

Hedge Funds in Hong Kong – an overview

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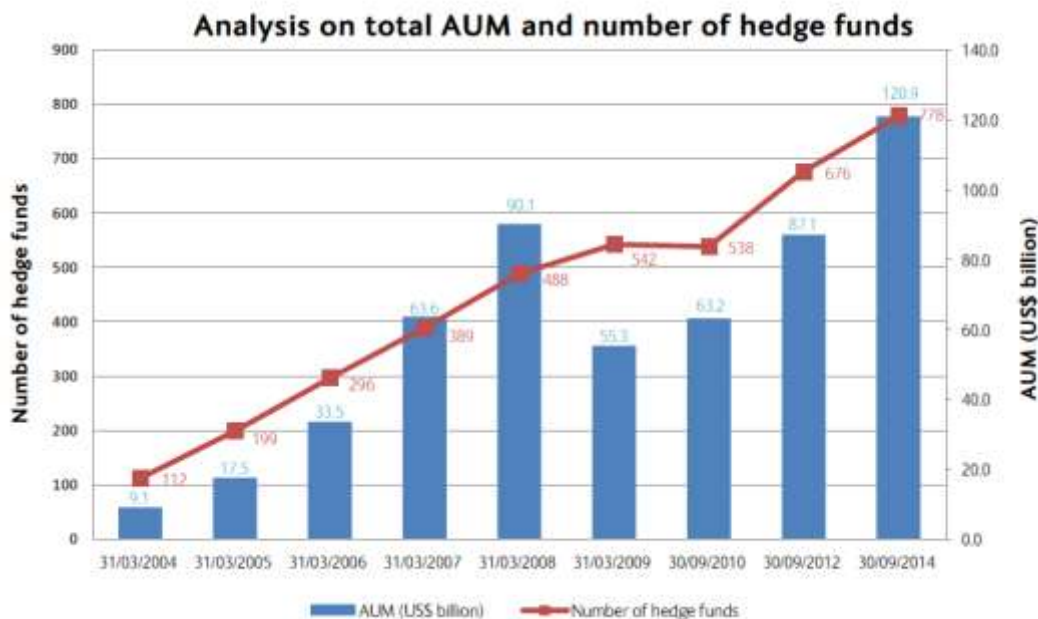


Hedge funds in Hong Kong – an overview

A Introduction

Although the territory constituting Hong Kong reverted to the People’s Republic of China (the “**PRC**”) in 1997, Hong Kong is an administratively autonomous region and has continued to maintain a common law legal system, based mainly on English law. Similarly, the regulators in Hong Kong, while operating increasingly closely with their counterparts on the mainland PRC, are statutory bodies with their own Hong Kong-specific rules and requirements. The Securities and Futures Commission (the “**SFC**”) is the main regulator of investment funds and fund managers in Hong Kong and the primary legislation is the Securities and Futures Ordinance (Cap. 571) (the “**SFO**”).

The hedge fund industry in Hong Kong has experienced tremendous and continued growth in the past decade. According to the SFC’s latest report on hedge fund activities released in March 2015¹ the number of hedge funds managed by SFC-licensed hedge fund managers in Hong Kong increased from 676 in 2012 to 778 as of 30 September 2014. The diagram below, taken from the said report, illustrates the upward trend of the volume of total hedge fund assets under management (“**AUM**”) in Hong Kong, which expanded from US\$87.1 billion in 2012 to US\$120.9 billion as of 30 September 2014, representing an increase of 38.8%. It was also reported that the surveyed hedge fund managers invested mainly in the Asia Pacific region and as of 30 September 2014, 92.1% of investors in hedge funds were from outside of Hong Kong, consisting mostly of funds of hedge funds, insurance companies and other institutional investors.



(Source: Securities and Future Commission, Hong Kong, 30 March 2015)

¹ The report is accessible on the SFC’s website at http://www.sfc.hk/web/EN/files/ER/Reports/HF%20Survey%20Report%202015_En.pdf

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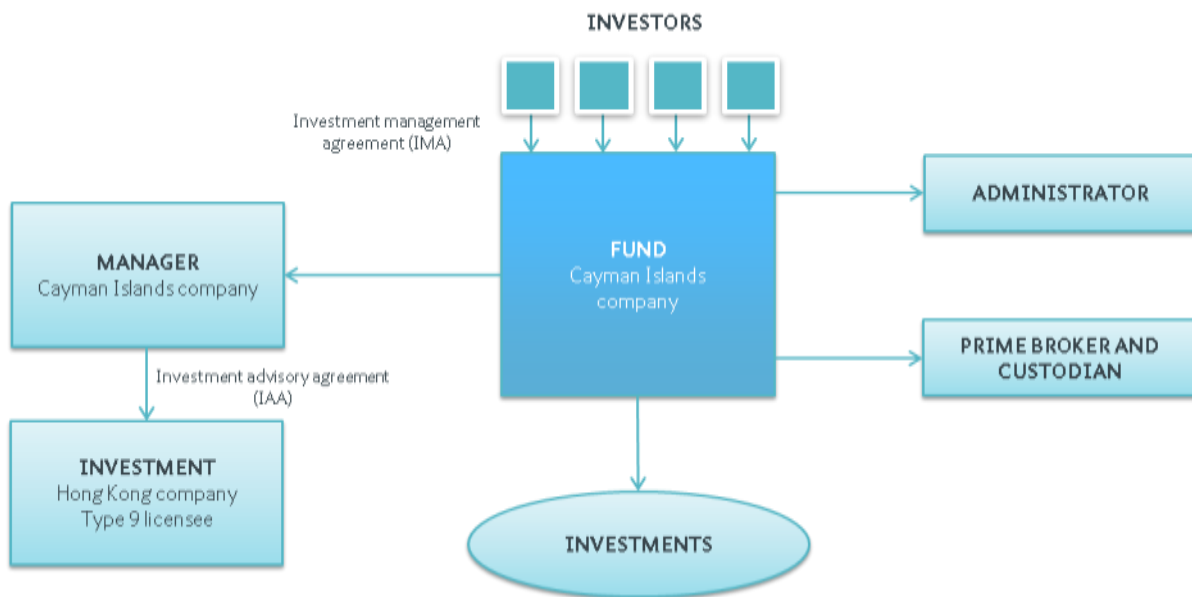
B Typical fund structures

