

# Hong Kong Limited Partnership Funds – An Overview



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# 01

Our strengths



## 1. Tiang & Partners' Funds practice

Tiang & Partners is an independent Hong Kong law firm and a member of the PricewaterhouseCoopers Limited ('**PwC**') network. The Funds and Regulatory practice consists of a team of dedicated investment funds and regulatory lawyers and legal staff covering the entire spectrum of investment funds, from private equity, hedge, hybrid to retail and authorised funds, and all non-contentious regulatory issues related to investment management activity in Hong Kong.

We have the capability and experience to advise on the full range of private funds including those which invest in:

- Private equity (including venture/clean tech., expansion capital, buyout and special situations)
- Natural resources (including clean energy)
- Credit
- Infrastructure
- Real estate
- Mezzanine
- Debt
- Distressed assets
- Secondaries
- Agriculture
- Fund of funds

We can advise both managers and investors on the full range of legal issues associated with closed-ended funds, including:

- Fund formation and documentation including appointment of advisers/service providers, structuring, advice on terms, marketing, documentation, investor negotiations and ongoing support following closing
- Regulatory issues including authorisation, ongoing compliance and marketing restrictions
- Fund manager establishment including structuring tax efficiency and documentation (such as LLP deeds and shareholder agreements)
- Taxation for funds, managers and transactions (through our PwC network)
- Team incentive schemes (including carried interest and co-investment schemes)
- Investments in private funds
- Secondaries
- Transactions including private equity ('**PE**'), mergers and acquisitions ('**M&A**') and special situation investments
- Financing and loan structuring for private funds that employ leveraged strategies
- Employment including contentious and non-contentious matters
- Restructuring and insolvency advice
- Virtual assets, security tokens and all forms of cryptocurrency



Our lawyers work closely with PwC's Asset & Wealth Management and Financial Services Lines of Service, as well as the global Legal teams within the PwC legal network, to provide integrated advice and support on operational, regulatory, and transactional aspects to fund managers, sponsors and investors. Our in-depth industry knowledge and expertise in specialist areas also equips us to advise on the full range of issues relevant to hedge, private equity, crypto and hybrid funds and their managers.

Given this capability, we are able to provide an end-to-end solution across the entire life cycle of a fund, from inception, to operation, through to termination. In addition, drawing from expertise across the entire legal and wider PwC network, we are able to provide services across all aspects of a fund's operation and in relation to asset management activity generally.

## **2. Transactional capabilities**

Our experienced team understands the importance of delivering value at all stages of a client's transaction and that the success of the deal usually comes from unlocking the value of a target post-completion.

Our unique end-to-end approach sees our lawyers working closely with PwC's consultants, commercial advisers, tax advisers, accountants, strategists and actuaries to help our clients execute every phase of the deal in the most efficient way possible. We provide support on:

- Mergers and acquisitions
- Business set up
- Structuring
- International business reorganisation
- Joint venture projects
- Other corporate services


For PE fund managers, therefore, this means that we have the capabilities to assist with the 'downstream' aspects of a PE fund's operations – namely the deployment of capital, and the acquisition and development of portfolio assets including real estate development projects, corporate acquisitions and joint ventures, mergers, share transfers and divestments, trade sales, and IPOs.

Our corporate team is also able to assist fund managers in relation to their management structure, including shareholder arrangements, seeding arrangements and revenue share structuring for general partners, management companies, special limited partners, or holding structures that sit above the management structure for a PE fund.

## **3. Finance capabilities**

With rich experience in banking and finance transactions, our team executes deals across borders to achieve finance solutions for clients in Asia Pacific.

Our team has acted for a wide array of clients including investment and commercial banks, financial institutions, corporate entities and investment funds in various industry sectors. Our team also has in-house experience within major banks and financial institutions – which means we



understand your challenges and requirements, guiding you through all stages of the project, from decision making to implementation.

With access to the PwC network, we can offer a holistic view on your projects and investments with PwC professionals from tax, deals, financial due diligence, assurance and consulting, where needed.

For funds and fund managers in particular, our finance team is able to assist on all aspects of fund lending and borrowing transactions, including note issuances, fund financing, mezzanine financing, GP or LP interest collateralisation and note and debt participation programmes (for private credit funds in particular). In addition, our team has experience with all types of structured product arrangements including total return swaps, options and futures contract drafting.

**Structuring of investments** – We have access to legal, tax and sector professionals across the PwC network who will advise on the optimal tax efficient deal structure or platform for each investment.

**Best in class advisers** – The integrated offer available through the PwC network means you will have access to multidisciplinary due diligence reports which cover legal, tax and financial considerations, helping you solve the whole of your problem, not just part of it.


**Support at financial close** – We will leverage the breadth of the PwC network, including highly experienced finance and restructuring lawyers with decades of experience working in Asia, to manage and deliver the legal agreements, opinions and process management required and assist you in the effective and timely execution and closing of your deals.

**Support post financial close** – We are available to support your continued success by assisting with ongoing contract interpretation and management, as well as the provision of further legal updates and input during the post-closing phase.

