



ASIA Funds & Financial Services

NEWSLETTER

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This issue of Sidley’s Asia Funds and Financial Services Newsletter discusses important regulatory and enforcement developments that impact financial institutions, investment advisers and investment funds operating in the Asia-Pacific region in a fast-changing regulatory landscape, with a special focus on Hong Kong’s new private fund regime as well as the regulatory responses in Hong Kong and Singapore amid the COVID-19 outbreak.

NEWS

HONG KONG INTRODUCES LANDMARK LIMITED PARTNERSHIP FUND BILL TO CREATE A DOMESTIC PRIVATE FUND INDUSTRY

Following the industry consultation by the Hong Kong government on the proposal to establish a limited partnership regime for investment funds in August 2019, the long-awaited Limited Partnership Funds Bill (Bill) was gazetted on Friday, March 20, 2020. The Bill aims to address the inherent limitations of the Limited Partnership Ordinance (Cap. 37) (LPO), which was enacted in 1912 before the advent of the modern private fund industry. The LPO is widely viewed as outdated and ineffective, and this has acted as a significant disincentive to the domiciliation of private funds in Hong Kong to date. The Bill is expected to take effect on August 31, 2020.

Once enacted, the Limited Partnership Funds Ordinance (LPFO) will provide for the registration of funds established in the form of limited partnerships in Hong Kong. The LPFO will directly affect segments of the market that traditionally use limited partnerships to structure privately offered investment funds, including venture capital, private equity and buyout funds, real estate funds, infrastructure and projects funds, special situations and hybrid funds, credit funds, hedge funds and funds that invest in digital assets, such as cryptocurrency and virtual assets. The LPFO will not preclude investment funds that invest in public equity and other liquid assets.

The new regime will be of particular interest to fund managers who would like to establish limited partnership funds in Hong Kong, migrate funds registered under the LPO to the LPFO or take advantage of the tax concessions to be introduced in respect of carried interest fee streams, as recently announced in the government’s budget proposal — in each case, in order to align with their business activities in Asia and facilitate greater regulatory and taxation certainty.

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Key Aspects of the New Limited Partnership Funds Regime

In line with best international practice for the establishment of limited partnerships, the new regime proposes the following:

- **No Separate Legal Personality:** A limited partnership fund (LPF) established under the LPFO will not have a separate legal personality and must be established with at least one general partner (GP) and one limited partner (LP).
- **GP's Unlimited Liability:** The GP will assume unlimited liability for the debts and obligations of the LPF that cannot be satisfied from the LPF's assets
- **LP's Limited Liability:** The LPs will not be liable for the debts and obligations of the LPF beyond the amount they have agreed to contribute, unless the LPs participate in the management and control of the LPF in a manner that falls outside the scope of the prescribed safe harbor activities.
- **Duties and Responsibilities of the GP:** The GP has ultimate responsibility for the management and control of the fund. The GP must appoint a person (either the GP itself or another person) as investment manager to carry out the day-to-day investment management functions of the fund.
- **Custody:** The GP must ensure proper custody arrangements for fund assets in accordance with the limited partnership agreement of the fund.
- **Contractual Freedom:** The GPs and LPs will enjoy extensive freedom of contract in respect of the operations of the fund, including in relation to capital contributions, distributions and the implementation of clawback mechanisms.
- **Confidentiality of Information:** Information that will be available for public inspection comprises (i) the identity of the GP, the authorized representative of the fund (if any) or the investment manager of the fund, (ii) particulars of the fund and (iii) particulars of any former GP, authorized representative of the fund or investment manager of the fund. Information relating to the LPs will not be available for public inspection.
- **Hong Kong Nexus:** The LPF must have a registered office in Hong Kong and apply for a business registration certificate under the Business Registration Ordinance (Cap. 310 of the Laws of Hong Kong).
- **Dissolution:** An LPF may be dissolved voluntarily in accordance with the limited partnership agreement of the fund, or if the GP or the authorized representative (if applicable) can no longer act in such capacity under prescribed circumstances and is not replaced. A partner or creditor of an LPF may also apply to the court for dissolution of the LPF.
- **Winding Up:** An LPF may largely be wound up under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) as if it were an unregistered company within the meaning of Part X of that Ordinance.
- **Migration of Limited Partnership Funds Registered Under the LPO to the LPFO:** The GP of a limited partnership that is registered under the LPO may apply to the Registrar of Companies for the registration of the LPF if it meets the LPF eligibility requirements.
- **Redomiciliation of Non-Hong Kong Limited Partnerships to the LPFO:** The current version of the Bill does not preclude the possibility that a redomiciliation provision may be included in the final version that is enacted as law. If a redomiciliation mechanism is ultimately included in the LPFO, such a provision will allow redomiciliation to occur for a significant proportion of the existing private fund industry that currently remains domiciled outside Hong Kong. The inclusion of such a provision in the final version of the Bill that is enacted as law is widely anticipated.



