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Contents

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1. Fund Formation

1.1 Formation of Investment Funds

Market practice for private funds that have a managerial presence in Hong Kong is to form the fund entities in a tax-neutral, offshore jurisdiction, such as the Cayman Islands. Hong Kong is not commonly used by advisers and managers for the formation of these fund entities. This is driven in part by tax considerations (the tax neutrality framework of certain offshore jurisdictions is historically tested and clear) and corporate considerations (a Hong Kong partnership would be formed under the Partnership Ordinance, which was last amended in 1924 and thus not ideally current).

1.2 Raising Capital from Investors

Hong Kong is often used for the raising of capital from investors internationally, given that Hong Kong is a leading international financial centre and strategic bridge to mainland China. In 2017, the total size of the asset management and fund advisory industry in Hong Kong recorded a year-on-year increase of 23% to HKD17,511 billion, with the private equity and venture capital sectors accounting collectively for about HKD689 billion and the hedge funds sector accounting for about HKD1,034 billion.

1.3 Common Process for Setting Up Investment Funds

The common structure of a private fund that has a managerial presence in Hong Kong consists of (i) a fund entity structured as a limited partnership (if the fund draws down capital in tranches over a fixed-length investment period), (ii) a company (if the fund draws down all committed capital at closing, as is the model for a hedge fund), (iii) an SPV, (iv) a general partner (assuming the limited partnership option is used) structured either as a limited partnership or as a company and (v) an investment manager structured as a company, all organised under the laws of a tax-neutral, offshore jurisdiction, such as the Cayman Islands.

Core fund documents include a limited partnership agreement (in the case of a limited partnership) or a shareholders' agreement and articles of association (in the case of a company), subscription documents, a private placement memorandum (where applicable), side letters entered into with investors (where applicable), an investment management agreement and (in cases where there is an investment adviser) an investment advisory agreement.

1.4 Regulation of Fund Structures

Private funds set up in tax-neutral, offshore jurisdictions that have a team of investment professionals based in Hong Kong would typically retain, directly or indirectly, a Hong Kong investment adviser entity. This adviser entity will usually be licensed under the Hong Kong Securities and Futures Commission (SFC) for conducting regulated activities in Hong Kong. For more details, see **2.2 Legal Regulatory and Investment Structures** and **3 Regulatory Environment**.

1.5 Limited Liability

Persons investing in private funds set up in offshore jurisdictions usually will not be deemed to be taking part in the management of the business of these funds (and will therefore be able to benefit from the safeguard of limited liability) so long as these persons act as passive, economic investors in connection with this investment, and locally qualified law firms may provide comfort on this point in the form of legal opinions. The contours of the exact legal requirements for how to act as a 'passive, economic' investor varies across jurisdictions. Generally, the ability for investors to sit on a fund-level advisory committee that reviews conflicts and other ancillary matters presented by fund management would not, by itself, result in the loss of these investors' limited liability protection.

1.6 Common Tax Regimes

As mentioned in **1.1 Formation of Investment Funds**, sponsors in Hong Kong prefer to set up private funds in certain offshore jurisdictions to enjoy tax neutrality or the otherwise preferential tax rates and treaty benefits that these jurisdictions may offer. In addition, funds that are domiciled outside of Hong Kong may be exempted from the Hong Kong profits tax if certain conditions under the Inland Revenue Ordinance (Cap 112) are met. The profit tax implications may vary for the asset-based management fees and variable performance fees that are often payable to fund managers.

1.7 Investment Sponsors

Hong Kong has historically been viewed as a preferred destination for global and regional private fund sponsors. Thirty-six of the top Asia-focused funds based on size have a managerial presence in Hong Kong. Hong Kong is an important jurisdiction for leading pension funds, insurance companies and other limited partners. Asset managers and family offices also play a prominent role in Hong Kong's private fund sector, due to Hong Kong's position as a leading hub for private wealth management.

Hong Kong has benefited from strong economic tailwinds for much of 2018. In particular, Chinese President Xi Jinping's Belt and Road Initiative (BRI) and the continued development of the Guangdong-Hong Kong-Macau Greater Bay Area have each contributed to the growth of Hong Kong's private equity sector. In 2018, a number of private funds were successfully launched focusing on BRI and the Greater Bay Area. Activity in support of these critical initiatives is projected to continue in 2019.

