

# The webinar will begin shortly

Please use the Q&A function for questions to the speakers, and the chat function for technical issues

## AIMA APAC July FMB Webinar: Limited Partnership Fund Bill and Other Regulatory Updates

7 July 2020

### Speakers:

Helen Fok, Partner, Morgan Lewis & Bockius LLP

Michael Bugel, Managing Director, Co-Head of APAC, AIMA



# AIMA House Rules

---



- This event is for persons working with AIMA member firms only. Individuals not affiliated with an AIMA member firm, or members of the media should not be on the webinar.
- This is an educational event, and should not supersede any independent advice members should seek separately taking into account their own individual circumstances.
- All views expressed by speakers/participants are solely their current opinions and do not necessarily reflect the views of AIMA or its members at large.
- While all efforts have been taken to ensure the information presented is accurate as of the date of the event, neither AIMA nor the speakers/participants will assume any responsibility or liability.
- This event is being held under the Chatham House Rule. You may use the information received but neither the identity nor the affiliation of the speaker(s) may be revealed.
- AIMA does not generally recommend or endorse any particular vendors featured, and members should independently assess the suitability of potential products/services for their use.
- This event is being recorded for replay, materials will be uploaded to the AIMA website after event.
- Please use the Q&A function for questions, and the chat function for any technical issues.

# AIMA APAC July FMB Webinar: Limited Partnership Fund Bill and Other Regulatory Updates

7 July 2020

Speaker: **Helen Fok**, Partner, Morgan Lewis & Bockius LLP





# Regulatory Updates

## 1. Hong Kong Limited Partnership Fund Bill

# Fund Vehicle Comparison



	Hong Kong (LPF)	Singapore (VCC)	Cayman Islands (SPC)
<b>Fund Types</b>	<ul style="list-style-type: none"> <li>May be used for all types of fund</li> <li>But it is expected LPF will be a vehicle more popular among private funds (PE, RE, VC)</li> </ul>	<ul style="list-style-type: none"> <li>May be used for all types of fund:</li> <li>mutual funds (retail)</li> <li>private hedge funds</li> <li>private funds (PE, RE, VC)</li> <li>Different requirements for each fund type. This table mainly covers private hedge funds.</li> </ul>	<ul style="list-style-type: none"> <li>May be used for:</li> <li>open-ended funds ( e.g. hedge funds)</li> <li>closed-ended funds (for example, PE, RE, VC funds)</li> <li>Additional requirements for administered funds. This table covers private hedge funds only.</li> </ul>
<b>Legal Form</b>	<ul style="list-style-type: none"> <li>Limited partnership</li> <li>Not a legal person - no separate legal personality</li> <li>GP has unlimited liability for debts and liabilities</li> <li>LPs may have unlimited liability if they participate in the management of the LPF (Please refer below for safe harbor provisions)</li> </ul>	<ul style="list-style-type: none"> <li>Single legal entity</li> <li>Sub-funds have segregated assets and liabilities but no separate legal personality</li> <li>A sub-fund may be wound-up as if it were a separate legal person</li> </ul>	<ul style="list-style-type: none"> <li>Single legal entity</li> <li>Sub-funds have segregated assets and liabilities but no separate legal personality</li> <li>Individual sub-funds may be wound up (typically by board resolution)</li> </ul>
<b>Incorporation process</b>	<ul style="list-style-type: none"> <li>Registration with RoC (an opt-in registration scheme)</li> <li>Application must be submitted by a registered Hong Kong law firm or a Hong Kong solicitor</li> <li>Information required: name of general partner and investment manager, responsible person, declaration of compliance with eligibility requirements etc.</li> <li>Low registration fee (a fixed fee of HKD3,034)</li> </ul>	<ul style="list-style-type: none"> <li>No registration with MAS</li> <li>Registration with ACRA</li> <li>Information required: e.g. constitution, names of manager and directors, registered office address, declaration of compliance with statute etc.</li> </ul>	<ul style="list-style-type: none"> <li>Registration with Registrar of Companies</li> </ul>