The introduction of the new LPF regime has the potential to create a new domestic industry for the development of private funds in Hong Kong—a move that will position Hong Kong to become a leading fund domicile for asset and wealth managers in Asia. Hong Kong looks likely to evolve as an attractive local alternative for participants in the private fund industry who wish to establish new funds or redomicile existing fund vehicles from offshore jurisdictions to Hong Kong. The development of the new regime is also expected to create wider opportunities for a range of industry participants, including custodians, administrators, banks, professional services firms, corporate services firms and valuers.

HONG KONG GOVERNMENT AND FINANCIAL REGULATORS ANNOUNCE RELIEF MEASURES TO AMELIORATE NEGATIVE IMPACT OF COVID-19 PANDEMIC ON CAPITAL MARKETS

In response to the COVID-19 pandemic, the Hong Kong government, the Securities and Futures Commission (SFC) and the Stock Exchange of Hong Kong Limited (Exchange) have issued a host of iterative guidance and introduced relief measures to help market participants while stepping up supervisory efforts to identify potential vulnerabilities arising from the exceptional market conditions, with a particular focus on the asset management industry. The key measures:

One-Off Bailouts for Exchange Participants and SFC Licensees

On April 8, 2020, the government proposed a second round of anti-epidemic fund measures committing HK\$140 million (out of HK\$137.5 billion) to help reduce the financial burden faced by small- and medium-sized Exchange participants and SFC licensees. These intermediaries, who primarily serve retail clients, have been particularly hardhit by market volatility. The financial packages were approved by the Legislative Council on April 18, and are expected to provide cash subsidies to over 700 eligible Exchange participants and over 40,000 eligible SFC-licensed individuals. The Hong Kong Securities and Investment Institute will disburse the special subsidies to eligible intermediaries.

Ad Hoc Relaxation of Filing Deadlines for Audited Accounts

Under the current regime, licensed corporations and associated entities of intermediaries are required to submit audited accounts and other financial information to the SFC within four months after the end of each financial year. However, many firms/auditors have encountered operational difficulties in complying with the prescribed time frame. Firms facing extenuating circumstances may apply to the SFC for extensions (on a case-by-case basis). For the avoidance of doubt, the SFC has stated that it is unable to provide blanket extensions or assurances that extensions will be granted.

Licensing Regulatory Papers/CPT Relief for Licensed Individuals

Worldwide travel curbs have left licensed staff at many licensed corporations stranded overseas. As a temporary measure, the SFC announced a three-month blanket extension of the deadline for all licensed individuals required, by way of licensing conditions or otherwise, to take postlicensing regulatory examinations on or before September 30, 2020. A similar three-month extension has also been granted to licensed individuals required to complete additional continuous professional training (CPT) hours on or before September 30. For avoidance of doubt, the licensees are not required to submit any application for time extension under these blanket extensions. Licensed individuals who are unable to fulfill the annual CPT hours by December 31, 2020, may also carry forward any unfulfilled CPT hours for the calendar year of 2020 to 2021.