A vast majority of hedge funds managed in Hong Kong are established offshore in the Cayman Islands for tax reasons. Generally, under the Inland Revenue Ordinance (Cap. 112) (the “**IRO**”), profits tax is payable by any person or entity that: (i) carries on a trade or business in Hong Kong; and (ii) earns profits which arise in or derive from Hong Kong, subject to specific exemptions available respectively to funds authorised by the SFC under the SFO (i.e. those which can be offered to the public) and non-Hong Kong resident funds in respect of certain specified transactions. Consequently, private (non-retail) funds which are managed in Hong Kong are usually established outside Hong Kong so as to take advantage of the profits tax exemption for offshore funds contained in the IRO.

Offshore hedge funds managed from Hong Kong commonly use mutual fund companies (including segregated portfolio companies), limited partnerships and unit trusts in the Cayman Islands as the investment vehicle, and are typically organised into a combination of, or a variation on, the following structures:

- Stand-alone funds;
- Master-feeder funds; and
- Umbrella funds.

Stand-alone funds



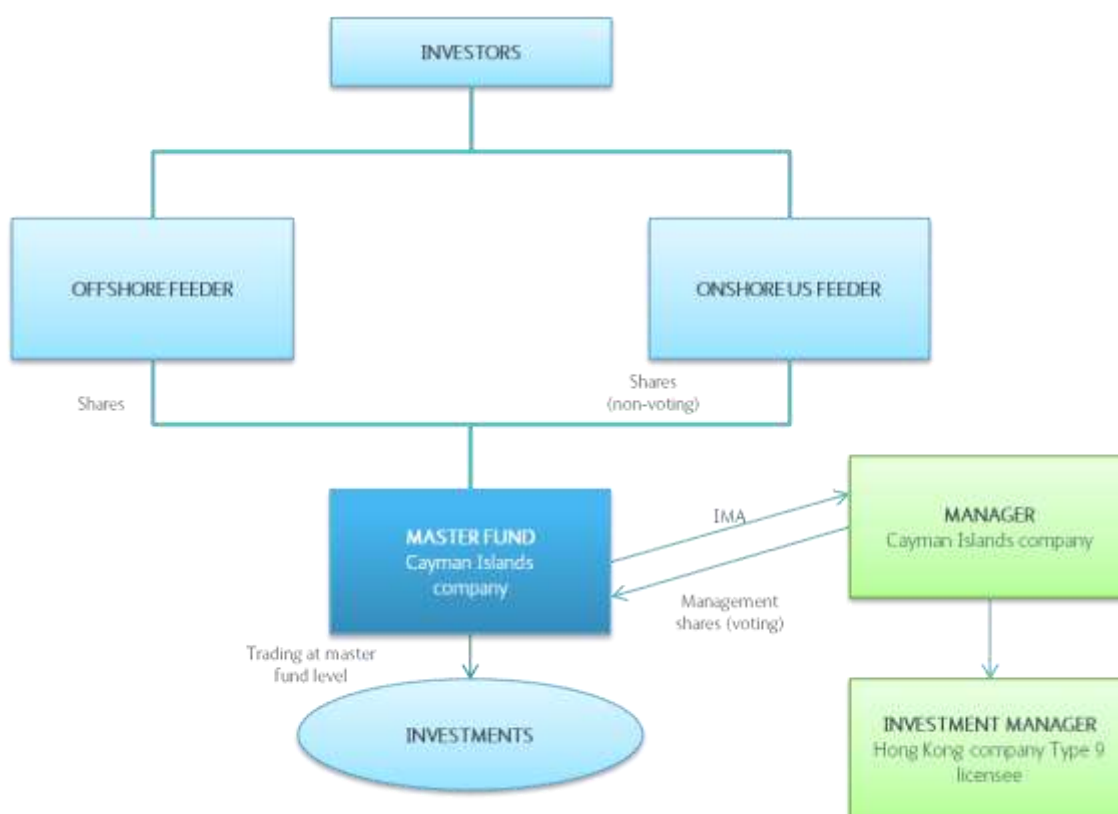
A stand-alone structure comprises a single vehicle with a single investment strategy. This type of fund most commonly uses an open-ended, limited liability company established in the Cayman Islands as its main vehicle.

Offshore fund structures often use a two-tiered management structure as set out above. The management function of the board of directors of the fund company is delegated to a separate investment manager (often established as a Cayman Islands exempt limited liability company). From the investment manager, there is further delegation of investment and advisory functions down to an investment advisor, which would be a domestic entity (usually a Hong Kong incorporated private company with limited liability). The investment advisor employs the majority of the investment team, and is usually licensed to carry out “regulated activities” in Hong Kong (see later). In terms of the economics of the fund, management and performance fees are paid to the investment manager. From this, a portion is allocated to the investment advisor (as an advisory fee) on a basis that equitably reflects the allocation of the fund’s investment resources.

There are three main drivers behind this management structure:

- **Taxation** – this structure is intended to achieve tax efficiency in relation to the economics of the fund structure, namely by the investment manager;
- **Litigation risk management** – removal of the management fee and performance fee from the fund vehicle into a distinct and separate entity (the investment manager) helps “ring-fence” those amounts from trading / investment risks generated by the fund; and
- **Regulation** – the investment team is “housed” at the investment advisor level, which is also the entity that is regulated by the SFC. This satisfies the requirements of the regulator, and also provides reassurance to investors that there is regulatory oversight of the fund’s activities.

