



**By email (slcheng@fstb.gov.hk) and by hand**

10 September 2019

Our Ref.: C/CFAP/IFRAP, BH46197

Financial Services Branch,  
Financial Services and the Treasury Bureau,  
24<sup>th</sup> Floor, West Wing, Central Government Offices,  
2 Tim Mei Avenue, Tamar, Hong Kong

Attention: Ms. Sze-ling Cheng, Assistant Secretary for Financial Services

Dear Sirs,

**Proposals to establish a Limited Partnership Regime for Funds**

Thank you for inviting the views of the Hong Kong Institute of Certified Public Accountants (“the Institute”) on the “**Proposals to establish a Limited Partnership Regime for Funds**” (“the Proposals”). Our views are summarised below.

In principle, we welcome proposals to expand to range of options for operating funds in Hong Kong and facilitating the establishment of private equity funds. As regards the details of the Proposals in the consultation document, we would like to seek some clarification and raise one or two issues for your further consideration.

**1. Separate Legislation for Limited Partnership Regime Specifically for Funds**

It is proposed to introduce separate legislation for limited partnership funds (“LPFs”) specifically, instead of amending the existing Limited Partnership Ordinance (“LPO”) (Cap. 37). We note that the Proposals do not recommend amending the LPO in order to avoid any impact on limited partnerships already formed, or to be formed, for other industries (such as game centres, restaurants and consulting firms). In addition, it is suggested that the LPF regime could be tailored for the needs of private equity funds.

However, we understand that LPFs in Cayman Islands are registered under the existing Cayman Island Exempted Limited Partnership Law, which is same legislation used to set up limited partnerships in other industries. As such, there is no separate legislation for LPFs in Cayman Islands. In addition, the proposed key characteristics of the LPF regime appears to provide a number of advantages, such as allowing flexibility in capital contributions and distributions of profits, contractual flexibility, and, potentially, a straightforward winding-up mechanism, which could also be beneficial to limited partnerships formed/ to be formed for other industries. On the other hand, setting out another piece of specific legislation for LPFs in Hong Kong could encourage more calls for



additional tailor-made legislation to serve the needs of other industries. Furthermore, taking a different legislative route in Hong Kong could end up complicating the legal system here and, possibly, make it more difficult to draw on case law from other relevant common law jurisdictions.

Under the circumstances, we would suggest that additional information and justification are warranted to explain why the government considers that the existing LPO cannot be suitably amended to cater for LPFs.

## **2. Proposed Key Characteristics of a LPF**

### ***Paragraph 9***

We agree that the proposed definition of an LPF should draw reference from the definition of “collective investment scheme” under Securities and Futures Ordinance (Cap. 571) with appropriate modifications. However, it is not immediately clear how or why reference should be made to definition of “fund” under section 20AM of the Inland Revenue Ordinance (Cap. 112) (“IRO”). The provisions of section 20AM of the IRO are for the purposes of taxation or, more particularly tax exemption, and not for the purposes of determining what should be regarded as a fund more generally. Such provisions may limit the scope and flexibility of the LPF regime. However, if an LPF wishes to seek profits tax exemption then it may need to align itself with the requirements of section 20AM to be consistent with the arrangements for other tax exempt funds.

### ***Paragraph 12***

In relation to paragraph 12(c), we would suggest that the financial statements of an LPF should be aligned with those of Hong Kong-incorporated companies and accord with the Companies Ordinance (Cap. 622). As such, they should be required to be prepared using Hong Kong Financial Reporting Standards.

## **3. Registration Requirements**

### ***Paragraph 13(e)***

As indicated in paragraph 12(b) of the Proposals, the investment manager (“IM”) should be appointed by the general partner rather than by the LPF.

### ***Paragraph 15***

We would suggest that the timetable for filing annual returns to the Registrar of Companies by the general partner should be consistent with that for Hong Kong-incorporated companies and accord with the Companies Ordinance.



#### **4. Anti-money Laundering/ Counter-Terrorist Financing (“AML/CFT”)**

It is not entirely clear why the eligibility for being an IM should be so closely linked to the anti-money laundering/ counter-terrorist financing (“AML/CFT”) regime, although we appreciate that the Proposals envisage that the IM will be responsible for conducting preventative AML/CFT measures under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) (“AMLO”). While this may be a regulatory responsibility of the IM, it will not be the primary role of the IM, which will require knowledge and experience in dealing with investments. Under the circumstances, we question whether it is appropriate to focus exclusively on the AML/CFT side of the IM’s duties and responsibilities. It should also be noted that there are, in practice, differences, under AMLO, between the supervision of authorized institutions and licensed corporations for AML/CFT by the Hong Kong Monetary Authority and the Securities and Futures Commission respectively, and the supervision of designated non-financial businesses and professions, such as accountants and lawyers, by their respective professional bodies.

#### **5. Maintenance of Records by a LPF**

##### ***Paragraph 25***

The different roles and functions of the general partner and the IM in the Proposals, implies the need for a division of responsibilities for maintaining records, which could involve some overlaps, as follows:

##### *Responsibility of General partner –*

- Accounting records of the LPF, including the financial accounts of the LPF audited by a practice unit, kept for at least seven years (paragraph 12(a) refers);
- a register of partners containing the particulars of each general partner and limited partner (including their identities and total amount of capital contribution) (paragraph 25(b) refers)

##### *Responsibility of investment manager -*

- Records and documents obtained in the course of customer due diligence and files relating to every customer’s account and business correspondence with the customer and any beneficial owner of the customer, kept for at least five years (paragraph 25(c) refers);
- documents and record of each transaction carried out by the LPF, retained for at least five years (paragraph 25(d) refers);
- information, including beneficial ownership, of all partners of the LPF for



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Exchange of Information purposes, as per the requirements of the Organisation for Economic Co-operation and Development (paragraph 25(e) refers).

Should you have any questions on this submission, please do not hesitate to contact me at 22877084 or [peter@hkiipa.org.hk](mailto:peter@hkiipa.org.hk).

Yours sincerely,

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