FSDC Paper No. 17

A Paper on Limited Partnership for Private Equity Funds

December

2015

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A) Executive Summary

We believe that creating an up-to-date legal structure for private equity funds (in the form of a new Limited Partnership Law) will help consolidate Hong Kong's position as the leading single centre for private equity ("PE") in Asia.

Whilst Hong Kong is growing its market share in an expanding segment of the asset management industry, a successful PE hub in the future will have operating 'substance' in places where there are strong trade and investment flows with the countries where PE investments are made.

The unification of the fund domicile with the operational centre of the management team in a jurisdiction with a network of double tax agreements ("DTAs") and a deep pool of professional service providers will allow Hong Kong to be more attractive to PE firms. In order to adapt, Hong Kong should encourage onshore PE funds – in the same way that the new legal and regulatory regime of open-ended fund companies ("OFCs") is being created for onshore mutual funds and hedge funds – by updating the Limited Partnership law. Onshore funds will strengthen Hong Kong's competitive position as a centre for PE and will also create new jobs.

Onshore Limited Partnerships will benefit (i) the substantial community of PE firms already based in Hong Kong (which will otherwise be motivated to establish onshore entities in other jurisdictions with a good DTA network), (ii) attract new international firms that wish to benefit from Asian investment returns, (iii) the increasing number of Mainland China PE investors (encompassing State Owned Enterprises, pension and insurance funds and domestic PE funds) that are expanding their outbound investment activities and (iv) the Hong Kong based advisory firms which provide services to PE firms in fund administration, accounting, legal and tax advice.

The legal structure on its own, however, is not enough to ensure that Hong Kong will continue to be the preferred choice for PE operations. The treatment of PE activities by the tax and regulatory authorities will also require some changes. The key elements of this are:

1. Fund taxation – the fund should be profits tax neutral and transfers of partnership interests should not be subject to stamp duty.

2. Regulation – at present PE activities are only partially regulated in Hong Kong with licensing requirements that are not tailored to the specifics of this sector. Once PE funds become domiciled in Hong Kong, it is likely that the regulatory approach to PE will require an upgrade on the licensing or registration of PE fund managers.

3. Double Tax Agreements – a network of DTAs with the main investment destinations for PE is a key element for a PE centre to be successful – and Hong Kong will need to expand its existing range of treaties of 32 to cover other important investment markets notably adding Australia, India and so on.

4. Of the above points, item 1 would align PE's Limited Partnerships structures with the proposed OFC tax treatment being introduced for other offshore fund investors, whilst items 2 – 3 are beyond the scope of this paper but are being discussed with the respective government bodies.

B) Background

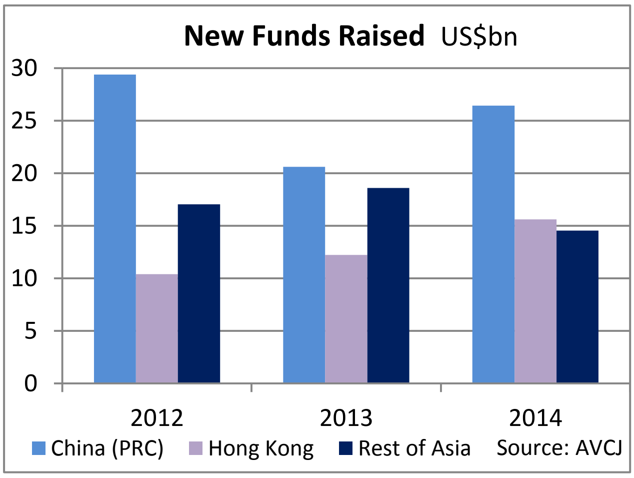
Hong Kong is currently the second largest PE centre in Asia after Mainland China, offering equity financing to (predominantly) private companies across Asia and local as well as regional start-up companies. Most of the PE capital that is advised from Hong Kong is sourced from professional overseas investors, including but not limited to, pension funds, insurance companies, sovereign wealth funds and family offices who have historically invested their funds in such ventures. This capital raised is invested primarily in companies located within Australia, Singapore, India, Korea, Japan, South East Asia and Mainland China. Globally, the majority of PE funds are domiciled in the US State of Delaware, the Cayman Islands, Luxembourg and Jersey.