Master-feeder funds



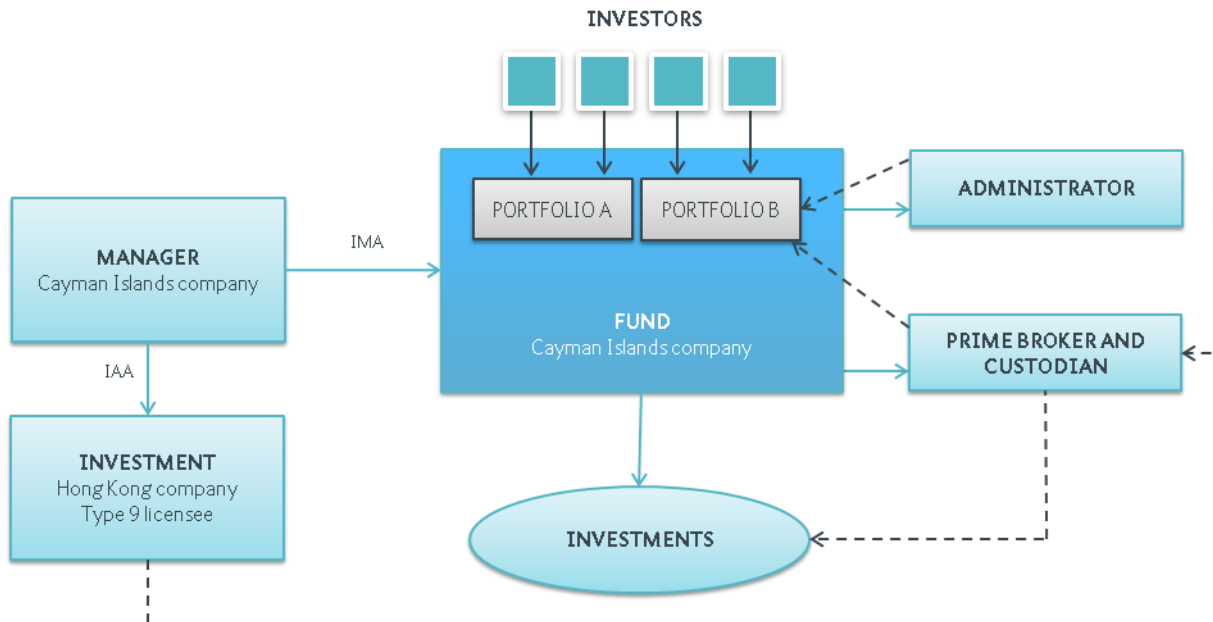
A master-feeder structure is one in which the assets from multiple funds (the “**feeder funds**”) catering for different investor groups are invested into a separate, central vehicle (the “**master fund**”). Investors invest and pay management and performance fees at the feeder fund level, while trading and investment occurs at the master fund level. This is the preferred structure for most large scale institutional launches in Hong Kong. Increasingly, funds that are open only to non-US taxable investors are being launched in Hong Kong. These funds are structured as “single-legged” master-feeder funds, that is, with only the offshore feeder and the master fund.

The onshore feeder may be structured as a Cayman Islands open-ended investment company, limited partnership, a Delaware limited partnership or LLC. In the past three to four years, however, the open-ended investment company (which then makes a “check-the-box election” to be treated as a partnership for US tax purposes) has been the more popular choice for managers based in Hong Kong. The main reason for this is the reduced time and cost involved in establishing the fund – documentation for the offshore fund can be more easily replicated for the onshore fund (with changes needed only for US tax, the Employee Retirement Income Security Act (**ERISA**) and securities law disclosure).

The principal benefits of a master-feeder structure are that:

1. It allows the fund to comply with and benefit from the regulatory environment applicable to different target investors in the fund. In particular, it allows US taxable investors to invest in an offshore hedge fund in a tax efficient manner that does not compromise the tax position of other non-US or US tax exempt investors.
2. There is flexibility at the investor level since multiple feeder funds may be introduced to invest into master fund, each of which may be tailored in accordance with different operating currencies, fees, subscription terms, liquidity and investment strategies.
3. There is also flexibility at the investment level, since different segregated pools may be created below the master fund (each structured as, for example, a wholly-owned subsidiary of the master fund) which may be used to trade different strategies, house its own pool of assets, and ensure there is segregation of liabilities.
4. The pooling of assets means that the fund can benefit from greater economies of scale in relation to day-to-day management and administration of the fund and its portfolios, and therefore lower operational and transactional costs. Further reduction in costs is made possible by the use of a single investment vehicle which, for instance, eliminates the need to enter into duplicated agreements with counterparties. The increase in the critical mass of funds under management also allows the manager to more easily obtain and maintain credit lines and enhance the fund's ability to meet asset size-based investment qualifying tests.
5. Segregation of US investors (traditionally regarded as more litigious) is preferred by non-US investors, as it lowers litigation risk that may involve non-US investors, and also provides an additional layer of protection for the fund's assets (all of which are housed at the master fund level).

Umbrella structure



An umbrella structure is a generic term for any overarching investment vehicle with sub-funds beneath it. Each sub-fund can have its own manager, pursue its own investment strategy and have its own pool of assets. Importantly, liabilities generated from the trading activities of each sub-fund are intended to be “ring-fenced” to the assets only of that sub-fund.

A Cayman Islands 'segregated portfolio company' ("**SPC**"), is a popular choice for investment managers in Hong Kong looking to establish an umbrella structure. The ability to create multiple segregated without needing to incorporate a new company every time is viewed as a distinct advantage in terms of time and costs. Cross-contamination of liabilities between different segregated portfolios is, of course, still an issue. For this reason, larger institutional hedge fund offerings tend to retain the "master-feeder" structures, while the SPC structure is often seen for smaller, private long only funds. It is possible to combine SPC structures with master-feeder structures, for example each segregated sub-fund can be a feeder fund into a separate master fund.