## 4. Employment capabilities

### How we can help

- Assisting clients in managing risks and designing practical solutions in relation to hiring/onboarding process, contract termination/expiration, global mobility, restructuring, incentive and bonus schemes, compliance investigations and other challenging objectives in daily human resource management, especially for employment arrangements and professionals in the asset management and investment funds field.
- Devising people and organisation plans, implementing projects and resolving different types of labour disputes, including commercial controversies relating to violation of anti-unfair competition or non-compete obligations, highly contentious executive exits, collective bargaining, and redundancy, etc.
- Handling redundancies, transfers and layoffs in association with M&A deals, cross-border restructuring, entity winding up/business closure and relocation, and we collaborate closely with other members of the PwC global network of firms in addressing other commercial and human resourcing affairs of significant projects.
- Providing the full spectrum of labour and employment services. Our team includes



lawyers who have decade-long experience and expertise in various labour and employment matters.

- Setting up employment incentive plans, carry pool plans and bonus plans for sharing carried interest, management fees and performance fees with investment staff or for principals of a fund manager.
- With the current economic and market dynamic and the emergence of new technologies, we stand with our clients ranging from start-ups to the largest and most reputable multinational companies to face the greater-than-ever PRC employment and human resource challenges. Against this backdrop, we work seamlessly with PwC's other member firms to provide a 'one-stop' service and commercially focused solutions.





## 5. PwC Global Legal Business Solutions

PwC Global Legal Business Solutions ('**LBS**') represents the combination of the PwC Network's global Legal and NewLaw practices. The global Legal practice consists of 3,500 professionals across 90+ territories, bringing the right combination of legal insights, business understanding and technological innovation to transform how you work and make the right decisions.

Investments funds and regulations need global perspective with local knowledge. The PwC global legal Funds team has presence in many of the key jurisdictions in which funds clients invest in, and has established alliances with leading law firms in many other jurisdictions. Working with us is not just about legal advice – by collaborating closely with PwC's Tax, Assurance, Risk and Regulatory Compliance, Deals and Crypto Advisory teams, our team provides asset and wealth management clients with an integrated, end-to-end business solution to all of their asset management and investment fund needs.

### PwC legal services coverage:



## 6. The PwC network of law firms across Asia Pacific

Tiang & Partners works closely with the PwC network of law firms – the most geographically connected legal services network in the world with more than 3,500 legal practitioners in 90+ territories, including offices across 12 territories in Asia Pacific. Combining local market knowledge with international experience, we connect your challenges with the right expertise in Legal and across PwC.

<b>Territory</b>	<b>Network firm(s)</b>	<b>Law practised</b>
<b>Hong Kong SAR</b>	Tiang & Partners*	Hong Kong SAR English Australian Canadian New York State, United States
<b>Taiwan</b>	PricewaterhouseCoopers Legal	Taiwan
<b>Singapore</b>	Eng and Co. LLC	English Australian Singapore
<b>Australia</b>	PwC Australia	Australian (NSW, VIC, QLD, WA, ACT)
<b>Indonesia</b>	Melli Darsa & Co., Advocates & Legal Consultants	Indonesian
<b>Japan</b>	PwC Legal Japan	Japanese
<b>Mongolia</b>	PwC Mongolia	Mongolian
<b>New Zealand</b>	PwC Legal New Zealand	New Zealand
<b>Philippines</b>	Cabrera & Co	Philippine
<b>Thailand Laos</b>	PwC Legal & Tax Consultants	Thai Laotian
<b>Vietnam</b>	PwC Legal Vietnam	Vietnamese
<b>Total</b>	<b>80+ partners and 400+ legal professionals</b>	

## 7. Tiang & Partners – Excellent market recognition

### Leading / recommended lawyers and individuals:



**Michelle Taylor**

Ranked in Capital Markets and Structured Finance & Securitisation



**Gaven Cheong**

Ranked in Investment Funds/ Private Funds – Formation & Regulatory/ FinTech



**Tejaswi Nimmagadda**

Ranked in Asset Finance/ Aviation Finance



**Martin Robertson**

Ranked in M&A



**Chiang Ling Li**

Ranked in Intellectual Property, Life Sciences, Patent and Technology Licensing, Data privacy & Protection



**Martyn Huckerby**

Ranked in Antitrust & Competition



**Kevin Tsang**

Ranked in Capital Markets and Structured Finance & Securitisation



**Nai Kwok**

Ranked in Asset Finance/ Aviation Finance



**David Law**

Ranked in Structured Finance & Securitisation



**'Innovation in Enabling Business Growth'** – Establishment of Global Shipping Business Network

### Ranked practice areas



Antitrust & Competition



Asset Finance (Aviation)



Capital Markets (South Korea, HK)