Relief and Guidance on Reporting Requirements Etc. for Listed Issuers

Since February 2020, the SFC and the Exchange have jointly issued two statements and one further guidance to offer relief and regulatory guidance for listed issuers that encounter operational difficulties complying with the requirements on financial reporting, information disclosure and annual/extraordinary/special general meetings under the Listing Rules and other relevant laws, codes and guidelines during the pandemic. Subject to the proviso that other reporting requirements are satisfied, the Exchange may allow listed issuers to publish unaudited preliminary results without imposing any trading halts.

Heightened Regulatory Focus on the Investment Funds Industry

In view of the volatility in local and international markets related to the COVID-19 outbreak, the SFC has announced that it will closely monitor the operational and financial resilience of the investment funds industry. In particular, it will focus on investment fund liquidity and redemption profiles as well as the fair treatment of fund investors, particularly if funds propose to activate liquidity risk management measures, such as swing pricing or suspensions.

The SFC has stepped up its monitoring of SFC-authorized funds to ensure that the managers, trustees and custodians properly manage the liquidity of funds and ensure fair treatment of investors. It has also reminded intermediaries of their obligation to take into account the client's circumstances in the current market conditions and ensure suitability when they make a solicitation or recommendation (especially in relation to products that may be highly volatile or less liquid).

SINGAPORE REGULATOR ADJUSTS REGULATORY REQUIREMENTS TO SUPPORT FINANCIAL SERVICES INDUSTRY DURING COVID-19 PANDEMIC

In response to the COVID-19 pandemic, the Singapore government has implemented a set of preventive measures called a "circuit breaker," which commenced on April 7, 2020, and has been extended until June 1, 2020. The circuit breaker measures include the closure of workplace premises, save for those providing "essential services." The Singapore government has identified financial services (which would include fund management services) as essential services. While financial institutions (FIs) such as fund management companies are considered essential service providers, they are required (like all other essential service providers) to operate with only the minimum staff needed on their premises and implement strict safe distancing measures.

On the regulatory front, the Monetary Authority of Singapore (MAS) has announced that it will adjust selected regulatory requirements and supervisory programs to enable FIs to focus on dealing with issues related to the COVID-19 pandemic and supporting their customers during this difficult period. Below is an overview of the key regulatory adjustments relevant to Singapore fund management companies.

Deferment of Implementation of Selected Regulatory Requirements

MAS will defer the implementation of the following regulatory requirements:

- **Over-the-counter (OTC) derivatives reporting requirements:** MAS will defer the implementation of the last phase of the reporting requirements relating to OTC commodity, equity and foreign exchange derivative contracts booked or traded in Singapore by fund management companies (and certain other nonbank FIs) by one year.
- **Examination requirements for representatives** Certain individual representatives of FIs are required to pass relevant modules of the Capital Markets and Financial Advisory Services (CMFAS) examination before commencing to engage in regulated activities. In recognition of the fact that various COVID-19 measures imposed locally and overseas have hampered



individuals' ability to take the examination modules in a timely manner, MAS will allow individuals to commence regulated activities as appointed representatives (subject to conditions), pending fulfilment of their CMFAS examination requirements. They will be given a grace period of six months to pass the CMFAS examination.

Deferment of New Policies

MAS will defer implementing certain new policies (for which the public consultations have closed), and FIs will be provided sufficient time to comply with these new policies when the new effective dates are announced. Below are some of the new policies being deferred that are relevant to Singapore fund management companies.

- **Guidelines on Individual Accountability and Conduct:** MAS consulted in 2018-19 on a set of proposed guidelines to strengthen accountability and standards of conduct across the financial industry. Specifically, the proposed guidelines aim to promote the individual accountability of senior managers, strengthen oversight of material risk personnel and reinforce standards of proper conduct among all employees.
- **Notice on Execution of Customers' Orders:** MAS consulted in 2017 on a proposed notice to formalize expectations for capital market intermediaries to establish policies and procedures to execute customers' orders on the best available terms (i.e., best execution) to support fair outcomes for customers.

Latitude on Submission Timelines for Regulatory Reports

MAS will work directly with FIs to review reporting submission timelines while taking into account MAS's need for timely information to facilitate its supervisory reviews.