Proposal for a Hong Kong Open-Ended Fund Company

Investment funds are domiciled in Hong Kong, they are most usually established as unit trusts because the capital maintenance rules and the restrictions on reduction of, and distributions out of, share capital under Hong Kong company law make it impractical to operate a Hong Kong company as an open-ended fund. In order to attract more funds to domicile in Hong Kong, on 20 March 2014, the Financial Services and the Treasury Bureau of Hong Kong (the "**FSTB**") issued a consultation paper on the proposed regulatory framework for open-ended fund companies ("**OFCs**") as an additional form of investment fund vehicle. On 15 January 2016, the FSTB published its consultation conclusions on allowing OFCs to be established under the SFO. The OFC regime is expected to become operational in 2018.

An OFC will have a variable share capital and therefore the flexibility to meet shareholder redemption requests and to make distributions out of its share capital, subject only to solvency and disclosure requirements. The OFC legislation will provide for a "protected cell" regime, such that an OFC, like a Cayman Islands SPC, can be established as an umbrella fund with multiple sub-funds whose assets are ring-fenced on a sub-fund by sub-fund basis.

In order to form an OFC, an application must first be made to the SFC for approval. When the SFC has issued its approval-in-principal for registration, the Companies Registry will then incorporate and register the OFC. While private OFCs will not have to be licensed or authorised under the SFO, the SFC will exercise its supervisory function in relation to all OFCs through: (i) the SFC licensed fund managers which will have to ensure compliance with the SFC's proposed OFC Code (in addition to compliance by the managers with the SFC's Code of Conduct and the Fund Manager Code of Conduct); and (ii) their custodians, which will also have to comply with the proposed OFC Code. The SFC will also be empowered under the SFO or subsidiary legislation to approve the appointment and replacement of key operators of the OFC including the OFC's directors, custodian and investment manager.

The perceived advantages of an OFC are that, unlike a trust, it will have separate legal personality and its own board of directors, and hence will not require a trustee. This should lead to greater cost savings. As a company, an OFC may also be more marketable and easier to understand than unit trusts, which may not be common in jurisdictions throughout Asia. Additionally, the OFC may provide an attractive vehicle for the purpose of seeking mutual recognition in the PRC under the proposed mutual fund recognition regime between Hong Kong and the PRC. As an OFC would be clearly domiciled in Hong Kong, establishing tax residency in Hong Kong so as to take advantage of double tax agreements, including with the PRC, may also be easier.

Given possible cost advantages of OFCs over unit trusts, OFCs may become popular vehicles for both SFC authorised, as well as non-authorised private funds. The FSTB has recently introduced proposals ("**Proposals**") to extend the profits tax exemption currently enjoyed by publicly offered funds and certain offshore funds, to onshore privately offered OFCs. In order to enjoy the profits tax exemption, an OFC needs to satisfy certain conditions. For instance, it has to be a resident in Hong Kong, not closely held, with restricted asset classes and with transactions carried out or arranged by SFO licensed / registered managers. The Proposals will likely attract more fund companies and managers to establish Hong Kong domiciled funds.

C Marketing restrictions

Under the SFO, any marketing document that contains offers of investment products to the public of Hong Kong (or any class of the public of Hong Kong) may not be issued, unless either the relevant advertisement (including offering documents) is authorised by the SFC or the offer is made within an exemption set out in the SFO.

Provided that the hedge fund is offered in Hong Kong only to “professionals investors” (as defined in the SFO and the Securities and Futures (Professional Investor) Rules (Cap. 571D) (the “**Professional Investor Rules**”)) or by way of private placement (hence not made to the public), no authorisation or regulatory approval of the hedge fund itself is necessary. Under the SFO and the Professional Investor Rules, “professionals investors” include financial institutions, licensed corporations and insurance companies as well as certain high net worth individuals or corporations having investment portfolios or total assets of not less than certain prescribed amounts. High net worth individual professional investors for these purposes include individuals with net liquid assets of HK\$8 million (approximately US\$1 million).

Under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (the “**C(WUMPO)**”) which, in addition to the SFO, regulates public offers of shares in corporate funds, it is also possible to offer shares to the same categories of professional investors without registering a prospectus. In addition, a minimum subscription exemption (HK\$500,000, approximately US\$65,000) and a minimum number of offerees exemption (no more than 50 in a 12 month period) are also provided under the Seventeenth Schedule to the C(WUMPO).

All marketing documents or advertisements (including offering documents) directed at the public of Hong Kong are, as a condition of SFC approval, required to contain adequate and accurate disclosures for investors to make informed decisions. Disclosure standards for offering documents of collective investment schemes are set out in the SFO as well as the SFC’s Handbook for Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Investment Products (the “**SFC Handbook**”). Compliance with the SFC Handbook is a requirement to have an offering document approved by the SFC. In reality, the SFC will not approve any offering document without the fund being authorised under the SFO. Most hedge funds cannot be authorised.

D Licensing

Regulated activities

Under the SFO, it is a criminal offence for any person to carry on a business in Hong Kong or hold himself out as carrying on a business in certain regulated activities, unless that person is licensed by or registered with the SFC. Financial institutions such as banks are primarily supervised by the Hong Kong Monetary Authority and will need to be registered with the SFC as “registered institutions” if they also engage in securities or futures related activities. All other persons carrying on regulated activities should be licensed by the SFC as “licensed corporations” or, in the case of individuals, be accredited to a licensed corporation to engage in the activity as “licensed representatives”.

There are presently ten regulated activities set out in Schedule 5 to the SFO:

- Type 1 (dealing in securities);
- Type 2 (dealing in futures contracts);
- Type 3 (leveraged foreign exchange trading);
- Type 4 (advising on securities);
- Type 5 (advising on futures contracts);
- Type 6 (advising on corporate finance);
- Type 7 (providing automated trading services);
- Type 8 (securities margin financing);
- Type 9 (asset management); and
- Type 10 (providing credit rating services).