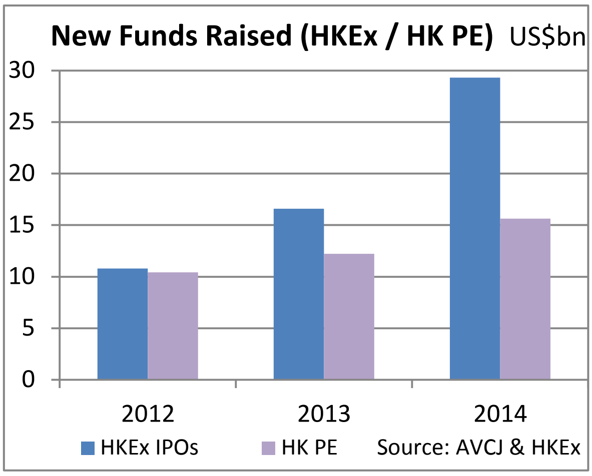
Despite the significant amount of PE capital currently being advised out of Hong Kong, currently there are no PE funds domiciled in Hong Kong. Over the last 3 years Hong Kong advised PE funds have accounted for 23% of all newly raised Asian PE capital. In terms of scale, the amount of capital raised for new investment by Hong Kong-based PE firms over the last 3 years is equivalent to two-thirds of the amount of capital raised by initial public offerings ("IPOs") on the Hong Kong Stock Exchange ("HKEx") in the same period.

It is interesting to compare these statistics with the development of the hedge fund sector in Hong Kong. As of 30 September 2014, the total hedge funds assets under management ("AUM") in Hong Kong (of US$120.9 billion) was nearly 13 times the AUM in 2004. Additionally, the number of hedge funds managed by the Securities and Futures Commission ("SFC") licensed hedge fund managers in Hong Kong grew to 778[1]. To an extent, a significant factor behind this growth was the impact of Revenue (Profits Tax Exemption for Offshore Funds) Ordinance 2006 (or the "offshore fund exemption") had on the alternative investment sector.

The Hong Kong government announced in its 2013-2014 Budget the plan to amend and extend the current offshore fund exemption to PE funds in order to attract more PE funds to be managed in Hong Kong. The Inland Revenue (Amendment) (No. 2) Ordinance was gazetted on 17 July 2015 with retrospective effect, applying in respect of tax chargeable for any year of assessment commencing on or after 1 April 2015. This long awaited law change will have a significant impact on PE fund industry in Hong Kong and increase PE fund management activity in Hong Kong, making Hong Kong a more competitive and attractive international asset / fund management centre. To further develop Hong Kong as an onshore fund hub as well as an asset / fund management hub, the Government should consider providing a clear and competitive legal, regulatory, and tax framework for onshore funds.

[1] Securities and Futures Commission: Report of the Survey on Hedge Fund Activities of SFC-Licensed Managers/Advisers, March 2015.





	As of end-2014[2]
Number of PE firms (based in Hong Kong)	390
Hong Kong capital under management ("CUM") (US$)[3]	US$110 billion
United States Funds - CUM (US$)[4]	US$1,023 billion
Cayman Funds - CUM (US$)[5]	US$701 billion
Mainland China Funds – CUM (US$)[6]	US$219 billion

In a survey (Winter 2014-15) of PE investors by Coller Capital, international limited partners showed a strong inclination to increase their commitment to Mainland China, Hong Kong, Taiwan and SE Asia.

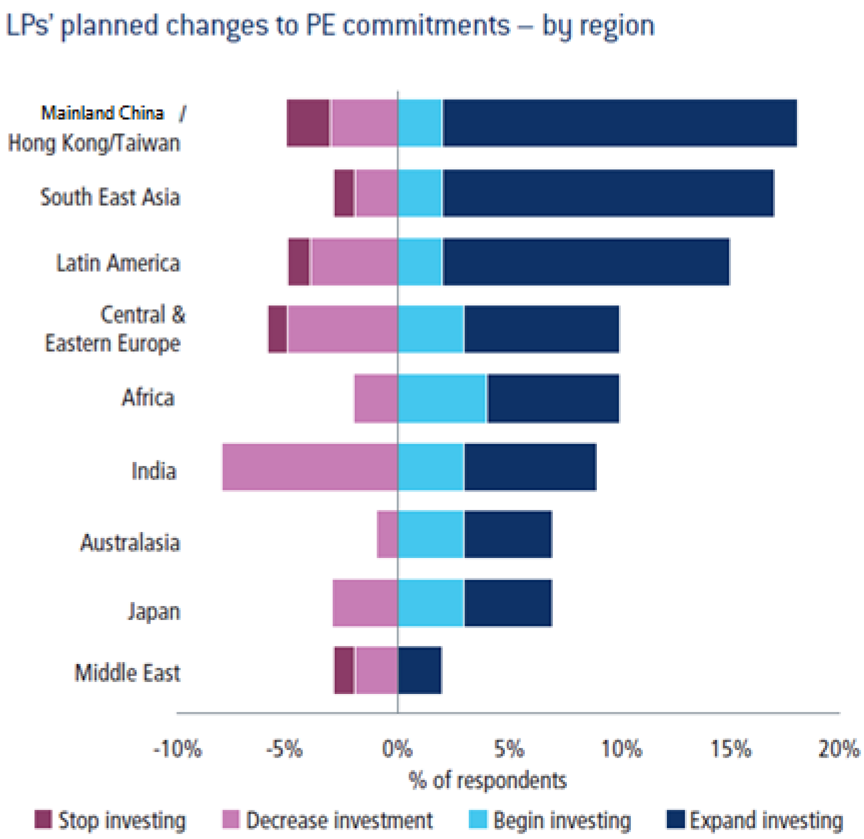
[2] We have made inquiries about similar industry information in Jersey, Guernsey and Luxembourg but comparable information was not available.