# Fund Vehicle Comparison



	Hong Kong (LPF)	Singapore (VCC)	Cayman Islands (SPC)
<b>Approval vs registration</b>	<ul style="list-style-type: none"> <li>Registration with the RoC</li> <li>No approvals from SFC unless the fund is offered to retail investors (subject to applicable exemptions)</li> </ul>	<ul style="list-style-type: none"> <li>Registration with ACRA</li> <li>No approvals</li> </ul>	<ul style="list-style-type: none"> <li>Registration required for certain open-ended funds under the Mutual Funds Law</li> <li>Registration required for certain closed-ended funds under the Private Funds Law</li> </ul>
<b>Timeframe</b>	<ul style="list-style-type: none"> <li>Processing time for application is not specified</li> <li>Streamlined channel for qualifying structures under LPO to migrate to the LPF regime</li> </ul>	<ul style="list-style-type: none"> <li>Up to 14 days from the date of submission of all required documentation to incorporate a VCC</li> <li>For transfer of registration, it may take up to 60 days</li> </ul>	<ul style="list-style-type: none"> <li>5 – 10 business days for incorporation (express incorporation in 1 business day available)</li> <li>Registration under Mutual Funds Law and Private Funds Law is a separate process</li> </ul>
<b>Registers</b>	<ul style="list-style-type: none"> <li>All documents registered with the RoC (e.g. annual return, notification relating to certain changes) and the certificate issued by the RoC are publicly available</li> <li>AML records are not for public inspection</li> </ul>	<ul style="list-style-type: none"> <li>Names of directors, managers, secretaries and auditors publicly available</li> <li>Register of members and constitution not publicly available</li> </ul>	<ul style="list-style-type: none"> <li>Only names of directors publicly available, in person at Registrar of Companies</li> <li>Register of members and constitution not publicly available</li> </ul>

# Fund Vehicle Comparison

	Hong Kong (LPF)	Singapore (VCC)	Cayman Islands (SPC)
<b>Amendments</b>	<ul style="list-style-type: none"> <li>Must file a notification of change with the RoC within 15 days in relation to e.g. change of GP, change in the registered office address or change in the investment scope etc.</li> </ul>	<ul style="list-style-type: none"> <li>No MAS approval requirements</li> </ul>	<ul style="list-style-type: none"> <li>No CIMA approval requirements but filing requirements for registered funds</li> <li>Filings with Registrar required for new sub-funds</li> </ul>
<b>Shares and share capital</b>	<ul style="list-style-type: none"> <li>Partnership interest</li> <li>No minimum capital requirement</li> <li>Freedom to contract - rights of the LPs are governed by the LPA</li> </ul>	<ul style="list-style-type: none"> <li>Variable capital structure</li> <li>Shares will be issued and redeemed at NAC</li> <li>Constitution may provide for price adjustment to reflect fees and charges</li> <li>Different classes of shares with different rights may be issued</li> </ul>	<ul style="list-style-type: none"> <li>Variable capital structure</li> <li>Shares will be issued on terms set out in the memorandum and articles and offering documents</li> <li>Different classes of shares with different rights may be issued.</li> </ul>
<b>Investment scope</b>	<ul style="list-style-type: none"> <li>No statutory investment restrictions</li> <li>Not subject to any SFC-imposed investment restrictions, disclosure and operational requirements..</li> </ul>	<ul style="list-style-type: none"> <li>Cross sub-fund investment permitted</li> <li>No restrictions on investment strategy</li> </ul>	<ul style="list-style-type: none"> <li>Cross sub-fund investment permitted, with restrictions</li> <li>No restrictions on investment strategy</li> </ul>

# Fund Vehicle Comparison



	Hong Kong (LPF)	Singapore (VCC)	Cayman Islands (SPC)
<b>Directors / Partners (as the case may be)</b>	<ul style="list-style-type: none"> <li>The GP must be any of the following:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a private company limited by shares incorporated in HK</li> <li><input type="checkbox"/> a registered non-HK company</li> <li><input type="checkbox"/> a limited partnership (including foreign partnership )</li> <li><input type="checkbox"/> an LPF</li> <li><input type="checkbox"/> an individual who is at least 18 years old</li> </ul> </li> <li>The LP can be an individual, a corporation, a partnership, an unincorporated body or any other entity</li> </ul>	<ul style="list-style-type: none"> <li>At least one Singapore resident director for non-authorized schemes</li> <li>At least three directors for authorized schemes</li> <li>"fit and proper"</li> </ul>	<ul style="list-style-type: none"> <li>1 director sufficient for non-regulated SPC</li> <li>2 directors required for SPC registered under the Mutual Funds Law or Private Funds Law</li> <li>No residency requirement</li> </ul>