Suspension of On-Site Inspections and Supervisory Visits

In recognition of the operational burden on FIs arising from implementation of business continuity measures such as split operations and telecommuting, MAS will suspend all regular on-site inspections and supervisory visits to FIs until further notice.

MAS will instead focus its supervisory reviews on how FIs are managing the impact of COVID-19 on their business and operations. MAS has begun to conduct on-site visits to FIs' customer-facing locations to verify and enforce the implementation of safe-distancing measures in line with guidelines from the Ministry of Health.

Temporary Working Arrangement for Appointed Representatives Unable to Return to Singapore

MAS will allow appointed representatives of FIs who are unable to return to Singapore for some time due to the COVID-19 situation to temporarily conduct regulated activities for Singapore customers from their overseas locations on behalf of the FI, provided that the FI

- Implements measures to continue to properly supervise the activities and conduct of the representatives, including ensuring compliance with all regulatory requirements in Singapore as well as the overseas jurisdiction in which the representative is located
- Maintains a register of such representatives and makes available this register upon MAS' request; the register should include details such as the period during which these representatives are working from the overseas location, the overseas jurisdiction where the representatives are located and the regulated activities conducted by the representatives

The FI is required to notify its MAS officer-in-charge in writing upon the commencement of such arrangement and confirm that it will comply with the two conditions above.



REGULATORY STANDARDS/UPDATES

Licensing Requirements for Family Offices and PE Firms

January 2020: The SFC published new guidance to clarify the baseline licensing requirements (and exemptions) for [family offices](#) and [private equity](#) (PE) firms that intend to carry on asset management or other services in Hong Kong. For inquiries, please do not hesitate to speak with your designated Sidley contact point.

New Conditions to Regulate Outsourcing Arrangements for Cloud Storage — Recent Updates

March 2020: The SFC partially [deferred](#) implementation of the new requirements for firms that keep records in an online environment amid the COVID-19 outbreak. Firms that intend to store records at a data center are now required to notify the SFC of their designated Managers-in-Charge (MICs) with oversight of the outsourcing arrangements and submit the relevant confirmation, notices or undertakings (as the case may be) no later than December 31, 2020 (i.e., an additional six-month grace period). For the avoidance of doubt, firms that already exclusively keep records in an online environment with third-party vendors are urged to seek SFC approval (without delay).

Amended Securities Law of China Came Into Effect

March 2020: The newly amended Securities Law of the People's Republic of China came into effect on March 1, 2020. The amended law aims, among others, to enhance the protection to investors and significantly increases the penalties for various violations in capital markets.

China Lifts Foreign Ownership Limitation for Securities Companies, Fund Managers and Futures Companies

April 2020: Effective from April 1, 2020, the China Securities Regulatory Commission officially lifted the foreign ownership limitation for securities companies and public fund management companies. The foreign ownership limitation for futures companies was lifted on January 1, 2020.

China Publishes New Rules on QFIIs' and RQFIIs' Investment Capital Management

May 2020: On May 7, 2020 the People's Bank of China and the State Administration of Foreign Exchange jointly issued the Provisions on the Administration of Domestic Securities and Futures Investment Capital of Foreign Institutional Investors to further relax the management of investment capital of Qualified Foreign Institutional Investors (QFIIs) and Renminbi Qualified Foreign Institutional Investors (RQFIIs). The new regulation allows QFIIs and RQFIIs to remit the investment capital in the currency and amount decided by themselves and to repatriate the profits with simplified procedures.

INTERMEDIARIES/MARKET SUPERVISION

SFC Puts Leveraged Foreign Exchange (FX) Trading Under the Microscope

April 2020: The SFC published [guidance](#) and expected regulatory standards following an industrywide survey of the sales and marketing practices for over-the-counter (OTC) FX products, which have recently been the subject of regulatory scrutiny. It also urged senior managers to assume responsibility for the implementation of policies and controls that comply with the expected regulatory standards.

SFC Signs Inaugural MoU with Competition Commission

April 2020: The SFC entered into its first [memorandum of understanding](#) (MoU) with the Competition Commission to foster greater collaboration and better monitor competition issues and combat anticompetitive practices in the securities and futures industry.