Data Privacy & Protection



FinTech



Intellectual Property - Patents, Trademarks, Copyright



Investment Funds



Corporate/ M&A



Structured Finance & Securitisation

# 02

## Limited Partnership Funds in Hong Kong – an overview



## 1. Introduction

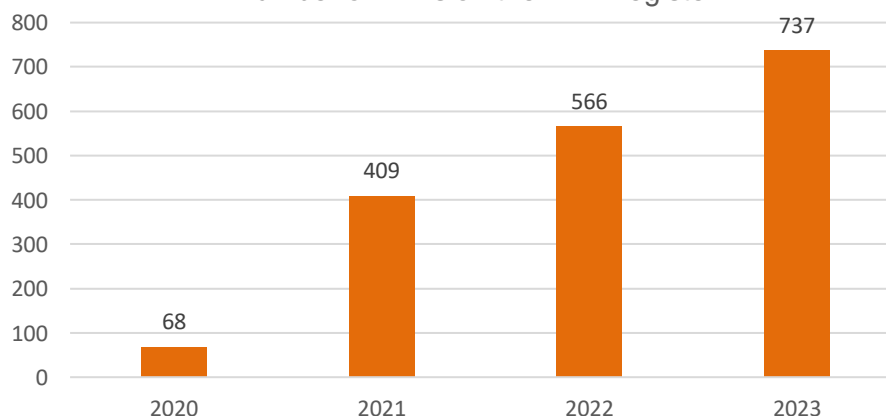
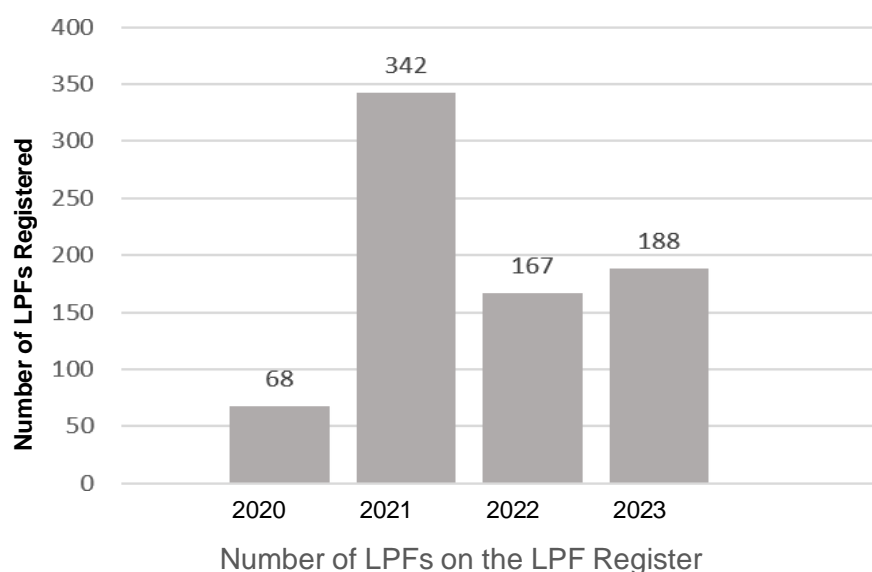
Assets under management in the Asia Pacific private markets has grown at a compound annual growth rate of 23% in the past decade. Hong Kong is the second-largest private equity hub in Asia Pacific after Mainland China, with total capital under management at US\$215 billion, as announced in the 36th Annual AVCJ Private Equity & Venture Forum in November 2023.

Prior to the introduction of the Limited Partnership Fund ('**LPF**') regime, Cayman GP/LP structures dominated the PE fund landscape in Hong Kong. As a matter of convention driven by US investor preference, PE funds were predominantly set up as limited partnership structures because of their 'pass-through' characteristic for tax purposes. And, in the Asia Pacific region, the Cayman GP/LP quickly became regarded as the 'gold standard' for PE/VC fund raising, given the familiarity that US investors (in particular) had with that structure.

With the aim of attracting offshore investment funds to set up in Hong Kong, the Financial Services and the Treasury Bureau of Hong Kong proposed to introduce an LPF regime in July 2019. The LPF regime came into force on 31 August 2020.

### Market trends

According to the Companies Registry ('**CR**'), there were 188 LPFs newly registered as of the end of February 2023. There was a total of 737 LPFs set up in Hong Kong by the end of 2023, which amounted to a 30% increase from 2022. There has been a steady increase in the number of LPFs that have remained registered on the LPF register.



