

## Hong Kong new re-domiciliation mechanism for foreign investment funds

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The Limited Partnership Fund Ordinance (Chapter 637 of the Laws of Hong Kong), which took effect on 31 August 2020, has introduced a new entity type allowing private investment funds to be established in Hong Kong in the form of limited partnership funds (the “LPFs”).

### Introduction

To facilitate private investment funds to operate as a LPF under the new regime, on 2 July 2021, the Government also gazetted the Limited Partnership Fund and Business Registration Legislation (Amendment) Bill 2021 (the “Bill”), with the purpose of creating a new re-domiciliation mechanism (the “Re-domiciliation Mechanism”) facilitating overseas investment funds to be re-domiciled and registered in Hong Kong as LPFs.

### Key points of the Re-domiciliation Mechanism

Currently, most funds having business operation in Hong Kong have adopted offshore structures, primarily with its domicile in Cayman Islands. In the absence of Re-domiciliation Mechanism, foreign investment funds wishing to re-domicile to

Hong Kong would need to transfer their assets to a new fund vehicle in Hong Kong in order to effectively re-domicile under existing law and the transfer process would give rise to stamp duty implications, which serves as a major deterrent preventing foreign investment funds from re-domiciling to Hong Kong.

To address the above issues, a task force led by the Financial Services and the Treasury Bureau, comprising members from the Hong Kong Monetary Authority, the Securities and Futures Commission and the Inland Revenue Department, has come up with the Bill on re-domiciliation of LPFs. The objective of the Bill is to introduce a commercially viable mechanism for foreign funds to re-locate to Hong Kong that:

- ▶ preserves the identity and continuity of the foreign investment funds upon re-domiciliation so that any contract made,

resolution passed, or any other act or matter done in relation to the fund before its registration in Hong Kong will not be affected or prejudiced;

- ▶ provides certainty in tax treatment to the effect that the registration of foreign funds as LPFs do not amount to a transfer or a change in beneficial ownership of the assets of the foreign funds so that the re-domiciliation process would not give rise to any stamp duty implications; and

- ▶ provides a clear and easy Re-domiciliation Mechanism and upon domiciliation, the fund would have the same rights and obligations as any other newly established LPFs in Hong Kong.

## Overview of the Re-domiciliation Mechanism

An overview of the New Re-domiciliation Mechanism is set forth below:

| Item   | Feature  |
|--|--|
| <b>Eligibility</b>                                 | A fund established outside Hong Kong in the form of a limited partnership is eligible to be registered as a LPF in Hong Kong, provided it meets the same set of eligibility requirements for a Hong Kong domiciled LPF.  |
| <b>Continuity</b>                                  | Upon re-domiciliation, the migrated fund remains as the same legal entity. Re-domiciliation to Hong Kong does not intend to prejudice or affect the identity of the fund as previously incorporated or registered.   |
| <b>Contracts remain effective</b>                  | Contracts made and resolutions passed prior to re-domiciliation will not be affected, and the rights, functions, liabilities, obligations and property of the fund will not be affected.   |
| <b>Legal obligations remain</b>                    | Any previous legal proceedings by or against the fund will not be rendered defective.  |
| <b>Application to be made by specified persons</b> | An overseas limited partnership may register as an LPF by having a Hong Kong law firm or a Hong Kong qualified solicitor file the application to the Companies Registry in Hong Kong.  |
| <b>Application pack</b>                            | An application for re-domiciliation should specify or include the followings: <ul style="list-style-type: none"> <li>▶ original name and place of establishment of the offshore fund;</li> <li>▶ a copy of certificate of establishment and constitutive document of the offshore fund;</li> <li>▶ confirmation that the proposed re-domiciliation and de-registration of the offshore fund are not prohibited by its</li> </ul> |

| Item                                  | Feature   |
|---------------------------------------|---|
|                                       | <p>constitutive documents, contracts and laws of its place of establishment; and</p> <p>▶ notice of the proposed re-domiciliation has been served to creditors.</p>   |
| <b>Tax treatment</b>                  | To provide certainty in tax treatment, the Bill provides that the registration of foreign funds as LPFs does not amount to a transfer, or change in beneficial ownership, of the assets of the foreign funds so that no additional stamp duty will be incurred.   |
| <b>Deregistration</b>                 | The Companies Registry will register the offshore fund as a LPF and issue a certificate of registration as proof of registration upon reviewing and being satisfied with the application documents. The offshore fund would then have to de-register in its original place of establishment within 60 days of issuance of the certificate of registration, failure of which would lead to its registration being cancelled. |
| <b>Effective date of commencement</b> | The re-domiciliation portion of the Bill is expected to become law on 1 November 2021.  |

## Conclusion

The Bill demonstrates the determination of the Hong Kong government to develop Hong Kong as a major fund domicile by strengthening and simplifying Hong Kong's

new fund vehicles' regime, and potentially to encourage more offshore funds to go "onshore". It is also clear that lawmakers are looking to strike a balance between sufficient regulatory oversight and efficiency of fund re-domiciliation.

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