# Fund Vehicle Comparison

	Hong Kong (LPF)	Singapore (VCC)	Cayman Islands (SPC)
<b>Manager</b>	<ul style="list-style-type: none"> <li>GP must appoint manager, which can be any of the following:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> a HK incorporated company</li> <li><input type="checkbox"/> a registered non-HK company</li> <li><input type="checkbox"/> a HK resident that is at least 18 years old</li> <li><input type="checkbox"/> GP itself can be the manager</li> </ul> </li> <li>If GP/IM carries out regulated activities in Hong Kong as defined in the SFO, appropriate licence(s) from the SFC must be obtained.</li> </ul>	<ul style="list-style-type: none"> <li>VCC must appoint manager:                             <ul style="list-style-type: none"> <li><input type="checkbox"/> regulated by the MAS (licensed or registered)</li> <li><input type="checkbox"/> Cannot be unregulated/ "exempt" or foreign licensed fund manager</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>No obligation to appoint manager</li> </ul>
<b>Custodian</b>	<ul style="list-style-type: none"> <li>GP needs to ensure proper custody arrangements for the assets of a LPF</li> <li>The manager of the LPF will be subject to the requirements under FMCC</li> </ul>	<ul style="list-style-type: none"> <li>An approved custodian is required for retail VCCs and restricted schemes</li> <li>Custodian not required if offered only to institutional investors</li> </ul>	<ul style="list-style-type: none"> <li>Custodian not required for non-regulated SPC</li> <li>Custodian not required for SPC registered under the Mutual Funds Law</li> <li>Custodian required for SPC registered under the Private Funds Law with certain exceptions. Internal custodians allowed.</li> </ul>

# Fund Vehicle Comparison



	Hong Kong (LPF)	Singapore (VCC)	Cayman Islands (SPC)
<b>Required service providers</b>	<ul style="list-style-type: none"> <li>• Auditor</li> <li>• Responsible Person to carry out AML measures, which must be any of the following:               <ul style="list-style-type: none"> <li><input type="checkbox"/> an authorized institution</li> <li><input type="checkbox"/> a corporation licensed by the SFC</li> <li><input type="checkbox"/> an accounting professional</li> <li><input type="checkbox"/> a legal professional</li> </ul> </li> <li>• Administrator not required</li> </ul>	<ul style="list-style-type: none"> <li>• Auditor</li> <li>• Company secretary</li> <li>• Local administrator (via tax incentives)</li> </ul>	<ul style="list-style-type: none"> <li>• No service provider requirement for a non- regulated SPC</li> <li>• Administrator and local Auditor required for SPC registered under the Mutual Funds Law</li> <li>• Administrator not required for SPC registered under the Private Funds Law</li> <li>• Local Auditor required for a SPC registered under the Private Funds Law</li> </ul>

# Legislative Framework

---



- Limited partnership under Limited Partnership Fund Bill (the “Bill”)
- The Bill was gazetted on 20 March 2020
- It is proposed that the Bill will come into operation on 31 August 2020.
- Administered by Registrar of Companies
- Oversight by Securities and Futures Commission (“SFC”)
  - if the general partner or the investment manager is involved in regulated activities under the Securities and Futures Ordinance (Cap. 571)

# Other key issues of the LPF

---



## ▪ Example of safe harbour activities for LPs

- Acting as or appointing someone to act as an agent, officer or employee of the LPF;
- Acting as or appointing someone to act as a director, shareholder, or officer of the GP;
- Advising or approving the GP/IM on the business, prospects, affairs or transactions of the LPF;
- Consulting, investigating, reviewing, approving or advising on the accounts, the valuation or the assets of the fund or the affairs of the fund;
- Acting as a guarantor for the fund or for the general partner in the fund.