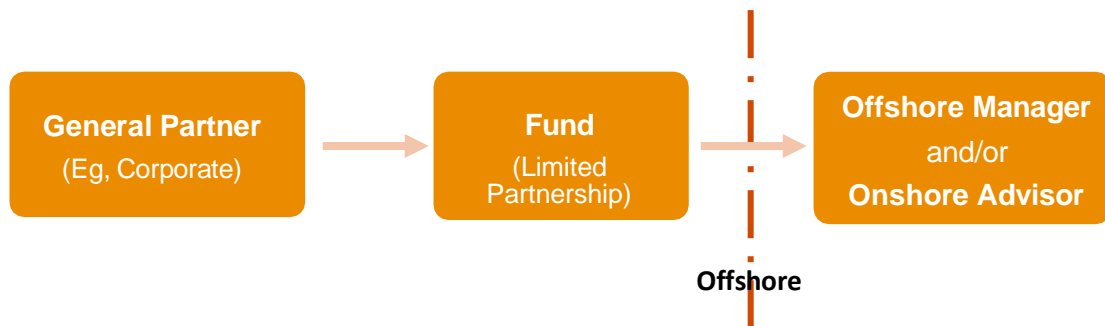
Source: Hong Kong Companies Registry

## 2. Structuring Considerations

- In Hong Kong, a fund may be domiciled in any jurisdiction including domestically, Singapore, US, UK, Guernsey, Jersey, Luxembourg, the Cayman Islands, or Mauritius. Typically, in an offshore limited partnership fund structure, an offshore limited liability company owned by the principals/sponsors of the fund, acts as the general partner ('GP').
- In the past, it was common for such limited partnership to enter into a management agreement with another offshore limited liability company that would act as the offshore manager (which was also usually owned by the principals/sponsors of the fund). The offshore manager would then enter into an investment management agreement with an investment manager that might hold an SFC licence to carry out asset management activities, or an investment advisory agreement with an investment adviser that may hold an SFC licence to provide investment advice.
- However, nowadays, it is much less common to see Hong Kong managers and sponsors setting up fund structures that involve an offshore manager. Instead, they would have an onshore entity act as the investment manager (and to pay Hong Kong taxes on amounts earned as carry and management fees in Hong Kong). There are 2 main reasons for this:
  - *Tax assessed by 'resource allocation'*: To determine whether revenues generated from the fund are taxable in Hong Kong, the Hong Kong tax authority looks at where the fund's management activities take place. If all of the fund's management activities (covering fund-raising, advisory, administration and discretionary management activities) are taking place in Hong Kong, the Hong Kong tax authority takes the position that all or most of the revenues generated from those activities ought to be paid into Hong Kong (and taxed accordingly), regardless of the management structures that have been set up.
  - *Economic substance requirements*: Nowadays, most offshore regulators (including the Cayman Islands since January 2020) require investment management entities established in their jurisdictions to have 'economic substance' in their place of incorporation. What this means exactly still remains unclear, but the prevailing view is that at a minimum, the offshore manager ought to have a physical office in the relevant jurisdiction, real directors resident in that jurisdiction need to be appointed, a minimum number of meetings ought to be held annually, and certain statements and reports need to be generated from the relevant jurisdiction. The result, in practical terms, is that there is now an additional cost layer (approximately US\$40-60,000 per annum, depending on the amount of activity that needs to take place for a jurisdiction like the Cayman Islands) if an offshore manager is to be retained in the structure.

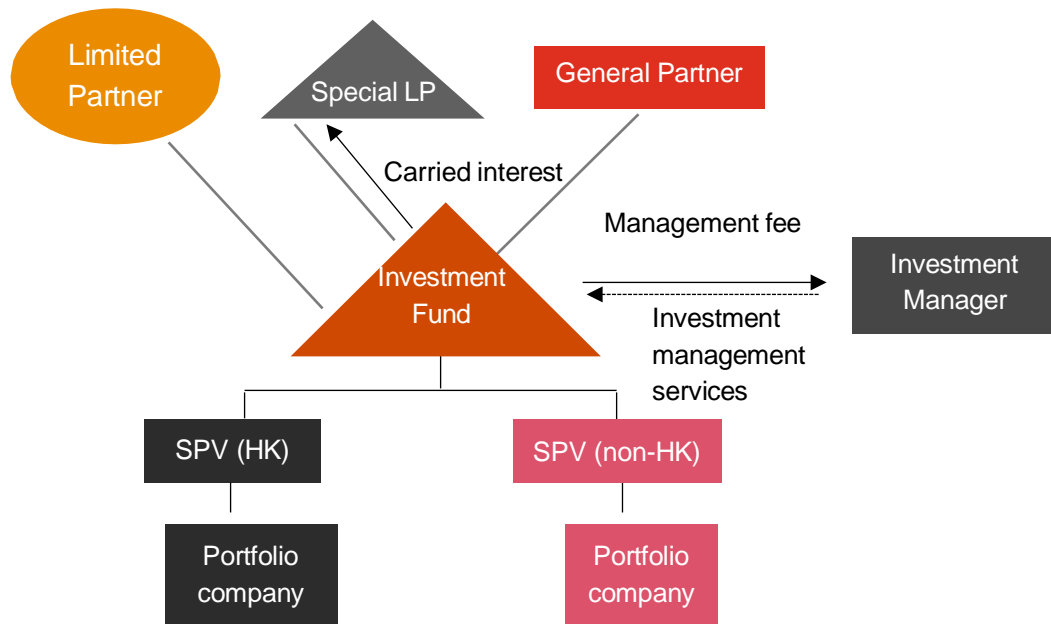


- Foreign PE fund managers, however, may prefer to retain carried interest and management fees offshore, in which case, they may only pay advisory fees to a domestic Hong Kong investment advisory entity, and ensure that management of the fund is carried on outside of Hong Kong by the GP.



### Management and Portfolio Holding

Typical private equity/ venture capital fund structure



### 3. New Hong Kong Limited Partnership Fund

#### Background

- Hong Kong offers a limited partnership fund regime which enables funds to be constituted and registered in Hong Kong in the form of limited partnerships. The new LPF Ordinance came into effect on 31 August 2020.
- The LPF regime is a registration regime, under which registration is effected through the CR in Hong Kong. The SFC will not be directly involved.
- The LPF largely shares the characteristics of a Cayman Islands exempted limited partnership ('ELP') regime, for instance, like an ELP, an LPF vehicle has no legal personality and is constituted by a limited partnership agreement.
- Also of note is that an LPF needs to be a 'fund', which is defined in a similar way to a 'fund' under the revised Inland Revenue Ordinance ('IRO') and that of a 'collective investment scheme' under the SFO.
- Under the LPF Ordinance, an LPF must have one GP with unlimited liability with respect to the debts and liabilities of the LPF and at least one LP which is not liable for the debts and obligations of the LPF beyond the amount of the partner's agreed contribution.
- The LPF regime will certainly be attractive to a Hong Kong-based sponsor, given that the centralisation of the fund's management, operation and domicile will reduce the cost of having to engage additional professionals and service providers for regulatory compliance in multiple jurisdictions (the legal fees and disbursements savings from using an LPF as opposed to a Cayman ELP are not insubstantial).
- This will be important for managers / sponsors looking to launch smaller sized funds, where Asset Under Management ('AUM') limits will make cost considerations at the forefront of the decision process.