1.8 Disclosure Requirements

Hong Kong-based investment advisers with SFC licences are subject to regulation under certain codes of conduct, including the Code of Conduct for Persons Licensed by or

Registered with the Securities and Futures Commission (the Code) and the Fund Manager Code of Conduct (FMCC), which set out required disclosures for investors. The FMCC, for example, requires disclosures of cross trades, leverage arrangements and summaries of policies regarding securities lending, repo and reverse repo transactions, risk management, custody arrangements and so forth, which are usually contained in investor-level marketing documents, such as term sheets and private placement memoranda.

1.9 Legal Forms

Private funds that have a managerial presence in Hong Kong are commonly set up in offshore jurisdictions with a fund entity structured as a limited partnership, a company or an SPV. For more details, see **1.3 Common Process for Setting Up Investment Funds**.

1.10 Regulatory Status

Investment advisers which carry on a business in a regulated activity in Hong Kong are required to obtain relevant licences from the SFC. The three types of licences that a private fund manager is most likely to hold are Type 1 (Dealing in securities), Type 4 (Advising on securities) and Type 9 (Asset management). For more details, see **3 Regulatory Environment**.

1.11 Legal, Regulatory or Tax Legislative Changes

FMCC Amendments

On 17 November 2018, an amended version of the FMCC came into effect. The SFC explained that the amendments to the FMCC are meant to carry out financial policy reforms in the wake of the global financial crisis and that these reforms are influenced by work taken by international regulatory bodies, including the International Organisation of Securities Commissions, the Financial Stability Board and similar. The FMCC's objective, as amended, is to help ensure that Hong Kong's regulatory regime is adequately robust and in line with recent, international regulatory developments.

Although the amended FMCC applies to all SFC licensed or registered persons with a business involving the management of collective investment schemes and/or discretionary accounts, certain critical requirements apply only to a fund manager that is "responsible for the overall operation of the fund" (ROOF). While the facts and circumstances must be examined to determine whether a particular manager is 'ROOF', the SFC's apparent intention is to capture a fund manager that is responsible for the day-to-day operation of fund management. The SFC has offered, by way of example, that if the representatives of a fund manager or its subsidiaries constitute a majority of a fund board, then the fund manager may be considered to be ROOF.

The amended FMCC enhances certain obligations and imposes new requirements, covering areas such as securities lending and repurchase agreements, the safe custody of fund assets, proper liquidity risk management and the disclosure of leverage.

New Regulatory Approach for Cryptocurrency Assets

In light of the growing investor interest in virtual assets (including exposure to these assets through private equity funds) and the growth in unlicensed trading platform operators in Hong Kong, the SFC on 1 November 2018 announced a new regulatory framework for the governance of virtual assets.

A virtual asset, in brief, is a digital representation of value that is referred to commonly as 'cryptocurrency', 'crypto-asset' or 'digital token'. Many virtual assets do not squarely fit within the definition of 'securities' or 'futures contracts' and thus would arguably fall outside the SFC's regulatory jurisdiction. On this basis, the management of funds investing solely in virtual assets and the operation of platforms that solely provide trading services for virtual assets might not appear to constitute a 'regulated activity' as specified under the Securities and Futures Ordinance (Cap 571) (SFO). However, if firms are engaged in the distribution of funds that invest thereafter in virtual assets, then, irrespective of whether these assets constitute securities or futures contracts, these firms would be required to be licensed by or registered with the SFC. This is because the interests in these funds would be securities and the distribution of these fund interests would be a Type 1 regulated activity. (Authorised financial institutions, such as banks, are required to be registered instead of licensed. This chapter focuses on issues relating to licensing, which is the relevant concern for private fund managers.)

In order to improve investor protection, the SFC has developed a set of terms and conditions to better address the risks posed by virtual assets. These terms and conditions will be imposed as a licensing condition on virtual asset portfolio managers that have a stated investment objective to invest in virtual assets or that intend to invest or have invested more than 10% of the gross asset value of their managed capital in virtual assets. Such portfolio managers are, furthermore, required to inform the SFC or existing management of this intention.

In addition, the SFC proposes to explore how to regulate virtual asset trading platforms in a more tailored manner by working with certain operators of these platforms that have demonstrated a commitment to high standards of conduct.