[3] The CUM is based on information published by the Asian Venture Capital Journal ("AVCJ") for funds advised from HK which may invest in Greater China or the Asian region but where the funds are normally domiciled elsewhere (many of the funds are domiciled in the Caymans – leading to some double counting with the Cayman category) in 2014.

[4] United States Funds are primarily established in the State of Delaware. The CUM number is estimated from projection based on the National Venture Capital Association ("NVCA") statistics and other publicly available data in 2014.

[5] The CUM number for Cayman Islands funds is calculated based on the number of active funds and the estimated average fund size.

[6] The CUM number for Mainland China funds is based on statistics published by Zero2IPO for the period from 2006 to 2014.



Source: Global Private Equity Barometer (Winter 2014-15), Coller Capital, December 2014

There is a push by the Hong Kong government to broaden Hong Kong's attractiveness to the asset management industry. The initiatives launched to date and those in the pipeline are demonstrative of this. The Hong Kong Financial Secretary first mentioned the proposed provision of a legal framework for introducing an OFCs structure in Hong Kong in his 2013/14 Budget Speech. This was referenced subsequently in both the 2014/15 and 2015/16 Budget Speeches. The Hong Kong Financial Services Development Council ("FSDC") also submitted its proposals on legal and regulatory framework for OFCs in Hong Kong in its paper issued in November 2013[7]. Looked at in conjunction with the Government's initiatives to launch an OFC regime in Hong Kong, as well as the recent extension of the Profits Tax Exemption for Offshore Funds to PE funds, promoting onshore PE fund establishment in Hong Kong is a natural extension and a corollary to these developments.

The OFC entity will provide offshore investors with a tax transparent (no tax on capital gains or profits made by the fund and no stamp duty on transfers of ownership interests in the fund) vehicle managed from Hong Kong. The PE industry uses the legal form of Limited Partnerships rather than OFCs and this paper proposes that the benefits of OFCs be extended to Limited Partnerships.

[7] Proposals on Legal and Regulatory Framework for Open-ended Investment Companies in Hong Kong, FSDC Research Paper No. 5 published in November 2013.

C) Developing Hong Kong as an Onshore Hub for Private Equity Funds

Hong Kong is well-placed to become a fund domicile hub for PE fund managers that have a primary investment focus within Asia, due to the following:

- Hong Kong is centrally located within the region and has optimal proximity to Mainland China which is the largest Asian PE investment destination in Asia

- Hong Kong has the largest single connection of fund manager/advisers of any Asian city and a deep pool of professional service providers