#### Registration and Maintenance requirements of an LPF

<b>Application documents</b>	An applicant must submit the following documents/items to the CR for registering an LPF: <ol style="list-style-type: none"><li>1. Form LPF1 – Application for Registration of Limited Partnership Fund</li><li>2. IBR4 – Notice to Business Registration Office</li><li>3. Application Fees (includes registration fee of HK\$2,555, a non-refundable lodgment fee of HK\$479 and business registration fee and levy (rates according to Business Registration Fee and Levy Table published by the Inland Revenue Department))</li></ol>
<b>Application process</b>	The application can be submitted electronically on the e-Services Portal of the CR. Alternatively, applicant may submit application by post or in person.
<b>Processing time</b>	The CR will usually issue the certificate of Registration and a Business Registration Certificate <b><u>within four working days</u></b> after receipt of the application. Upon obtaining the certificates, registration is complete.



**Ongoing  
statutory  
notifications and  
returns**

As a part of ongoing compliance, the LPF is required to:

1. File annual returns of the LPF in Form LPF5 **within 42 days after each anniversary of the date on which the certificate of registration is issued**
2. Notify the CR of any changes in particulars (including but not limited to change of name of LPF in Form LPF3, and change in particulars of GP, Authorised Representative, Investment Manager and Responsible Person of LPF in Form LPF4B)
3. Pay continuing filing fees of all applicable forms

**How does the LPF compare to other structures?**

Typical (cross-border) private equity investment fund vehicles (non-exhaustive)

**Cayman Islands**

- Exempted Limited Partnership
- Exempted and limited Company
- Segregated Portfolio Company

**Singapore**

- Variable Capital Company (VCC)
- Limited Partnership
- Limited Private Company

**Hong Kong**

- Limited Partnership Fund (new)
- OFC (Open-ended Fund Company)

**Mainland China  
(for reference)**

- Foreign Direct Investment
- Qualified Foreign Limited Partnership (QFLP)
- Foreign Invested Venture Capital
- WFOE in FTZ
- China Holding Company (CHC)

## Typical (cross-border) private equity investment fund vehicles – A comparison

Location	Comments
Hong Kong	<ul style="list-style-type: none"> <li>• The open-ended fund company ('<b>OFC</b>') regime may be used for a privately offered fund. Relevant tax exemption is also available subject to conditions. However, this regime is typically more suitable for open-ended hedge funds, as opposed to PE/VC investing. The set-up of an OFC requires SFC approval.</li> <li>• The LPF regime is catered for private equity funds. It is easy to register and no prior-regulatory approval is required. It is a new regime and the acceptance among investors is yet to be tested. Tax exemptions are available subject to conditions. A 're-domiciliation' regime to be introduced to allow foreign funds to migrate to HK.</li> </ul>
Cayman Islands	<ul style="list-style-type: none"> <li>• Cayman Islands is the most common fund location and a tax neutral jurisdiction. PE/VC investments would typically use the ELP as the fund vehicle. Corporate vehicles including the exempted limited company or the segregated portfolio company are less common for PE/VC funds and more for open-ended hedge fund structures.</li> </ul>
Singapore	<ul style="list-style-type: none"> <li>• Variable Capital Company ('<b>VCC</b>'): A new regime rolled out in 2019; tax exemption available (with conditions) and may be suitable for PE/VC investments, although this is less common as the VCC is more used for open-ended hedge fund structures.</li> <li>• Singapore limited partnership: tried and tested; tax exemption available provided there is a qualified investment manager and other conditions are fulfilled;</li> <li>• Singapore private company: used by some funds, easy to set up but are subject to normal corporate restrictions on capital repatriation, share buy-back, etc. May not be suitable for marketing to investors.</li> </ul>
Mainland China	<ul style="list-style-type: none"> <li>• Qualified Foreign Limited Partnership/Limited Partnership Enterprise ('<b>QFLP</b>') regime allows foreign LPs participation in onshore RMB fund vehicles (subject to foreign exchange/regulatory approvals/registrations). There are uncertainties on the calculation of taxes for LPs, withholding tax rates, etc., subject to local practices.</li> </ul>