For a hedge fund manager in Hong Kong, the three most relevant regulated activities are:

- **Type 1 (dealing in securities)** –buying and selling of “securities” or inducing another party to enter into an agreement with a view to the buying or selling of securities; in this regard, the term “securities” is defined in the widest possible sense under the SFO and includes, among other things and subject to exceptions, shares, stocks, bonds, debentures, interests in any collective investment scheme and interests “commonly known as securities”;

- **Type 9 (asset management)** – includes real estate investment scheme management or securities or futures contract management which, importantly, includes providing a service of managing a portfolio of securities for another person; and
- **Type 4 (advising on securities)** – giving advice or issuing analyses or reports on whether, which, the time at which or the terms or conditions on which securities should be acquired or disposed of.

The definition of each of these regulated activities includes various limited carve-outs. For example:

- A person licensed for Type 1 regulated activity does not need to be licensed for Type 9 regulated activity if he provides asset management service wholly incidental to the carrying on of Type 1 activity; similarly, a Type 9 licensee does not need to be licensed for Type 1 regulated activity if he performs Type 1 activity solely for the purpose of carrying on asset management activity.
- A person does not need to be licensed for Type 1 regulated activity if he is acting as principal and dealing only with professional investors (for example, where the directors of a fund are marketing the fund).
- A Hong Kong based company does not need to be licensed for Type 9 or Type 4 activity if it is providing such service solely to any of its wholly owned subsidiaries, its 100% holding company, or other wholly owned subsidiaries of that parent company; however, the SFC considers that the exemption from a Type 9 license can only be used if no third party funds are under management. Accordingly, if the Hong Kong company is an investment manager or sub-investment manager of a fund, this would not work.
- A person does not need to be licensed for Type 4 regulated activity if he is licensed for Type 1 regulated activity and is performing Type 4 activity wholly incidentally to dealing in securities, or if he is licensed for Type 9 regulated activity and is providing advice to a for he is managing the portfolio of securities solely for the purpose of providing the asset management service.

New OTC Derivatives Licensing Regime

The Securities and Futures (Amendment) Ordinance (the "**Amendment Ordinance**") was published on the Hong Kong Government Gazette on 4 April 2014. The Amendment Ordinance has:

- introduced two new regulated activities:
 - Type 11 – Dealing or advising in over-the-counter ("**OTC**") derivative products; and
 - Type 12 – Providing clearing agency services for OTC derivative products; and
- expanded on two existing regulated activities:
 - Type 9 (asset management) – to cover management of a portfolio of OTC derivative products; and
 - Type 7 (providing automated trading services) – to cover the provision of automated trading services for OTC derivative products.

For fund managers in Hong Kong, the new Type 11 and expanded Type 9 regulated activities will be the most relevant. In particular, managers that intend to either deal or advise in relation to OTC derivatives and managers/funds that enter into an OTC derivatives transaction other than as a "price taker" (i.e. primarily for the purpose of hedging) will have to obtain a Type 11 licence.

Managers that have, as part of the portfolio that they are managing, any OTC derivative, even purely as part of the fund's hedging strategy, will need to apply for an expanded Type 9 licence. In respect of both Type 9 and Type 11 regulated activities, there is a two-year Hong Kong experience (in relation to OTC derivatives) requirement.

Key Licensing Requirements

If none of the exemptions or carve-outs applies, a fund manager must apply to be licensed for the regulated activities which it engages in, and in doing so must satisfy the following criteria.

Incorporation

The fund manager seeking to be licensed must be either a Hong Kong incorporated company or a non-Hong Kong company registered with the Hong Kong Companies Registry under Part 16 of the Companies Ordinance (Cap. 622). Sole proprietorship or partnership is not an acceptable form of business structure for licensing purposes.

Competence

The fund manager must satisfy the SFC that it has a proper business structure, good internal control systems and qualified personnel status to ensure proper management of risks that it will encounter in carrying on its proposed business as detailed in its business plan. A business plan together with client documentation and a compliance manual must be submitted as part of the licence application.

Fitness and Properness

The SFC is obliged to refuse to grant a licence if the fund manager fails to satisfy the SFC that the fund manager itself, its substantial shareholders and officers, as well as any other person who is or is to be employed by or associated with the fund manager, are "fit and proper" for the purpose of the regulated activity.

In determining whether a person is fit and proper, the SFC will take into account the following factors, in addition to any other matters that the SFC may consider relevant:

- financial status or insolvency;
- educational or other qualifications or experience having regard to the nature of the functions to be performed;
- ability to carry on the regulated activity concerned competently, honestly and fairly; and
- reputation, character, reliability and financial integrity.

Responsible Officers

Every fund manager must have at least two licensed representatives who are additionally approved by the SFC as responsible officers ("**Responsible Officers**") of the manager to supervise the conduct of each of the regulated activities it carries on. Applications for approval of the proposed Responsible Officers must be lodged with the SFC at the same time as the licence application.

For each regulated activity, at least one of the Responsible Officers must be an executive director which, in the licensing context, means a director of the licensed corporation who actively participates in, or is responsible for directly supervising, the business of a regulated activity for which the corporation is licensed. All of the fund manager's executive directors who are individuals must in any event seek the SFC's approval as Responsible Officers of the fund manager in relation to all the regulated activities it is licensed to carry on. Provided that there is no conflict of interest, a Responsible Officer may supervise more than one regulated activity.

The SFO further requires that, for each regulated activity, at least one of the Responsible Officers must be available at all times to supervise the business. This has been interpreted by the SFC as requiring at least one of the Responsible Officers to be based in Hong Kong, and at least one of them must be immediately contactable at all times by the SFC and by the fund manager's staff who are working from its Hong Kong office.

In order to qualify as a Responsible Officer, an individual must fulfil four competence requirements:

1. Management Experience

The individual must have a minimum of two years' proven management skills and experience.

2. Industry Experience

The individual must possess three years of relevant industry experience over the six years immediately prior to the date of application. Experience acquired by an individual from a broad range of activities and investment strategies, including asset management, proprietary trading, research, private equity, special situations, as well as experience in dealing with other alternative investments, will be considered as industry experience directly relevant to hedge fund management.