Expansion of Profit Tax Exemptions

On 7 December 2018, the Hong Kong government gazetted the Inland Revenue (Profits Tax Exemption for Funds) (Amendment) Bill 2018 (the Bill) to introduce changes to the existing profits tax exemption for privately offered funds. The Bill was subsequently introduced into the Legislative

Council on 12 December 2018 and is expected to come into effect on 1 April 2019.

The purpose of the Bill is to address the concerns of the Council of the European Union over the ring-fencing implications of Hong Kong tax regimes for privately offered offshore funds and enhance the competitiveness of Hong Kong tax regimes by creating a level playing field for all funds operating in Hong Kong. To achieve this objective, the Bill unifies the profits tax exemptions for privately offered funds so that all funds in Hong Kong can enjoy the profits tax exemption for their transactions in specified assets, subject to certain conditions, regardless of structure, location of central management and control, size or purpose. A fund can also enjoy the profits tax exemption in respect of investment in both offshore and local private companies. To counteract the tax evasion risk, the Bill also introduces certain anti-abuse measures.

2. Fund Investment

2.1 Types of Investors

Hong Kong is an international market with many of the same key investors seen in other important jurisdictions, including pension funds, insurance companies, private banks, wealth management firms, funds of funds, high net worth individuals and family offices. Some of these institutional investors are branch offices of mainland China-based operations.

2.2 Legal, Regulatory and Investment Structures

Investors in Hong Kong prefer to invest in private funds set up in a tax neutral jurisdiction that has a track record of recognising the limited liability of investors. Similar to investors in other mature markets, investors in Hong Kong invest in private fund structures of various types formed in jurisdictions that are often used by all international investors.

As discussed in **1.3 Common Process for Setting Up Investment Funds**, the common structure of a private fund that has a managerial presence in Hong Kong would consist of (i) a fund entity structured as a limited partnership, (ii) a company or (iii) an SPV, (iv) a general partner (assuming the limited partnership option is used) structured either as a limited partnership or as a company and (v) an investment manager structured as a company, all organised under the laws of the Cayman Islands.

Typically, a Cayman Islands-domiciled private fund with a team of investment professionals based in and working out of Hong Kong would also include a Hong Kong investment adviser entity that employs these professionals and generates investment advice and operational support in respect of the investments which the fund proposes to make. Activities of an investment adviser could, depending on the facts and circumstances, come within various categories of regulated activities under the SFO, including but not limited to:

- selling fund interests to residents in Hong Kong;
- conducting selling activities in Hong Kong;
- deal sourcing and execution of transactions;
- making recommendations and advising with respect to potential deals; and
- making investment decisions for the investment fund it manages.

As a result, this Hong Kong investment adviser entity would likely be required to obtain certain licences from the SFC.

2.3 Legal, Regulatory or Tax Themes/Issues

In recent years, the regulators in mainland China have revisited and tightened control on inbound and outbound investments. Prior to making a private fund investment, investors must carefully review and understand the impact of these rules, updates thereto and relevant law enforcement actions. Certain investors are subject to special regulations based on their investor type; for example, regulators in mainland China have last year steepened the requirements for China-based insurance companies investing in private funds to report extensive, and potentially sensitive, information on their investments to government authorities in mainland China.

2.4 Restrictions on Investors

Due to the periodic tightening of RMB capital outflows by the monetary regulators in mainland China, investors that have to source capital from their mainland China affiliate(s) may encounter difficulty in funding capital calls on a timely basis.

2.5 Marketing Restrictions

Private Placement Rule

Offerings in Hong Kong of interests in private funds structured as partnerships or trusts (in the case of closed-ended funds) are subject to regulation under the SFO. Offerings in Hong Kong of shares or debentures issued by private investment funds structured as companies (in the case of open-ended funds, such as hedge funds) are subject to regulation both under the SFO and the Companies Ordinance.

Offering documents relating to securities offered to members of the Hong Kong public, whether or not by a licensed person, must be authorised by the SFC unless an exemption applies.

One of the most commonly used exemptions applies to offers made solely to 'professional investors' within the meaning of the SFO and its relevant subsidiary legislation. 'Professional investors' broadly encompasses financial institutions, insurance companies, investment companies, retirement schemes, pension plans, government entities and

certain high net worth individuals and large entities. If fund interests are marketed in Hong Kong, the relevant investors should be required to complete a supplemental Hong Kong investor questionnaire to ensure their professional investor status. In addition, certain categories of professional investors, including individuals, may cause a fund to be subject to enhanced compliance and due diligence requirements.