KEY PRODUCT DEVELOPMENTS

SFC Paves Way for IPO Securities to Be Offered in Uncertified Form

April 2020: Following public consultation, the SFC/the Exchange and Federation of Share Registrars released their joint consultation [conclusions](#) to migrate toward the adoption of a fully dematerialized securities market in Hong Kong. If implemented, the proposals will pave the way for initial public offering (IPO) securities to be offered in uncertified form, thereby enabling investors to hold shares in their own names (rather than in the name of a nominee via the Central Clearing and Settlement System) as well as dematerializing existing securities as early as 2022.

OTC Derivatives Regime — Recent Updates

May 2020: The SFC [deferred](#) implementation of the initial margin (IM) requirements for non-centrally cleared OTC derivative transactions (NCCDs) for 12 months to provide relief amid the COVID-19 outbreak. Relevant entities with an average aggregate notional amount of NCCDs greater than €50 billion (or HK\$375 billion) will now be subject to IM requirements from September 1, 2021, while entities with NCCDs greater than €8 billion (or HK\$60 billion) will be required only to exchange IM from September 1, 2022. However, the existing variation margin requirements will come into effect on September 1, 2020 (and have not been deferred).

SIGNIFICANT ENFORCEMENT ACTIONS

We highlight below several noteworthy disciplinary and enforcement actions in the second half of the year that may be of interest to fund managers, MICs/responsible officers (ROs), licensed representatives, intermediaries and others operating in the Hong Kong financial markets.

Senior Management Accountability

- **March 2020:** Two ROs/fund managers were suspended for 28 months and seven months respectively (and the licensed corporation fined HK\$6.3 million) for illegal short selling and conducting undisclosed cross-trades between staff/client accounts (which resulted in the transaction being executed to the client's detriment).

Internal Control Failures

- **April 2020:** A retail fund manager was reprimanded and fined HK\$3.5 million for breach of the Unit Trust Code and Fund Manager Code of Conduct for failing to properly account for interest accruing on cash deposits held in interest-bearing accounts with connected affiliates.
- **April 2020:** A licensed corporation was reprimanded and fined HK\$19.6 million for a series of regulatory breaches stemming from lax margin lending practices.

Anti-Money-Laundering/Life Bans

- **February 2020:** A licensed corporation was reprimanded and fined HK\$3.7 million and its RO suspended for nearly six months for failing to report suspicious off-exchange transfers of placing shares in two Hong Kong-listed issuers for sums incommensurate with its clients' financial profile.
- **March 2020:** A licensed representative of an asset manager was banned for life after being convicted of theft of shares worth roughly HK\$110 million (which was concealed through false accounting entries and client statements).
- **May 2020:** A licensed brokerage firm was reprimanded and fined HK\$5 million for lax anti-money-laundering compliance procedures when screening third-party deposits.



Licensing-related issues

- **February 2020:** A research analyst was banned for 12 months for undisclosed conflicts of interests and concealing dealing in securities during the blackout period contrary to his recommendations.
- **February 2020:** A licensed fund manager (approved to deal and advise on securities in Hong Kong) was reprimanded and fined HK\$1.5 million for conducting cross-border distribution of investment funds and offering investment advice in Taiwan. The SFC rejected arguments that the activities were confined to the provision of product information and client relationship management.
- **April 2020:** A fund manager was convicted and sentenced to community service for holding himself out as carrying on business in asset management without a license.
- **May 2020:** A placing agent was reprimanded and fined HK\$7 million for failing to conduct adequate suitability assessments when recommending and/or soliciting clients to invest in collective investment schemes and derivative products.

Civil liability for late disclosure of inside information

- **March 2020:** The Market Misconduct Tribunal, the statutory tribunal that determines civil contraventions of the market misconduct regime, ruled that three (out of five) directors were liable for failing to disclose inside information to the public about a potential takeover bid as soon as reasonably practicable. The tribunal found the directors had failed to take reasonable precautions to preserve confidentiality and were therefore unable to rely on the "incomplete proposal or negotiation" safe harbor. (A ruling on the appropriate penalty and related consequential orders is pending.)

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