Where the individual has only acquired experience indirectly relevant to hedge fund management business (e.g. in sales, marketing or risk management of hedge funds), the SFC may exercise their discretion to accept him or her as a Responsible Officer but impose a licensing condition under which the individual must, when actively participating in or when directly supervising the business for which the firm is licensed, do so under the advice of another Responsible Officer who possesses the required direct hedge fund management experience.

3. Academic/Industry Qualification

The individual must have obtained one of the recognised industry qualifications relevant to the regulated activities to be performed. For example, for Type 9 regulated activity, these are: (i) Papers 1 and 3 of the Hong Kong Securities Institute ("HKSI") Diploma Programme Examination ("DPE"); or (ii) Papers 7 and 12 of the HKSI Licensing Examination for Securities and Futures Intermediaries ("LE"). However, this requirement can be compensated by:

- a degree in Accounting, Business Administration, Economics, Finance or Law, or other degree but with passes in at least two courses in the aforesaid disciplines;
- internationally recognised professional qualifications in Law, Accounting or Finance, such as Chartered Financial Analyst, Certified International Investment Analyst and Certified Financial Planner;
- passes in English or Chinese, and Mathematics in the Hong Kong Certificate of Education Examination or equivalent high school public examinations and university entry examinations, plus an additional two years of relevant industry experience, which will be assessed by reference to any recognised industry qualifications, the role and functions to be performed and any experience that is closely related to such functions; or
- an additional five years of relevant industry experience (i.e. eight years in total).

Full and conditional exemptions from the academic/industry qualification requirement can be granted by the SFC. A full exemption is possible for individuals who are currently, or within the past three years have been, licensed representatives and would like to apply for: (i) a different type of regulated activity licence with the same competence requirements and in the same role; or (ii) a transfer of accreditation to another licensed corporation for the same regulated activities and in the same role.

An individual may be granted conditional exemption in exceptional circumstances if he is a current licensee with five years of related experience over the past eight years, and is now applying to carry on a regulated activity with different competence requirements but in the same role. Where the exemption is granted, the SFC may impose restrictions on the scope of activities that may be undertaken and the individual is required to complete an additional five hours of continuous professional training in industry/product knowledge in respect of the new regulated activity.

4. Regulatory Knowledge

The individual must have passed one of the recognised local regulatory framework papers. For example, for a Type 9 licence, these are: (i) HKSI DPE Paper 2; (ii) Paper 1 of the HKSI Financial Market Principal Programme Examination; or (iii) HKSI LE Papers 1 and 6 (although Paper 1 is not required for an existing licensed representative applying to be a Responsible Officer). The SFC may as a matter of complete discretion grant a six-month grace period to one of the Responsible Officers to pass the relevant regulatory examinations, and a failure to obtain a pass within six months of obtaining approval may render the approval invalid unless a further extension of time is granted by the SFC in exceptional circumstances.

However, a full exemption to the regulatory knowledge examination requirement may be granted if the individual: (i) has been licensed with the SFC within the past three years for a regulated activity with the same competence requirements and in the same role as previously licensed; or (ii) has been actively involved in regulatory or compliance work in Hong Kong in the relevant industry for not less than three years over the past six years.

A conditional exemption to the regulatory knowledge examination requirement may be granted on such conditions as the SFC may consider necessary to impose, such as restricting the individual's activities within the same group of related companies or to non-retail clients, if the individual can demonstrate certain things.

A conditional exemption may also be granted in certain circumstances.

Hong Kong's "Manager-in-Charge" regime

A licensed corporation is required to nominate a Manager-In-Charge ("**MIC**") for each of the following core functions. A MIC is an individual appointed by the Company to be principally responsible, either alone or with others, for managing the relevant core function(s) of the Company:

- Overall Management Oversight (a function responsible for directing and overseeing the effective management of the overall operations of the Company on a day-to-day basis)
- Key Business Line (a function responsible for directing and overseeing a line of business which comprises one or more types of regulated activities)
- Operational Control and Review (a function responsible for: (i) establishing and maintaining adequate and effective systems of controls over the corporation's operations; and (ii) reviewing the adherence to, and the adequacy and effectiveness of, the corporation's internal control systems)
- Risk Management (a function responsible for the identification, assessment, monitoring and reporting of risks arising from the Company's operations)
- Finance and Accounting (a function responsible for ensuring the timely and accurate financial reporting and analyses of the operational results and financial positions of the Company)
- Information Technology (a function responsible for the design, development, operation and maintenance of the computer systems of the Company)
- Compliance (a function responsible for: (i) setting the policies and procedures for adherence to legal and regulatory requirements in the jurisdiction(s) where the Company operates; (ii) monitoring the Company's compliance with the established policies and procedures; and (iii) reporting on compliance matters to the Board and senior management)
- Anti-Money Laundering and Counter-Terrorist Financing (a function responsible for establishing and maintaining internal control procedures to safeguard the Company against involvement in money laundering activities or terrorist financing)

An individual may be MIC for more than one core function. The purpose of the MIC regime is to have clearly identified individuals held accountable for regulatory lapses that belong to their area of responsibility.

Financial Resources

A licensed corporation must maintain at all times financial resources of no less than the specified levels of minimum paid-up share capital and liquid capital. The levels of these requirements depend on the regulated activity for which the licensed corporation is licensed and are set out in the Securities and Futures (Financial Resources) Rules (Cap. 571N) made under the SFO.

Application Forms

In general, three main applications need to be submitted: for the licensed corporation, for each individual seeking to be licensed as a licensed representative and for each individual seeking approval as a Responsible Officer. Application forms can be downloaded from the SFC's website.

Application Processing Time

For applications lodged by a new fund manager to become a licensed corporation, the SFC's estimated processing time is approximately 15 weeks once the relevant papers have been received in good order. However, this period refers only to the time taken by the SFC to process the application on their part, and does not include the time lapse between the issue of the SFC's requisitions and the applicant's responses. Accordingly, assuming there will be no significant issues, a more realistic time estimate would be 20 weeks, although in some cases applications can be processed in less time.