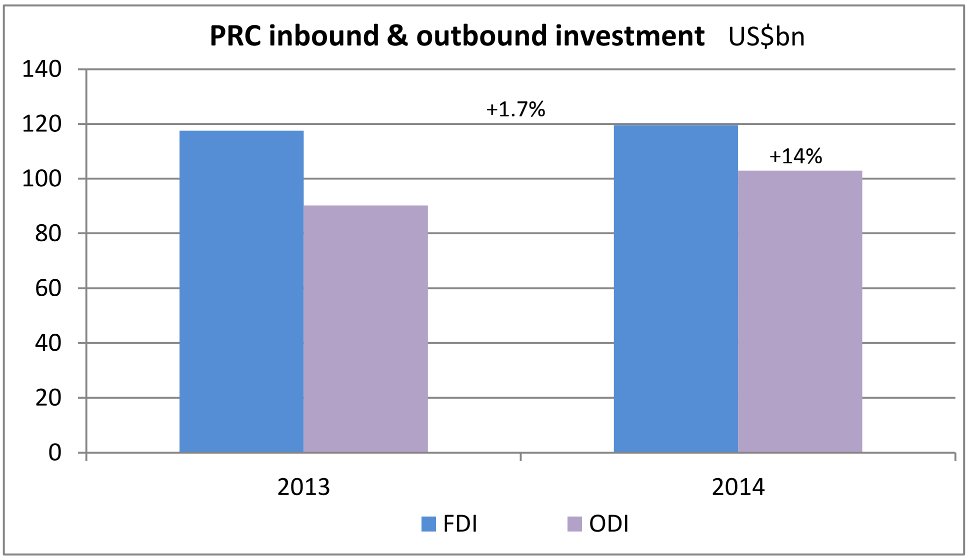
- China is transforming from being an inbound destination for PE capital to a major potential source of outbound investment capital (see chart below). Many leading mainland investors are developing 'offshore' operations – and Hong Kong is ideally placed to capture a significant share of this developing activity. Mainland Chinese PE investors seeking to establish Hong Kong legal entities through which to channel their outbound investments are currently being advised to establish those entities in offshore centres such as the Cayman Islands or BVI.

- The local stock market in Hong Kong provides an attractive exit option for PE investors. – The HKEx has hosted a majority of IPOs backed by Mainland Chinese PE funds. The recent successful launch of the Shanghai-Hong Kong Stock Connect and the upcoming Shenzhen-Hong Kong Stock Connect will further boost the Hong Kong's robust capital market, creating a more attractive exit channel for PE funds.

- The liberalisation of the use of Rembinbi for direct investment has facilitated Hong Kong to become the largest offshore Renminbi funding centre for companies to raise Renminbi capital to finance their Mainland Chinese operations.

- Over the last 5 years, more than 32% of all IPOs on HKEx have had a PE shareholder. The Hong Kong- China Mutual Recognition of Funds Scheme was launched on 1 July 2015 allowing Mainland China and Hong Kong domiciled qualified funds managed by Mainland China and Hong Kong licensed managers to be sold in Hong Kong and Mainland China .

In 2014, inbound investment (FDI) to PRC grew by a modest 1.7% whilst outbound non-financial investment (ODI) grew by 14.1%.



Source: Ministry of Commerce of China

Exit through an IPO is viewed by PE firms as one of the most optimum channels to maximise the value of their PE investment upon realisation. The launch and growth of Stock Connect can benefit the PE industry through opening up capital markets in Mainland China to allow for more foreign capital to be invested whilst at the same time allowing capital markets in Hong Kong to benefit from Mainland China capital investment. This is likely to increase the demand for Hong Kong and Mainland China stocks.

Creating a fund regime in Hong Kong that is tax neutral as well as comparable and competitive to other existing PE fund regimes such as the Cayman Islands and Delaware would help Hong Kong position itself as an onshore hub for servicing the PE fund industry. Whilst a number of PE firms are currently based in Hong Kong, providing an attractive platform for PE firms to also domicile their new funds in Hong Kong will help to attract further and new business into Hong Kong from established Western and Asia-based PE funds manager, but more importantly, from the Mainland China PE firms.

As part of the process of establishing, launching and running a PE business fund managers have to deploy resources where they base their operations, primarily human capital, as well as engage the services of other service providers such as financial intermediaries, fund administrators, custodians, accountants, lawyers and tax advisors. For ease of management and running day to day operations of their managed PE funds, managers will often look to appoint other services providers located in close geographic proximity to where they have set up shop.

Currently, the PE industry is not a large employer. An HKVCA survey of its members in 2014 indicated that PE firms in HK directly employed on average 14 people. HKVCA has 180 PE-firm members (70 replied to this survey), whilst AVCJ estimates that there are just over 400 PE operations based in HK (perhaps 20% of these are small or dormant). A rough estimate of total employment is that PE firms employ 3,220 people (14 employees at 180 HKVCA member firms plus 5 employees per firm at the AVCJ non-HKVCA member, non-dormant 140 PE firms). PE firms, however, outsource significant amounts of their activities. It is difficult to put a multiplier on the number of jobs outsourced, but a multiplier of between 3 and 6 may be reasonable (cf a PwC study of March 2013 estimated a multiplier of 4.6) would indicate that perhaps an additional 10,000-20,000 jobs are sustained by the industry. We believe that bringing Limited Partnerships onshore in Hong Kong would (i) increase the number of PE firms based in Hong Kong and (ii) increase the multiplier effect as more activities would be outsourced to Hong Kong services firms supporting the PE firms (at the expense of Cayman and BVI activities). The potential employment creation would fall largely outside the PE industry.