To the extent all Hong Kong offerees cannot meet the professional investor standard, another exemption is available under current market practices for offerings to not more than 50 offerees in Hong Kong. Although the offering documents for the types of private offers listed above are not required to comply with the prospectus content requirements, they should include an appropriate securities legend to highlight that the offering documents have not been reviewed by any regulatory authority in Hong Kong and that the investors are encouraged to seek independent professional advice.

SFC Licensing Regime
Under the authority of the SFC, any company (or branch office of a foreign company) that carries on a business in a regulated activity in Hong Kong or holds itself out as carrying on a business in a regulated activity in Hong Kong is required to be licensed by the SFC, unless a specific exemption is available. For detailed information, see **3 Regulatory Environment**.

3. Regulatory Environment

3.1 Regulatory Regime
The SFC is the primary regulator of private funds and fund managers in Hong Kong. The primary securities legislation is the SFO.

The SFO prohibits (i) a person from carrying out a business in a regulated activity or holding himself out as carrying on a business in a regulated activity without a licence and (ii) 'active marketing' of any services by any person (including those operating from offshore) to the public, directly or by another person on this person's behalf, if that would constitute a regulated activity if it were undertaken in Hong Kong, unless this person obtained a licence.

For details on 'active marketing' and 'regulated activity', see **3.3 Regulatory Approval** and **3.4 Authorisation of Marketing Activities**.

The core principle behind the Hong Kong licensing regime is that applicants must demonstrate, to the satisfaction of the SFC, that these applicants are fit and proper (SFO, s 129) to be licensed. Being fit and proper involves, broadly, being financially sound, competent, honest, reputable and reliable. In order to obtain an SFC licence, an applicant would generally need to satisfy certain standards relating to incorporation, competence, responsible officers, senior management, substantial shareholders, the fitness and properness of officers and other related persons, financial resources and insurance.

With regard to responsible officers (ROs), the applicant must appoint at least two ROs to be tasked with directly supervising the conduct of each proposed regulated activity, with at least one RO being available at all times to supervise each of the proposed regulated activities, and at least one RO designated as an executive director. The same individual may be appointed to be a responsible officer for more than one regulated activity, provided that this individual is fit and proper to be so appointed and there is no conflict in the roles assumed. 'Executive director' means a director of the corporation who actively participates in or is responsible for directly supervising the business of a regulated activity for which the corporation is licensed.

In addition to ROs, any individual who carries on a regulated activity on behalf of the corporation will similarly be required to obtain a licence as a representative accredited to this corporation. Licensed representatives (LRs) may be accredited to more than one licensed corporation. As with ROs, LR applicants must satisfy the SFC that the LR has fulfilled the fit and proper requirement. All LR applicants must pass the Test of Competence for Licensed Representative.

In addition, all of the executive directors in the application must seek the SFC's approval to serve as ROs for the applicant.

Among other requirements, each RO applicant needs to satisfy the SFC that this applicant has fulfilled the fit and proper requirements and has sufficient authority to supervise the business of regulated activity within the licensed corporation to which the RO applicant will be accredited.

3.2 Territorial Reach of Regulators
A manager registered in a jurisdiction other than Hong Kong that intends to conduct a regulated activity in Hong Kong, such as offering private fund interests to residents in Hong Kong and/or providing fund management or advisory services, must still comply with the private placement rule as detailed in **2.5 Marketing Restrictions** and the SFC licensing regime as detailed in **3 Regulatory Environment**, as applicable.

3.3 Regulatory Approval
As mentioned in **3.1 Regulatory Regime**, the SFO prohibits 'active marketing' of any service by any person (including those operating from offshore) to the public if that would constitute a regulated activity if it were undertaken in Hong Kong, unless this person has obtained a licence.

SFC guidance provides additional detail on how this active marketing threshold may be crossed. In undertaking this analysis, the SFC places emphasis on whether:

- there is a detailed marketing plan to promote the services;
- the services are extensively advertised via marketing means such as direct mail, advertisements in local newspapers, the use of broadcasts or other 'push' technology over the internet (as opposed to where the services are passively available; eg, on a 'take it or leave it' basis);
- the related marketing is conducted in a concerted manner and executed in accordance with a plan or schedule that indicates a continuing service rather than a one-off exercise;
- the services are packaged to target the public of Hong Kong; eg, written in Chinese and denominated in Hong Kong dollars; and
- the services are not sought out by the customers on these customers' own initiative.