E Ongoing Obligations for Licensed Fund Managers

Remaining Fit and Proper

Having successfully become licensed for the relevant regulated activities and therefore a licensed corporation, the fund manager and the licensed representatives accredited to it must remain fit and proper at all times. In particular, they must comply with all applicable provisions of the SFO and its subsidiary legislation, as well as the codes and guidelines issued by the SFC. Failure to comply with the applicable codes may be taken into account in considering whether the fund manager or the relevant representative is fit and proper to remain licensed.

Submission of Audited Accounts etc. and Annual Fee

As a licensed corporation, the fund manager is also required to submit to the SFC the following documents and fees on a periodic basis:

Document	Time Limit	Comment
Audited Accounts	Within four months after the end of each financial year	Audited accounts and other required documents, made up to the date of cessation, should be submitted not later than four months after the date on which the corporation ceases to carry on all of the regulated activities for which it is licensed.
Financial Resources Return	Within three weeks after the end of each month, except for corporations which are licensed for only Type 4, Type 5, Type 6, Type 9 and/or Type 10 regulated activities and are subject to the condition that they shall not hold client assets, in which case, within three weeks after the end of June and December each year	N/A
Business and Risk Management Questionnaire	Within four months after the end of each financial year	N/A
Annual Return	Within one month after each anniversary date of the licence	Failure to submit on time could result in suspension and revocation of the licence.
Payment of Annual Fee	Within one month after each anniversary date of the licence	Monthly surcharges apply to outstanding amounts. Failure to pay on time could also result in suspension and revocation of the licence.

Notification of Certain Events and Changes

All licensed corporations and licensed representatives are required to notify the SFC of certain events and changes within the specified time limit. Some of the more common changes and events that require notification are set out in the table below:

Types of change/events	Time limit on notification
Cessation of business	At least seven business days in advance for intended cessation of business
Ceasing to act as a licensed representative	Within seven business days
Ceasing to act as a Responsible Officer	Within seven business days
Change in name	Within seven business days
Change in business address	At least seven business days in advance for intended change in business address

Change in director or his particulars	Within seven business days
Change in complaints officer or his particulars	Within seven business days
Change in share capital or shareholding structure	Within seven business days
Change in contact information	Within seven business days
Change in bank accounts	Within seven business days
Change in associated entity or its particulars	Within seven business days
Change in auditor's name	Within seven business days
Giving notice of a motion to remove or change an auditor to be moved in general meeting, or cessation of an auditor before expiration of its term of office	Within one business day
Change in executive officer or his particulars	Within seven business days

In addition, licensed corporations and licensed representatives are required to seek prior approval of the SFC if they intend to make certain changes. Some of the more common changes that require prior approval of the SFC include:

addition of regulated activity;

- reduction of regulated activity;
- modification or waiver of licensing or registration condition;
- change of financial year end;
- adoption of a period exceeding 12 months as financial year;
- extension of deadline for submission of audited accounts;
- new premises to be used for keeping records or documents;
- any person becoming a substantial shareholder of a licensed corporation;
- transfer or addition of accreditation; and
- any licensed representative becoming a Responsible Officer.

Continuous Professional Training

Fund managers, as licensed corporations, are held primarily responsible for designing and implementing continuous professional training ("**CPT**") programmes that are best suited to the training needs of the licensed representatives they engaged. Such programmes should be able to enhance the individuals' industry knowledge, skills and professionalism. Sufficient records on the CPT programmes and activities undertaken by the individuals should be kept for a minimum of three years and be made available for inspection upon request by the SFC.

Licensed representatives are generally required to complete five CPT hours per calendar year for each regulated activity which they may carry out. They should also retain their own CPT compliance records for a minimum of three years.

Recent Regulatory Updates

- Hong Kong Fund Manager Code of Conduct set to change
At the end of November 2016, the SFC launched a Consultation Paper on Proposals to Enhance Asset Management Regulation and Point-of-sale Transparency, affecting the Fund Manager Code of Conduct. The SFC's proposed enhancements relate specifically to (i) securities lending and repurchase agreements (repos); (ii) custody, (iii) liquidity risk management and (iv) disclosure of leverage. A key aspect and thrust of the proposals is that fund managers will have explicit responsibility under the Fund Manager Code of Conduct for the funds they manage.
- Suitability Obligations
The SFC issued two sets of FAQs on 23 December 2016 on compliance with suitability obligations by licensed or registered persons, and on triggering of suitability obligations respectively. The FAQs set out a list of six of such suitability obligations (and other miscellaneous ones), provide guidance on how to comply with each of these duties, and clarify the types of interactions or relationships in

which suitability obligations may arise. In terms of actual compliance, an intermediary should perform proportionate due diligence both for the investment products it recommends and particularly on the clients to whom it is recommending, and ensure that compliance is ongoing and regularly reviewed.

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Best Law Firm for Asset Management

AsianInvestor Asset Management Awards 2016 and 2017

Best Regulatory Practice

Hedge Fund Journal Awards 2016

Asset Management Team of the Year

Financial News Awards for Excellence in Legal Services 2016

Core strengths

Simmons & Simmons' leading hedge fund practice in Hong Kong provides authoritative advice to hedge fund sponsors and managers across Asia.

Our core team is led by three partners and supported by 8 full time assistants as well as other legal staff. Specialist lawyers outside the core team are also involved to provide the full range of legal services required by hedge fund clients. In addition our team enjoys the full support of Simmons & Simmons London's market-leading European hedge funds practice which has been providing authoritative advice to the industry for over 20 years.

We have the largest hedge fund team of any law firm in the UK which works closely with our international network. Through our alliance with Seward & Kissel LLP for hedge fund and asset management work and our joint law venture in Singapore, we are able to provide coordinated US, UK, Hong Kong and Singapore legal advice on all aspects of hedge fund formation as well as US, UK, Hong Kong and Singapore regulatory, operational and transactional advice to hedge fund managers and sponsors. In-depth industry knowledge and expertise in specialist areas equips us to advise on the full range of issues relevant to hedge funds and their managers.