It is anticipated that for every US$100 billion under management, a Hong Kong domiciled fund would need to incur or spend at least 1%[8] of its capital under management on payroll expenses and other service providers i.e. US$1 billion. By attracting more fund managers to launch onshore PE funds and base their operations in Hong Kong, an increasing percentage of the operational cost of these firms would be deployed in Hong Kong resulting in an uplift in the demand for professionals working in the financial services industry as well as other ancillary sectors.

Hong Kong is an established financial centre and well recognised for its expertise in this industry globally. Hong Kong has a strong base of industry professionals who have experience in the fund management and PE industries. This is supported by an established base of other service providers such as lawyers, auditors, administrators, bankers, valuation agents etc. who are already present in Hong Kong and ready to serve a Hong Kong limited partnership fund regime. Building up an onshore PE fund regime will further enhance Hong Kong's position as a leading financial centre.

Hong Kong is the prominent centre for PE in Asia and is well placed to benefit from future growth of PE investment through channeling: external capital into Asia and China-sourced capital to the rest of the world. One reason why Hong Kong should be successful is that PE seeks tax efficient structures in locations that have a good network of avoidance of double tax treaties (DTAs)[9]. DTAs are increasingly being challenged where 'commercial substance' is not demonstrated in the country of source of the investment or the country of domicile of the legal entity where realisation proceeds are being repatriated to. If Hong Kong allows full substance by being the location of both the PE fund vehicle and its manager, the PE vehicle can obtain maximum benefit from Hong Kong's DTA network. This will not be the case for many of the 'offshore' centres around the world giving Hong Kong a natural competitive advantage if it adapts the proposed legal and regulatory structures and recommendations to cater for onshore PE funds.

[8] Per a survey performed by the Hong Kong Private Equity Finance Association in April 2015.

[9] As of April 2015, Hong Kong has concluded 32 DTAs, and is negotiating 13.

D) Proposed Legal and Regulatory Framework for Limited Partnerships in Hong Kong

Rationale for Using a Hong Kong Limited Partnership in Private Equity and Venture Capital Industry

A main legal feature and benefit of a limited partnership structure is the contractual freedom which it offers the partners. The limited partnership vehicle is the preferred structure for PE and venture capital investors internationally also because of the tax neutral treatment or the flexibility of the 'flow-through' taxation position and the limited liability of investors. There exist two types of partners in a limited partnership, the limited partners, whose liability is capped at the amount of their investment or commitment (the "LPs") and the general partners, who have unlimited liability for the liabilities of the limited partnership (the "GPs"). Whilst this unlimited liability may create a perceived risk for the GP, this can be mitigated through having a limited liability company serve as the GP.

Most of the terms governing the day to day operations and management of the limited partnership, which may be freely determined and negotiated between the LPs and the GPs, are laid out in the limited partnership Agreement ("LPA").

The LPA is the constitutional document of the limited partnership which is negotiated and agreed by the partners (LPs and GPs) and governs the terms and conditions of the partnership and sets out the rights and obligations of the partners, the remuneration of the GP, capital call structure, distribution waterfall, governance of the partnership and other specific terms agreed upon by the partners (such as key man). Not only is the LPA an agreement between the GP and the LPs, it is also an agreement by and amongst the LPs with each other.

Moreover, from a tax perspective, the use of a limited partnership has certain advantages for international investors as their home countries will, based on domestic tax law, treat the limited partnership as a "flow though" structure and the limited partnership itself is tax neutral.

Therefore, it will be beneficial for internationally operational PE fund managers to select a limited partnership vehicle domiciled in a jurisdiction such as Hong Kong where the limited partnership can benefit from the tax treaty network of Hong Kong to reduce withholding taxes on income and gains derived from underlying overseas investments. The use of limited partnerships has become an industry standard globally, with the vast majority of all PE vehicles being created in this legal form.

Summary of proposed legal and regulatory framework for Limited Partnerships in Hong Kong

The proposal on features of the limited partnership structure has been formulated, taking into account the current framework applicable to limited partnerships in Hong Kong and the practices of the existing regimes for limited partnerships in other global investment fund centres (namely, the Cayman Islands, US State of Delaware, England, Jersey, Luxembourg, Mainland China and Singapore) where limited partnerships are often set up in.