## Key considerations of private equity investment fund vehicles – A comparison across jurisdictions

Key considerations	Cayman Islands	Singapore		Hong Kong	
	<u>Exempted Company</u>	<u>Authorised VCC</u>	<u>Restricted Exempt VCC</u>	<u>OFC</u>	<u>LPF</u>
Number of Directors required	1	3 directors are required. With at least 1 independent director for retail fund	1 executive director and at least 1 independent director	2, with at least 1 director independent of the custodian	<b>1 general partner and at least 1 limited partner</b>
Directors' residence requirement	No	1 director must be resident		No	<b>No residence requirement for general partner or limited partner</b>
Fund manager	No requirement on having a fund manager director No requirement on the location of the fund manager	At least 1 fund manager director Fund manager should be located locally		Requires a Type 9 (asset management) licensed Investment Manager under SFC	<b>If no regulated activities under SFO is involved, there is no need to appoint an external licensed investment manager</b>
Auditor	No requirement to appoint an auditor	An auditor must be appointed		An auditor must be appointed	<b>An auditor must be appointed</b>
Custodian	No requirement to appoint a custodian	A custodian must be appointed	Assets must be maintained with a prescribed entity. VCCs which are private equity or venture capital funds do not require a custodian	A custodian must be appointed	<b>No requirement to appoint a custodian, but the GP is under duty to ensure the proper custody of LPF's assets</b>

Key considerations	Cayman Islands	Singapore		Hong Kong	
	<u>Exempted Company</u>	<u>Authorised VCC</u>	<u>Restricted/ Exempt VCC</u>	<u>OFC</u>	<u>LPF</u>
Minimum capital requirement of the Fund	N/A	N/A		N/A	
Prepare Financial Statement at sub-fund level	Yes	Yes		Yes	Sub-fund not applicable
Public availability of Financial Statement	No	No		No	
Financial Statement GAAP	Any GAAP	Presentation as per the Code of Collective Investment Schemes	SFRS, IFRS, US GAAP	HKFRS or IFRS	No limitations on the use of certain accounting methods as long as there is audit
Submission of Financial Statement to authority	CIMA	ACRA		SFC	FS needs to be audited but no submission requirement
Public availability of shareholder lists	No	No		No	
Re-domiciliation	Yes	Yes		Yes	

## 4. Tax Considerations

- The IRO was amended from 1 April 2019 to exempt all funds, wherever established or domiciled, from Hong Kong profits tax arising from qualifying transactions provided that the relevant fund is managed by a specified person (essentially an SFC licensed corporation).
- LPFs can also rely on this tax exemption, in the same way as offshore funds can, in respect of qualifying transactions. For a more detailed discussion of the requirements that need to be met in order to qualify for an exemption under the new unified regime, please consult or seek advice from one of our tax experts within the PwC network.
- Apart from the tax neutrality as outlined above, no stamp duty will be payable on assignment of interests in an LPF under the new regime. Interests in an LPF are not 'Hong Kong stock' as defined in the Stamp Duty Ordinance of Hong Kong (Cap. 117) and so, on assignment, should not be chargeable to Hong Kong stamp duty. However, in-kind capital contributions of shares or real estate to an LPF or distributions by an LPF of Hong Kong stock are dutiable in the normal way.

### Carried Interest concession regime for PE funds in Hong Kong

- The Inland Revenue (Amendment) (Tax Concessions for Carried Interest) Ordinance 2021 introduced a profits and salaries tax concession regime for eligible carried interest received by, or accrued to, qualifying persons and qualifying employees on or after 1 April 2020 from their provision of investment management services to 'certified investment funds'.
- Under the new carried interest regime, carried interest distributed by eligible PE funds operating in Hong Kong will enjoy a 0% profits tax rate, and there will be an exclusion of 100% of eligible carried interest from employment income for the calculation of salaries tax.
- On 16 July 2021, the Hong Kong Monetary Authority (the '**HKMA**') issued a guideline on the certification of funds under Schedule 16D to the IRO in relation to tax concessions for carried interest. The certification scheme is open to application by funds with immediate effect. In summary, the criteria are:
  - i. the fund has invested in certain classes of assets (such as shares or bonds of a private company); and
  - ii. the qualifying person has satisfied the minimum activity requirements (at least two full-time qualified employees who carry out investment management services, and HK\$2 million operating expenditure) throughout the applicable period.
- A qualifying person will also have to satisfy the 'adequacy test' under section 5(3) of Schedule 16D to the IRO in order to be eligible for tax concessions.
- A certified investment fund refers to funds that are certified by the HKMA. To be certified, the fund must submit to the HKMA, amongst other documents, a completed certification application form and an auditor's report prepared by a certified public accountant. The auditor's report should demonstrate the fund's investment activity in criteria (i) above.

## 5. Regulatory Considerations

### Is an SFC Type 9 Licence Mandatory for an LPF?

- Under the SFO, persons who engage in regulated activities in Hong Kong must be licensed or registered with the SFC. A corporation that carries on a business in a regulated activity or actively markets services to the public which constitute a regulated activity need to be licensed, while individuals performing a regulated function for a licensed corporation must be accredited as a licensed representative and, if the said individual is also an executive director, approved as a responsible officer. Authorised financial institutions that are supervised by the HKMA, such as banks or deposit-taking companies, must also be registered with the SFC to carry on a business involving regulated activities.
- Schedule 5 of the SFO sets out ten categories of regulated activities ('RA'). These are:
  - Type 1 (dealing in securities);
  - Type 2 (dealing in futures contracts);
  - Type 3 (leveraged foreign exchange trading);
  - Type 4 (advising on securities);
  - Type 5 (advising on futures contracts);
  - Type 6 (advising on corporate finance);
  - Type 7 (providing automated trading services);
  - Type 8 (securities margin financing);
  - Type 9 (asset management); and
  - Type 10 (providing credit rating services).
- One of the core questions regarding licensing is whether an investment manager of an LPF must have a Type 9 (Asset Management) RA licence ('**Type 9 Licence**'). Simply put, if (i) an LPF investment manager carries on a business of providing asset management services to the LPF in Hong Kong and (ii) the LPF invests in securities, the investment manager is required to hold a Type 9 Licence.
- However, while the LPF Ordinance provides that an LPF must appoint an investment manager to carry out the day-to-day investment management functions of the LPF, the Ordinance:
  - states that the General Partner of an LPF can itself be the manager; and
  - is silent as to whether this manager must hold a Type 9 Licence (unlike the position vis-à-vis an OFC).
- The Hong Kong LPF Association sought clarification from the Government as to the licensing requirements for investment managers of LPFs in February 2022. In March 2022, the Financial Services and the Treasury Bureau of the HKSAR Government released a formal response.

