislative proposals to allow foreign investment funds to re-domicile to Hong Kong as LPFs. Members generally supported the legislative proposals to allow foreign investment funds to re-domicile to Hong Kong as LPFs and discussed various issues including benefits of the proposed re-domiciliation mechanism for Hong Kong, criteria for considering re-domiciliation applications, and measures to attract foreign funds to set up in or re-locate to Hong Kong.

Conclusion

15. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. As the Bill seeks to introduce a statutory regime for non-Hong Kong funds in the form of limited partnerships to be registered as LPFs in Hong Kong, Members may consider forming a Bills Committee to study the Bill in detail.

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