Hong Kong already has a Limited Partnerships Ordinance (Cap. 37) ("LPO") in place albeit somewhat dated (1912). However, the LPO does not cover issues such as distributing capital, investor protection and confidentiality which are relevant for PE funds. The aim of the proposal is to update and modernise the LPO in order to:

- create attractive conditions for limited partnerships establishment when compared with other global investment fund centres;
- provide greater certainty, flexibility and relevance to better suit the needs of private funds; and
- ensure investor protection through appropriate measures and requirements.

Legal framework, supervision and enforcement

Given there exists currently in force a LPO , Hong Kong limited partnerships could be established as "collective investment schemes" under a revised and updated LPO, reflecting the features set out in this paper.

However, care would need to be taken as to how any revision of the LPO would impact existing limited partnerships established under the current LPO i.e. those not established as "collective investment schemes".

Limited partnerships structured under the revised and updated LPO as collective investment schemes would be private funds for the purposes of the Securities and Futures Ordinance ("SFO"). Accordingly, Hong Kong limited partnerships could only be offered in Hong Kong on a private placement basis – for example, to "professional investors" only; under the Companies Ordinance there also exists a 50 offerees statutory safe harbor, and consideration should be given to expanding the Companies Ordinance 50 limited offerees safe harbour applicable to companies to limited partnerships as well.

Like the OFC regime, the establishment of a limited partnership as a collective investment scheme would be subject to approval of the SFC; but they would not be regulated by the SFC. The SFC would exercise its supervisory function primarily through the SFC licensed or registered managers that perform the asset management function for the limited partnership.

In this respect it is worth noting that under the current SFO a Type 9 license is probably the most relevant. However, it is worth considering whether the existing Type 9 licensing and supervisory framework is in fact sufficiently appropriate to the PE industry, given that the skill set and experience required for managing a portfolio of public market securities is quite different to investing in a relatively small number of PE/non-public transactions.

The GP, which we would expect to be incorporated in Hong Kong, should not be subject to SFC licensing in its own right if it delegates the asset management function to a Type 9 licensed or registered asset management firm. We should also allow for the flexibility that the GP could in turn be a limited partnership, to which the principles discussed in this paper would also apply.

Consistent with the spirit of the profits tax exemption for offshore PE funds enacted on 17 July 2015[10] ("2015 Ordinance"), if the limited partnership is not managed by a SFC licensed entity (being its GP or the GP's delegate), it could also be exempted from Hong Kong profits tax provided it meets the conditions of a "qualifying fund" as set out in the 2015 Ordinance[11].

Investment scope

We recommend using a negative list approach for permissible activities of a limited partnership: (a) a Hong Kong limited partnership should be able to carry on any lawful purpose, within or outside Hong Kong. Exceptions might include: as a limited partnership it cannot be licensed to carry on any type of regulated activity under the SFO, as a licensed corporation; it cannot carry on a banking business or business of taking deposits under the Banking Ordinance; (b) there should be no restriction as to the type of assets it can hold, with the exception of Hong Kong immovable property (see next paragraph); (c) there should be no legal restrictions on its investment policy or strategy - these should be left to the terms of the LPA itself.

With regards to restrictions on holding real estate, this should be limited to exclude Hong Kong immovable property only which should be set at a limit or threshold, and, consistent with the investment scope as set out in the 2015 Ordinance to extend the current profits tax exemption for offshore funds to PE funds.

Investor protection

One of the cornerstones of investor protection will be a requirement that each GP should either itself be licensed for Type 9 regulated activities or that it delegates the discretionary asset management function to a licensed or registered asset management firm.

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[10] As the Inland Revenue (Amendment) (No. 2) Ordinance 2015.

[11] The three conditions can be summarised as follows: (i) the number of investors (unrelated to the Originator) exceeds 4; (ii) the capital commitments made by such investors exceed 90% of the aggregate capital commitments; and (iii) the net proceeds to be received from the fund by the Originator does not exceed 30% of the net proceeds arising from the transactions of the PE fund.

Whilst given the nature of the underlying assets of a PE fund, we do not propose that an independent custodian must be appointed, it might be determined that for reasons of investor protection an independent custodian is desirable. There should be no specific eligibility criteria for any such custodian.

Governance

To promote good corporate governance there will be requirements as to a minimum number or proportion of independent directors of the GP of the limited partnership.

Central management and control of a limited partnership can be, and should be encouraged to be, in Hong Kong.

The proposed Limited Partnership Law does not require an annual audit and holding of an Annual General Meeting ("AGM"). This is consistent with limited partnership laws in other regions, for example in the Cayman Islands, Delaware, USA and China. The flexibility of not having an annual audit and AGM requirements would make the limited partnership regime in Hong Kong more attractive for PE firms and any such requirements are being deferred to the mutual agreement by the market participants.