- The Government clarified that the LPF Ordinance does not explicitly prohibit the investment manager from delegating its duties to a third party, regardless of whether the third party is situated in Hong Kong. If the investment manager does not engage in any regulated activity (as will be explained below) under the SFO, then the investment manager is not required to hold a Type 9 Licence. As seen from the Government's reply, the LPF regime adopts a targeted approach in which the requirement for a licence is strictly limited to activities that fall under the SFO's definitions (*Financial Services and the Treasury Bureau of the HKSAR Government Clarifies on the Licensing Issues regarding Investment Manager of Hong Kong Limited Partnership Funds, HKLPFA, 1 April 2022*).

### Portfolio Composition

- So what does this mean in practice? As a first step, one must look at what is in the portfolio being invested into, or held by, the LPF. Clearly, an LPF which invests directly in assets that do not fall within the definition of 'securities' under the SFO (for example, directly in real estate without the use of any special purpose vehicles) would not require its manager/adviser to obtain a Type 9 Licence in order to manage it.
- The position is less certain, however, when it comes to LPFs that own a portfolio of private company shares (by extension, an LPF that invests in real estate through a holding of private company shares may also run into issues).
- Schedule 1 of the SFO provides a wide definition of 'securities' which includes, inter alia, shares and debentures issued by any incorporated or unincorporated body. The definition however, specifically excludes the shares or debentures of private companies within the meaning of section 11 of the Companies Ordinance (Cap. 622). Technically speaking, therefore, only shares in private Hong Kong companies would **not** be considered 'securities' under the SFO.
- This means that any LPF that invests in non-Hong Kong private companies, or holds assets through SPVs that are incorporated in, say, the BVI, Cayman Islands, etc, or that are wholly foreign-owned enterprise ('**WFOE**'), would technically be holding a portfolio of 'securities'. And, any fund manager that advises or manages that fund in Hong Kong would therefore be carrying out a regulated activity for which a Type 9 Licence is needed (although a more detailed analysis is needed if these private companies are only being utilised as holding structures, and the actual 'management' activity is being carried out at the asset level rather than at the holding structure level).
- Finally, it is worth noting that pursuant to the guidance under paragraphs 1.4.18 and 1.4.19 in the latest edition of the SFC's Licensing Handbook, the SFC has confirmed that if a firm deals in, advises on, or manages shares or debentures of private offshore companies that fall outside the definition of 'private company' under the Companies Ordinance, it is likely that such firm will require a licence for any regulated activities conducted in Hong Kong.



### Where is the RA being carried out?

- Even if the portfolio of the LPF consists of securities, however, further analysis is required as to whether the relevant RA (in this case, the business of asset management) is being carried out in respect of that portfolio, in Hong Kong.
- In this regard, three points must be noted:
  - Section 7(1)(c)(iii) of the LPF Ordinance allows for the General Partner of the LPF to be a non-Hong Kong incorporated company (for example, it may be a Cayman Islands company, although if that is the case, that foreign entity must be registered as a 'non-Hong Kong company' under section 776 of the Companies Ordinance (Cap. 622));
  - Under section 20(1) of the LPF Ordinance, while every LPF must have an investment manager appointed, that entity can be the General Partner itself, or it can be a third party delegated with investment management responsibility by the General Partner; and
  - Section 20(2)(c) of the LPF Ordinance provides that the investment manager must be registered in Hong Kong as a 'non-Hong Kong company' under section 776 of the Companies Ordinance (Cap. 622) if it is incorporated outside of Hong Kong.
- Given the above, it is entirely possible for an LPF to be managed by an entity that is either the General Partner itself, or by a third party entity acting as an investment manager, and in both cases, these entities undertake the management activity (that is, the exercise of investment discretion), outside of Hong Kong. This is so, even where the entity is registered with the CR as a 'non-Hong Kong company'. It also follows, therefore, that in such circumstances, as there is no RA being carried on in Hong Kong, that entity would not need a Type 9 Licence from the SFC.
- The Licensing Handbook confirms the observations above, and also provides further guidance on the type of licence that may be relevant based on the LPF's business model:
  - An entity that is delegated with discretionary power to make investment decisions over a portfolio of securities in Hong Kong for an LPF would be required to obtain a Type 9 Licence.
  - An entity that is not granted discretionary investment authority by the LPF would need to be licensed for Type 1 (Dealing in Securities) RA if it markets or distributes the LPF or conducts any other securities dealing activities (such as deal negotiation and trade execution) for the LPF, or, unless the wholly-owned group company exemption is available, Type 4 (Advising on Securities) regulated activity if it provides investment advice to the LPF.
  - An entity may also continue to rely on any applicable incidental exemptions, whereby certain regulated activities will not require a licence to be granted by the SFC if such activities are performed wholly incidental to the carrying out of another regulated activity that the entity is already licensed for. The most relevant incidental exemption for investment managers is where the manager has a Type 9 Licence, it will not require an additional licence to carry out any Type 1 (Dealing in Securities)



or Type 4 (Advising on securities) regulated activities provided that these are carried out solely for the purposes of its asset management business.