# Other key issues of the LPF

---



- Relaxed eligibility criteria of the GP and the new requirement for an authorized representative
  - Proposal by the government in July 2019: GP shall be a private company limited by shares incorporated in HK
  - Under the Bill: such requirement is removed – GP can be an individual, a corporation, a partnership, an unincorporated body
  - To attribute liability to a GP that has no legal personality, such GP must appoint an authorized representative who will share with the GP the ultimate responsibility to manage the LPF and be jointly and severally liable for any liabilities of the LPF
  - Authorized representative must be any of the following:
    - ❑ A HK incorporated company
    - ❑ A registered non-HK company
    - ❑ A HK resident that is at least 18 years old

# Dissolution and liquidation mechanisms

---



- Can be dissolved in accordance with the LPA
- Dissolution without a court order. For example, when:
  - there are default events in relation to the GP or the authorized representative (if applicable) of the LPF (e.g. bankruptcy / death of the GP); and
  - no replacement within 30 days
- Dissolution with a court order (to be applied by a partner or a creditor of an LPF). For example, when:
  - a partner willfully or persistently breaches the LPF
  - the business of the LPF can only be carried on at a loss
  - on just and equitable grounds



# Regulatory Updates

## 2. The Hong Kong National Security Law

# Background of the Hong Kong National Security Law



- The Basic Law should be, in effect, the mini-constitution of HKSAR.
- Article 18 of the Basic Law:

“The laws in force in the Hong Kong Special Administrative Region shall be this Law, the laws previously in force in Hong Kong as provided for in Article 8 of this Law, and the laws enacted by the legislature of the Region.

*National laws shall not be applied in the Hong Kong Special Administrative Region except for those listed in Annex III to this Law. The laws listed therein shall be applied locally by way of promulgation or legislation by the Region.*

*The Standing Committee of the National People's Congress may add to or delete from the list of laws in Annex III after consulting its Committee for the Basic Law of the Hong Kong Special Administrative Region and the government of the Region. Laws listed in Annex III to this Law shall be confined to those relating to defence and foreign affairs as well as other matters outside the limits of the autonomy of the Region as specified by this Law.”*

- NPCSC listed the national security law for HK (“NSL”) into the Basic Law Annex III and the law takes effect on 1 July 2020 in HK as a national law after promulgation by the SAR government on 30 June 2020.
- While Article 23 states:

“The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.”



# Overview of the Hong Kong National Security Law

## ▪ 4 broad offences

- **Secession** is defined in Article 20 as “... organises, plans, commits or participates in any of the following acts, whether or not by force or threat of force, with a view to committing secession or undermining national unification...”
  - Acts of secession refer to the separation of Hong Kong or any other part of China from the PRC, alerting by unlawful means the legal status of Hong Kong or any other part of China, or surrendering Hong Kong or any other part of China to a foreign country.
- **Subversion** is defined in Article 22 as “...organises, plans, commits or participates in any of the following acts by force or threat or force or other unlawful means with a view to subverting the State power...”
  - Acts of subversion refer to “overthrowing or undermining the basic system of the PRC established by its constitution, or the body of central power of the PRC or Hong Kong”. These acts also refer to “serious interfering in , disrupting or undermining the performance of duties and functions ...by the body of central power of the PRC or Hong Kong, or attacking or damaging the premises and facilities used by the body of power of Hong Kong to perform its duties and functions, rendering it incapable of performing its normal duties and functions.”
- **Terrorism** is defined in Article 24 as “...organises, plans, commits or participates in or threatens to commit any of the following terrorist activities causing or intended to cause grave harm ... with a view to coercing the Central People’s Government or Hong Kong government or an international organisation or intimidating the public in order to pursue political agenda.”
  - The relevant acts include: serious personal violence; using explosives, arson, poison, radioactive materials or infectious diseases; sabotage of means of transport and power facilities etc.; serious interruption or sabotage to infrastructure (e.g. telecommunications, electronic control system); or other dangerous activities that jeopardise public health, safety and security.