Tax framework

An essential part of the proposal is that limited partnerships will be tax neutral, regardless where central management and control exists. This is consistent with the FSDC's recommendation on the OFC regime. Specifically, the regime should create competitive conditions for setting up limited partnerships in Hong Kong compared to other global investment fund centres, maintain a level playing field with other types of investment vehicles commonly used by Hong Kong managers, and at all times ensure an appropriate level of investor protection.

Tax neutrality is important for it to be on par with the proposed OFC regime – which are proposed to be exempt from Hong Kong profits tax. Additionally, no stamp duty should be payable on the sale or transfer of limited partnership interests provided the investment scope of the limited partnerships are comparable to that of the tax exempt counterparts.

Winding up

A simple and practical mechanism should be provided for the liquidation and winding up of limited partnerships, although safeguards will need to be considered to protect the interests of creditors in the case of a compulsory winding up. The provisions of the LPA should reflect this.

Attachment

Details of proposed legal and regulatory framework for Limited Partnerships in Hong Kong

Subject area	Legal and Regulatory Framework for Limited Partnerships in Hong Kong
1. Partnership structure	The recommended limited partnership structure is set out below: ● The partnership should not have separate legal personality. ● GP (s) can be an individual, a corporation or a partnership, with at least one Hong Kong resident director if the GP is a corporation. ● LPs can participate as advisor/non-executive members. ● LPs' rights and obligations are to be determined by the terms of the LPA. ● Residence of GP /central management and control in Hong Kong or off-shore. ● Central management and control of a limited partnership can be in Hong Kong, with setting up of GP and residence of majority or all of directors (if a corporation) in Hong Kong without affecting the profits tax exemption status of the limited partnership if other tax exempt conditions are satisfied.
2. Local operations requirements	● A limited partnership may be formed in the manner and subject to the conditions by the LPO. ● Registration of a limited partnership and its subsequent changes during the continuance of anlimited partnership with the Companies Registry. ● Registration shall be effected by submitting to the Registrar of Companies for registration a statement signed by the partners. ● For the particulars of registration which are open to public inspection, see "Minimum disclosure requirements" at Item 10.
3. Oversight / Fiduciary responsibility	A GP shall: ● be in a fiduciary relationship with its LPs ● act at all times in good faith in the interests of the limited partnership; ● be capable of contractual variation provided that the GP acts in good faith. A LP will not owe any fiduciary duty to the limited partnership or other partners in exercising any of its rights or authorities or otherwise in performing any of its obligations under the LPA; and as a member of any

Subject area	Legal and Regulatory Framework for Limited Partnerships in Hong Kong
	board or committee of the limited partnership (e.g. limited partners advisory committee) it will not owe any fiduciary duties to the limited partnership or any other partner. A LP will not lose its limited liability status solely because of its relationship with the GP (see "Circumstances of losing limited partnership status" at Item 18).
4. Annual general meetings and audited statements	No requirement for annual general meeting and annual audit. The LPA may prescribe requirements for annual general meeting, annual audit and relevant accounting standard that the partnership should adopt, if necessary.
5. Winding up	It is advisable for Hong Kong to adopt a simple and practical mechanism for the liquidation of limited partnerships. Voluntary winding up should be subject to the provisions of LPA. There must be safeguards to protect the interests of creditors in case of compulsory winding up.
6. Profits tax treatment	A limited partnership will be tax exempt and hence fiscally-neutral provided it qualifies for profits tax exemption. A limited partnership shall be treated as a separate entity from partners for tax purposes. Distribution to partners, like a company's dividends, is not taxable to the partners. Limited Partnerships can follow any investment scope, but if they want to benefit from the Hong Kong tax exemption, they need to comply with certain investment scope requirements (see "Investment scope" at Item 12) and follow the same principles as that of private OFCs. Taxation of "carried interest" would be a separate issue and not be included in this proposal.
7. Stamp duty treatment	Redemption and transfer of equity interest in the limited partnership will not be subject to stamp duty. Stamp duty would be payable for any underlying assets (e.g. Hong Kong real estate) directly held by a limited partnership, which are stampable.
8. Tax filing	To assist the Inland Revenue Department's monitoring, a limited partnership