### **Other considerations**

- Whether a Type 9 Licence is needed ultimately depends on where the LPF's management activity (ie investment discretion) takes place. If management activity takes place offshore, then there is usually no need to apply for a Type 9 Licence in Hong Kong. However, caution must be exercised in practice to prevent the fund from falling under the licensing regime unintendedly. It should also be noted that the SFC will scrutinise these arrangements much more closely now that it has changed its policy in relation to PE/VC type activities.
- For many PE/VC fund managers, the decision as to whether to get licensed in Hong Kong comes down to their appetite for reputational/regulatory risk. Increasingly, larger fund houses will seek to get licensed in any event, because the reputational risks are too high. With the pivot by the regulators in Hong Kong, it is submitted that this risk has just become even higher across the board for PE fund managers of all sizes.
- Regulatory/reputational risks aside, managers should also consider the other costs and benefits of getting licensed. Obviously, having a licence entails the regulatory burden of ongoing compliance (which has become even heavier following the introduction of the revised Fund Manager Code of Conduct – which applies to PE funds as well as hedge funds). Applying for a licence is also costly and time-consuming (expect up to 6 months now before a licence will be issued).
- There are, however, many benefits that come with being licensed. For one, having a Type 9 Licence means that the manager can also market the fund in Hong Kong (since a Type 9 Licence holder can exercise Type 1 (Dealing in Securities) functions as an incidental activity to the management function it is exercising in respect of the LPF). This would mean the LPF can avoid having to appoint a separate placement agent, and hence save on placement/distribution fees. Being regulated by the SFC may also aid with capital raising since the SFC is a well-regarded regulatory authority in the region.



# 03

## Key contacts



## Your primary contact for Investment Funds and Regulatory work:



### **Gaven Cheong**

Partner and Head of Investment Funds  
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Gaven Cheong is Head of Investment Funds at Tiang & Partners (an independent law firm and a member of the PwC network).

Prior to joining Tiang & Partners, Gaven was an equity partner in the investment funds group of Simmons & Simmons (Hong Kong), and before that, a Counsel with the funds practice of Sidley Austin in Hong Kong.

With almost 20 years of fund formation and Hong Kong regulatory experience, Gaven is able to assist clients in the establishment and structuring of a diverse range of collective investment schemes including hedge funds, real estate funds, private equity arrangements, hybrid funds and other private investment structures, and regulatory advice in relation to investment management activity generally. He is also a pioneer in the crypto fund formation and regulatory advice space, having helped obtain the first regulatory licences in Hong Kong for the management of a fund of crypto funds and shortly after that, a pure virtual assets fund.

Working closely with other disciplines in PwC Mainland China and Hong Kong as well as PwC Legal Business Solutions, he is able to offer investment funds and asset manager clients an international fund formation and regulatory service that can also integrate PwC's tax, accounting, deals and consulting offerings - thus providing a truly end-to-end business solution.

Gaven is a ranked practitioner in 'Investment Funds' by *Chambers Greater China Region*, a recommended individual in 'Investment Funds' by *Legal 500 Asia Pacific* and 'Private Funds – Formation' by *Who's Who Legal*. He is also a 'Leading Individual' in 'Fintech Legal (International Firms)' by *Chambers FinTech*. In recent editions of *Chambers*, clients praised Gaven for being 'very technically sound', 'practical and shrewd in terms of getting down to the key points in relation to any matter', 'a very bright individual' and for having 'good response time and a business mind'.

*Legal 500 Asia Pacific Guide* quotes Gaven as being 'unquestionably the most knowledgeable crypto funds lawyer operating in the Hong Kong market right now. He has a very solid background in the hedge fund industry coupled with deep understanding of the digital asset space, which is a formidable combination'.

Gaven received his Bachelor of Commerce (Accounting and Finance), LL.B (Hons) and LL.M (Distinction) from the University of Western Australia. He is qualified to practise in Western Australia, Hong Kong and England & Wales. He is fluent in English and Cantonese, and is conversant in Mandarin.

### **Areas of expertise**

- Investment funds (private hedge, PE and hybrid funds)
- Virtual assets - crypto fund formation and regulatory
- Financial services regulatory (primarily non-contentious)
- Fund and asset management-related disputes

### **Representative experience\* (including handled prior to join Tiang & Partners)**

- Advising as lead counsel on the establishment of a number of large and reputable private hedge fund and PE fund launches.
- Advising on a number of crypto fund launches.
- Advising fund managers and sponsors on the virtual assets regulatory regime in Hong Kong and assisting with applications to the SFC for various virtual assets licences.
- Providing general regulatory advice to numerous asset management, investment funds, private equity and other financial services companies.
- Advising on asset management-related disputes.

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