Alliance with Seward & Kissel LLP

- Coordinated approach for funds and managers provides clients with seamless top-tier global representation in the hedge fund and asset management space across Europe, Asia and the United States
- Dedicated group of Seward & Kissel LLP attorneys for hedge fund and private equity fund formation and regulatory advice (e.g., SEC, CFTC, ERISA, tax and other specialised US advice relevant to funds and their managers). See attached list of key contacts for investment fund advice
- Seward & Kissel LLP established what is considered the first hedge fund, A.W. Jones, and has earned numerous best in class awards for its work with hedge funds. The firm has one of the largest and deepest hedge fund practices among US law firms

Simmons & Simmons JWS

- Our Singapore office was established in 2013 and provides a hub to support clients throughout South East Asia with seamless service covering both international and Singapore law advice. Working in integrated teams with our other Asian offices in Beijing, Hong Kong, Shanghai, and Tokyo, as well as with those in the UK, the Middle East and continental Europe, the lawyers in our Singapore office focus on cross-border transactions, investigations and arbitrations for clients working across the South East Asia region.
- In November 2016 Simmons & Simmons entered into a Joint Law Venture with JWS Asia Law Corporation to deliver an integrated client service through Simmons & Simmons JWS. Simmons & Simmons JWS provides Singapore hedge fund expertise and local market knowledge alongside a full range of legal services to clients across all stages of development — from fund structuring, formation and marketing, to regulatory advisory services such as licensing and corporate structuring.

Our services

- Advising on structuring funds, choosing the domicile, listing requirements and drafting fund documentation
- Advising on legal restrictions on marketing internationally (with the assistance of our international network)
- Advising on the SFC licensing and application process
- Advising on regulatory issues for hedge fund managers including disclosures of interests
- Advising on structuring and setting up hedge fund management businesses
- Negotiating prime brokerage and trading documentation (including ISDA Master agreements, CFD, repo and other futures and options agreements)
- Advising on strategic and transactional matters, including fund M&A, illiquid investments and active investment situations
- Advising on all aspects of the employment relationship (both contentious and non-contentious) including employment contracts, employee entitlement and protection, employee documentation, termination disputes and redundancies
- Through our Shanghai and Beijing offices, advising on PRC issues including marketing restrictions and other applicable PRC regulations

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Expertise in practice

We act for many of the best known hedge fund sponsors and managers. We advise hedge fund managers across Asia and in the UK, Europe and the US from Hong Kong and Singapore. Our clients include both specialist hedge fund firms as well as institutional fund management houses.

LaunchPlus Hong Kong

With the introduction of our award-winning online resource – “LaunchPlus Hong Kong” – we are now better placed than ever before to assist our manager clients achieve their goals.

LaunchPlus Hong Kong is a free offering for our start-up clients which provides access to a host of valuable step-by-step guides, reference materials, templates and precedents. Each module is designed to guide a start-up manager through each phase of a hedge fund’s life-cycle - from launch, to operation through to growth of the fund.

If you are a start-up manager and you would like to know more about LaunchPlus Hong Kong, including having trial access – come speak to us !

Our hedge fund clients in Asia include:

- ABCI Asset Management
- AID Partners Asset Management Limited
- Ajia Partners
- Ally Bridge
- Altis
- Arcus Investment
- Aristagora Investment Management
- Asia Lion Capital (Hong Kong) Limited
- Athos
- Bach
- Ballingal Investment Advisors
- Bosera
- Brevan Howard
- BTG HK
- Capula Investment Management

- CG Partners Asset Management Limited
- Chartwell Capital
- Cheetah Investment Management
- China Investment Securities
- China Merchants
- Chongyang
- CICC Investment Solution Management
- Cinda International Asset Management Limited
- CloudAlpha Capital Management Limited
- CG Partners
- Deepwater Capital
- Dragonstone Capital
- Dymon Asia
- East Purple Capital
- Eastfort Asset Management
- EIP
- Elevation Capital
- Ellis Brady Management
- Elpis Capital Limited
- Epiphany Asset Management
- Ethan China
- Evo Capital Management Asia
- Excel Investment
- Fighton
- Folger Hill Asset Management LP
- Foundation Asset Management
- Founder Asset Management
- Four Elements
- Fundamental Value Partners
- Goldstream
- Grand Fund Hong Kong Management Limited
- Guotai Junan
- Hehui Investment Management (Shanghai) Co., Ltd.
- HFZ Capital Management
- Hound Partners
- HT Capital Management
- Huatai-Pinebridge Fund Management Co., Ltd.
- Hutchin Hill
- HZ Capital Limited
- H2 Capital Limited
- InnoFusion
- Jaala Asset Management
- Junson Asset Management
- Juntong Capital Management Limited
- LBN Advisers
- Lone Pine Capital
- Mandarin Capital
- Marshall Wace
- MCP Asset Management Company Limited
- Modus Asset Management
- Myo Capital Advisors
- NF Trinity Capital
- North West
- Ocean Arete
- Orbis Investment Advisory Limited
- Oriental Harbor (Hong Kong)
- OTS Capital
- Pedder Street
- Perry Capital (Asia)
- Petrel Capital
- Pickers Capital
- Plymouth Lane Capital
- Prism Financial Products LLP
- Rafiki Capital
- Rongtong
- RT Capital
- Samsung Asset Management (Hong Kong) Limited
- Silk Road AFC Management Limited
- Sixpoint Partners LLP
- Standard Perpetual Partners Limited
- Sunwah Kingsway Capital Holdings Limited
- Tangible Asset Management
- The Wittgensteins Consulting Limited
- Tian Yue
- Vantage
- VL
- Wei Capital
- Wing Lung
- Winton
- Zeal
- Zenas

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Gaven Cheong is a Partner in the Investment Funds and Regulatory group of Simmons & Simmons in Hong Kong. Gaven specializes in fund establishment work across a range of private fund structures, including hedge, private equity, hybrid and fund of funds. He also advises on contentious and non-contentious regulatory issues in relation to asset management generally and across the life cycle of a fund.