3.4 Authorisation of Marketing Activities

Regulated Activity

The SFO stipulates ten types of regulated activity, the most relevant of which for a private equity fund sponsor are Type 1 (dealing in securities), Type 4 (advising on securities) and Type 9 (asset management).

Type 1 (dealing in securities) regulated activity includes the making or offering to make an agreement with another person or inducing or attempting to induce another person to enter into an agreement for or with the view to acquiring or disposing of securities. As a result, if a company is considering engaging in the distribution and sale of securities, such as limited partnership interests or company shares, where marketing is involved, a Type 1 licence would be required. In addition, if engaging in deal sourcing and the execution of private equity transactions (including participation in negotiations with a target company), this conduct may also fall into the category of Type 1 regulated activity.

Type 4 (advising on securities) regulated activity includes the giving of advice on whether securities should be acquired or disposed of. If a company provides investment advice for which remuneration is received, then, unless these advisory activities are wholly incidental to the Type 1 regulated activity, the company will need to apply for and obtain a Type 4 licence.

Type 9 (asset management) regulated activity includes the managing of a real estate investment scheme or securities or futures contracts. If a company wishes to provide portfolio management services, then the company will require a Type 9 licence.

Possible Exemptions

As the profile of each private fund management team or sponsor with a managerial presence in Hong Kong may differ depending on such factors as strategy, business capabilities, operational model and personnel, many firms decide to apply for one or a combination of the Type 1, 4, or 9 licences, while some other firms instead seek to rely on an exemption from the licensing requirements. Some firms that might otherwise decide to apply for a licence might instead choose to acquire a corporation that is already licensed and through this means conduct the desired type of regulated activity. The SFO sets out various exemptions from the licensing requirements, the most relevant of which are discussed below.

Incidental exemption

A company may not need a licence for certain regulated activities if these activities are performed in a manner that is wholly incidental to the carrying out of another regulated activity for which the company is already licensed. For example, if a company holds a Type 9 licence, that company may rely on the incidental exemption to carry out Type 1 and Type 4 regulated activities, provided that these activities are undertaken solely for the purposes of the company's asset management business.

Dealing with professional investors exemption

A company may not need a licence for futures or securities dealing activity if the company acts as principal and only deals with certain professional investors.

Group company exemption

A company may not need a licence for Type 4 or Type 9 regulated activity if the company provides the relevant advice or services solely to the company's wholly-owned subsidiaries, the company's holding company which holds all of the company's issued shares or to other wholly-owned subsidiaries of the company's holding company.

3.5 Investor-Protection Rules

As mentioned in **2.5 Marketing Restrictions**, one exemption commonly relied upon by a private fund to facilitate private placement in Hong Kong is an offering limited to 'professional investors'. Professional investor, for this purpose, is defined in the SFO and its relevant subsidiary legislation, and is broadly split into three categories:

- institutional professional investors;
- individual professional investors; and
- corporate professional investors.

Institutional professional investors generally include authorised or regulated entities, such as recognised exchange companies, recognised clearing houses, recognised exchange controllers, recognised investor compensation companies, authorised financial institutions and authorised collective investment schemes. Individual professional investors and

corporate professional investors are usually determined on the basis of their asset value or portfolio size, including:

- a trust corporation having been entrusted under one or more trusts of which it acts as a trustee with total assets of not less than HKD40 million;
- an individual, either alone or with any of his or her associates on a joint account, having a portfolio of not less than HKD8 million;
- a corporation or partnership having a portfolio of not less than HKD8 million or total assets of not less than HKD40 million; and
- a corporation whose principal business is to hold investments and which is wholly-owned by a professional investor under the three points above.

3.6 Approach of the Regulator

One of the SFC's core objectives is to take a proactive approach and seek continuous improvement. The SFC regularly publishes guidance on regulatory matters and tends to be prompt in dealing with matters within expected timeframes. The SFC also regularly consults the industry and public at large, as evidenced by its extensive interaction with the industry ahead of revisions to the FMCC. Recent years have seen the SFC focus on addressing irregularities in the market and strengthening scrutiny over fund managers on various aspects of a fund manager's businesses, including the licensing requirement and approval processes, the role of transfer pricing in a firm's managerial structure and the appropriate regulatory approach towards investments in new industries, such as virtual assets.