# Overview of the Hong Kong National Security Law



- **4 board offences (con't)**
  - **Collusion with foreign forces** is defined in Article 29 as “...steals, spies, obtains without payment or unlawfully provides state secrets or intelligence concerning national security for a foreign country or an institution, organisation or individual outside the mainland, HK and Macau.”
    - collusion also refers to “...requests a foreign country, institution, organisation or individual outside mainland, HK and Macau or conspires with them or directly or indirectly receives instructions, control, funding or other kinds of support from them to commit any of the following acts: waging a war or using force against the PRC; seriously disrupting the formulation and implementation of laws or policies by Hong Kong government or Central People’s government which is likely to cause serious consequences; rigging or undermining an election in HK; imposing sanctions, blockades or other hostile activities against HK or the PRC; or provoking by unlawful means hatred among HK residents towards the Hong Kong government or the Central People’s Government, which is likely to cause serious consequences.
- **Sentences**
  - 3 categories for secession and subversion : principal offender (10 years – life imprisonment); active participation (3 years – 10 years) and other participants (not more than 3 years, short-term detention or restriction)
  - 2 categories for terrorism and collusion with foreign forces : 10 years – life imprisonment OR 3 years – 10 years
- **Jurisdiction, extradition and extraterritoriality**
  - Article 55 provides three exceptions for the Office for Safeguarding National Security of the Central People’s Government in the HKSAR to exercise jurisdiction over a case under the NSL (i.e. realistic difficulties faced by SAR government due to involvement of a foreign country/external elements, no effective means to enforce the law by the HK government, occurrence of a major and imminent threat to national security)
  - Article 38: This Law shall apply to offences under this Law committed against the Hong Kong Special Administrative Region from outside the Region by a person who is not a permanent resident of the Region.



# Regulatory Updates

3. Emphasis on operational resilience during/after COVID-19

# Operational Resilience

---



- The UK regulators define operational resilience as:
- *"the ability of firms to provide important business services in times of operational disruption"*
- Two key challenges: (i) identifying important business services; (ii) set impact tolerances
- Operational resilience has become a key agenda item for boards and senior management
- Failure to implement would risk regulatory enforcement against the firms and senior managers

# Operational Resilience



## ▪ Resilience questions for boards and senior management <sup>1</sup>

Governance	<ul style="list-style-type: none"> <li>• What is our risk appetite for resilience risk?</li> <li>• Who is accountable in the 1st and 2nd lines of defense for managing, monitoring, and reporting on resilience?</li> </ul>
Organizational Focus	<ul style="list-style-type: none"> <li>• Does the organization understand the dependencies of critical business services on organizational assets?</li> <li>• What are our most critical assets that impact service delivery</li> <li>• How does our approach to resilience change the way we manage operations, technology, and third parties?</li> </ul>
Integration	<ul style="list-style-type: none"> <li>• What is our measure of criticality?</li> <li>• What are our critical business services and why?</li> <li>• How are we leveraging existing definitions of criticality and critical business services (e.g., from resolution planning)?</li> <li>• What is our impact on customers and the financial system?</li> </ul>
Measurement	<ul style="list-style-type: none"> <li>• What are the most important resilience risks for the organization?</li> <li>• How do we monitor and manage the level of resilience of the organization?</li> <li>• How is risk appetite reflected in our impact tolerances?</li> <li>• In which scenarios are we outside of our defined impact tolerances?</li> </ul>
Preparedness	<ul style="list-style-type: none"> <li>• How do we make sure we are effectively prepared for different disruption events?</li> <li>• How frequently are we testing our response and recovery capabilities for different disruptive scenarios?</li> </ul>

<sup>1</sup> Source: Striving for Operational Resilience – The Questions Boards and Senior Management should ask by Oliver Wyman

# Q&A



# Contact

---



Michael Bugel  
AIMA  
E: [mbugel@aima.org](mailto:mbugel@aima.org)

Helen Fok  
Morgan Lewis & Bockius LLP  
E: [helen.fok@morganlewis.com](mailto:helen.fok@morganlewis.com)

## Disclaimer

This document is provided to and for AIMA members only. It is intended as indicative guidance only and is not to be taken or treated as a substitute for specific advice, whether legal advice or otherwise. All copyright in this document belongs to AIMA and reproduction of part or all of the contents is strictly prohibited unless prior permission is given in writing by AIMA.