

BRIEFING

Re-Domiciliation of Cayman Islands Exempted Limited Partnerships as a Hong Kong Limited Partnership Fund – Practical Considerations

Introduction

A fund established in the form of a limited partnership in a jurisdiction outside of Hong Kong can be re-domiciled as a Hong Kong limited partnership fund (the “**LPF**”) pursuant to the Limited Partnership Fund and Business Registration Legislation (Amendment) Ordinance 2021 of Hong Kong, which came into effect on 1 November 2021.

Re-domiciliation of a Cayman Islands exempted limited partnership (the “**Cayman Fund**”) as an LPF is done by the de-registration in the Cayman Islands of the Cayman Fund and transferring by way of continuation as an LPF registered under the LPFO. The re-domiciliation process consists of 3 separate processes, which are as follows: (1) the de-registration of the Cayman Fund as a private fund in the Cayman Islands with the Cayman Islands Monetary Authority (“**CIMA**”) (assuming that it is registered as such with CIMA as would typically be the case); (2) the registration of the fund as an LPF in Hong Kong with the Hong Kong Companies Registry (“**HK Registrar**”); and (3) the de-registration of the fund as a Cayman Fund in the Cayman Islands with the Registrar of Exempted Limited Partnerships (the “**Cayman Registrar**”).

This Briefing examines some of the practical considerations in these 3 processes.

Registration of the General Partner (the “GP”) of a Cayman Fund as a Registered Non-Hong Kong Company

If the GP of a Cayman Fund to be re-domiciled as an LPF is a company incorporated outside of Hong Kong (which for a Cayman Fund would typically be a Cayman Islands exempted company), then it must be registered as a registered non-Hong Kong company with the HK Registrar for it to continue to act as the GP of the fund following its re-domiciliation as an LPF. This is a relatively straightforward procedure which should be completed before the re-domiciliation takes place because a company incorporated outside of Hong Kong is not eligible to act as a GP of an LPF unless it is registered as a registered non-Hong Kong company.

Amending the Limited Partnership Agreement (the “LPA”)

Cayman Islands law provides that a Cayman Fund can be de-registered if (amongst other things) “the transfer is permitted by and has been approved in accordance with the

partnership agreement of the applicant partnership”.¹ Given that it is unlikely that any LPA currently in the market has a specific provision regarding the re-domiciliation of the Cayman Fund from the Cayman Islands to Hong Kong through a transfer by way of continuation, it means that the LPA would most likely need to be amended to include a clause specifically permitting the transfer of the Cayman Fund by way of continuation to Hong Kong as an LPF and specifying the type of approval required for this to be effected. Subsequently, the required approval needs to be obtained before the re-domiciliation process can take place.

An LPA that is governed by Cayman Islands law would typically make extensive references to the laws of Cayman Islands. Because a Cayman Fund, following its re-domiciliation, will no longer be subject to Cayman Islands laws and instead will be subject to Hong Kong laws, such references to Cayman Islands law will become obsolete following the completion of the re-domiciliation process and hence should be replaced by references to Hong Kong laws. These amendments should be made in accordance with the provisions regarding amendments to the LPA as set out in the LPA, including obtaining the approvals required to make such amendments. These amendments should come into effect when the fund is registered as an LPF.

Timing of the Re-domiciliation Process

The Cayman Fund must firstly be de-registered as a private fund in the Cayman Islands with CIMA. A final audit of the Cayman Fund must be filed with CIMA as a part of this process. Given that an audit may often take some time to prepare, an auditor should be engaged to begin preparing the final audit as a matter of first step in the re-domiciliation process. After the CIMA de-registration process is completed, the next two steps would be the registration of the fund as an LPF in Hong Kong with the HK Registrar and the de-registration of the fund as a Cayman Fund with the Cayman Registrar - these two steps should occur on the same day in order to avoid either a gap (which would occur if the fund is de-registered in the Cayman Islands before it is registered as an LPF in Hong Kong, resulting in a period of time when it is subject to neither Cayman Islands nor Hong Kong laws) or an overlap (which would occur if the fund is registered as an LPF in Hong Kong before it is de-registered in the Cayman Islands, resulting in a period of time when it is subject to both Cayman Islands and Hong Kong laws).

Costs

There are 4 categories of costs in the re-domiciliation process: (1) Cayman Islands related disbursements; (2) Cayman Islands related professional fees (e.g. legal fees); (3) Hong Kong related disbursements; and (4) Hong Kong related professional fees (e.g. legal fees).

For a typical Cayman Fund, the total Cayman Islands related disbursements would amount to approximately US\$8,000 which comprises of (i) the application fee for the CIMA de-registration, (ii) disbursements in relation to the de-registration with the Cayman Registrar which include a fee equal to three times the annual fee that would have been payable by a

¹ Section 43(2)(k) of the Exempted Limited Partnerships Act of the Cayman Islands

Cayman Fund in the January immediately preceding the application for the de-registration by the Cayman Fund (currently being US\$2,440 x 3), and (iii) other miscellaneous filing fees and disbursements.

The Hong Kong related disbursements comprise of (i) a fee of HK\$3,034 payable to the HK Registrar for the registration of the fund as an LPF, and (ii) a fee of HK\$150 payable to the Hong Kong SAR Government for the (1 year) business registration of the LPF.

Concluding Remarks

The entire process for the re-domiciliation of a Cayman Fund to an LPF should be straightforward in most cases. Given the increasing regulatory obligations imposed by Cayman Islands regulatory bodies, many of which were unexpected at the time of the establishment of the Cayman Fund but were subsequently imposed, resulting in increased regulatory burden and additional costs on the Cayman Fund, GPs of existing Cayman Funds may find re-domiciling the fund as an LPF in Hong Kong to be an attractive option. The costs associated with re-domiciliation process can be recouped relatively quickly through the savings from reduced on-going costs for maintaining an LPF as compared to a Cayman Fund.

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[OCTOBER 2022](#)