Subject area	Legal and Regulatory Framework for Limited Partnerships in Hong Kong
	shall have an obligation to file a profits tax return with the Inland Revenue Department. The GPand LPs (whether resident or non-resident, corporate or individual) will be subject to the normal Hong Kong profits tax/income tax filing obligations as applicable.
9. Minimum partnership requirements	At least one GP and one LP.
10. Minimum disclosure requirements	A limited partnership should be registered with the Companies Registry. Particulars to be registered should comprise the firm name, the general nature of the business, the principal place of business, the full name of each of the partners, the term of the partnership and its commencement date, description of every LP and the contribution sum (whether in cash or how otherwise) by each LP, and a statement that the partnership is limited. <u>Minimum disclosure requirements to the public</u> The name and address of each LP and the date on which each LP became and ceased to a LP may be inspected by the public with the consent of the GP. The amount and date of contribution of each LP and the amount and date of return of the whole/part of the contribution of any LP may be inspected by the public with the consent of the GP. <u>Minimum disclosure requirements of GP (s) to LP (s)</u> The name and address of each LP and the date on which each LP became and ceased to a LP may be inspected by all partners, subject to any express or implied term of the LPA. The amount and date of contribution of each LP and the amount and date of return of the whole/part of the contribution o any LP may be inspected by any LP with the consent of the GP.
11. Private Placement	The offering of interests in a Hong Kong established limited partnership can be done on a private placement basis in Hong Kong, under the SFO (including, for example, to professional investors). The approach should be consistent with the existing securities offering regime in Hong Kong under the SFO. However, and although the Companies Ordinance will not apply to Hong Kong limited partnerships, consideration should be given to offering the limited offerees safe harbour (not more than 50 Hong Kong

Subject area	Legal and Regulatory Framework for Limited Partnerships in Hong Kong
	offerees who are not professional investors) available for companies to limited partnerships, rather than having to rely on the common law limited offerees private placement safe harbour.
12. Investment scope	Flexible and open to activities which are legal. Limited Partnerships should be able to invest in any asset class[12].
13. Eligible requirements of custodian	Appointment of custodian should not be mandatory. In the event that a custodian should be appointed for reasons of investor protection, there should not be any specific statutory eligibility requirements given that custody is not a regulated activity in Hong Kong and the nature of the assets a PE invests in. Any eligibility requirements could be included contractually in the LPA.
14. Removal of custodian	Any rules or restrictions relating to the removal of the custodian should be specified in the LPA. No statutory or regulatory restrictions should be imposed
15. Minimum capital requirements	None.
16. Distributions	Distribution requirements or restrictions in Hong Kong should be governed by the LPA in order to give parties flexibility. There should be no statutory clawback or refund requirements for any capital distributed, unless the limited partnership is insolvent at the time the original distribution was made and the LP has actual knowledge of the insolvency of the limited partnership.
17. Enforcement	The enforcement obligation should remain with the Companies Registry. In relation to the licensed/registered persons operating a limited partnership, the SFC would have its normal disciplinary powers.
18. Circumstances of losing limited liability status	A LP will lose its limited liability protection if he takes part in the management or conduct of the limited partnership, for the period of time in which he takes part in the management or conduct of the limited partnership. A LP related to the GP will not lose its limited liability protection solely because of their relationship.

[12] For limited partnerships to be exempt from Hong Kong profits tax, it should follow the allowable scope for "excepted private companies" as set out in the 2015 Ordinance to extend the profits tax exemption for offshore funds to PE funds.

Subject area	Legal and Regulatory Framework for Limited Partnerships in Hong Kong
	It may be worth considering: ● adding a list (exhaustive or non-exhaustive) of activities (which either would or would not lead to loss of limited liability status) to the LPO to enhance certainty for limited partners as well as for the external third parties with whom they interact; and ● setting up a mechanism to keep the list updated and sustainable in view of industry development.
19. Licensing/ registration requirement for general partner	A GP of a limited partnership should not be subject to licensing or registration requirements, provided that the GP delegates all "asset management" functions relating to the limited partnership to an intermediary licensed/registered to carry on Type 9 regulated activity or other applicable regulated activities, and does not otherwise carry out any other regulated activities (such as marketing or distribution of funds). Consideration to be given to ensure the Type 9 licensing and supervising framework is sufficiently appropriate to the PE industry.

About the Financial Services Development Council, Hong Kong

Established in January 2013, the Financial Services Development Council (FSDC), Hong Kong is a high-level and cross-sector platform to engage the industry and formulate proposals to promote the further development of Hong Kong's financial services industry and map out the strategic direction for development. The FSDC will advise the Hong Kong SAR Government on areas related to diversifying the financial services industry, enhancing Hong Kong's position and functions as an international financial centre of our country and in the region, and further consolidate our competitiveness through leveraging the Mainland to become more global.

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