4. Fund Finance

4.1 Access to Fund Finance

Funds managed by advisers in Hong Kong are typically set up under the laws of offshore jurisdictions. If seeking to incur financing and/or leverage, these funds are most likely to do so by entering into capital call and subscription credit facilities from banks, including international banks with a Hong Kong presence. Hedge funds are unlikely to obtain external debt financing, but may invest in securities which synthetically incorporate leverage.

4.2 Borrowing Restrictions/Requirements

In addition to the SFO, the SFC has issued other codes and guidelines that regulate licensed or registered persons, including the Code and the FMCC, which set out borrowing and other conduct requirements for licensed or registered persons. For example, FMCC Section 3.12 requires a fund manager which is responsible for the overall operation of a fund to disclose to investors the expected maximum level of leverage that may be employed on behalf of the fund and the basis for calculating this leverage, which should be reasonable and prudent. Moreover, FMCC Section 3.8.2 provides that a fund manager should not borrow funds from a connected person on behalf of a fund, unless interest charged and fees levied in connection with the relevant loan are no higher than the prevailing commercial rate for a similar loan.

Although a breach of the Code or the FMCC would not directly and necessarily cause the relevant licensed or registered persons to become subject to legal action, this breach would reflect negatively on the fitness and properness of the sanctioned persons and may create a basis for disciplinary action.

4.3 Securing Finance

Asian private equity or venture capital funds have traditionally sought financing to bridge a funding gap, either by way of a capital call or subscription credit facility. Such facilities are useful to private equity and venture capital funds as they could access funds quickly to capitalise on investment opportunities, while waiting for capital calls from limited partners to arrive. Drawdown under a capital call facility could be arranged within as little as one business day, whereas a capital call could take ten business days or more. This firm has also seen capital call facilities being utilised to bridge the funding gap between the time in which an acquisition is completed and drawdown under a permanent asset level financing.

Capital call and subscription facilities are structured as a revolving facility with the private equity or venture capital fund as borrowed and secured by (i) an assignment of capital call rights under the limited partnership agreement and unfunded commitments of the limited partners, and (ii) a charge over the accounts to which capital calls are to be deposited.

There is usually no security provided over the fund's underlying assets.

We have also heard of enquiries on umbrella financing, and financings for general partners in respect of their own commitments (where the general partner's right to receive fees and carry is secured as well as the collection accounts), but these facilities tend to be less common in Asia to date.

4.4 Common Issues in Relation to Fund Finance

For private equity and venture capital funds, the most common legal issues for subscription facilities arise in relation to the general partner's ability to call capital, as this is the main recourse for lenders, and those issues are normally discussed when the fund documents are being diligenced. Some common issues include:

- ability on the limited partnership to incur indebtedness and provide security – to the extent there are any limitations in the limited partnership agreement, this could affect the availability of facilities to the fund;

- right of general partner to call capital – if a limited partner defaults in its capital call and the general partner is unable to make a capital call to the non-defaulting limited partners for the shortfall, then this will need to be considered by the lenders;
- circumstances in which investor commitments could be cancelled or reduced – these will need to be considered by the lenders;
- transferability of limited partners – a transfer of a limited partner is a key risk for the lenders. The lenders may want to impose conditions or consent rights prior to the transfer of commitments of any limited partner; and
- term of the fund and commitment period – this will determine when a capital call could be made and therefore will affect the availability period and maturity date of the facility.

5. Tax Environment

5.1 Tax Framework

Although a Hong Kong-based investment adviser may advise on the operation of the fund, profits and income may remain largely with a separate Cayman-based fund manager, pursuant to contractual arrangements. In recent years, taxation of fund managers and advisers in Hong Kong has drawn closer scrutiny by the Inland Revenue Department (IRD) in terms of both the nature and source of income derived and also the sufficiency of amounts received by the Hong Kong-based investment adviser under a transfer pricing analysis. In the current market, sponsors of private funds must carefully review the service agreements among managerial entities, alongside the underlying compensation arrangements, in order to anticipate and defend against any challenges from the IRD.

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6. Miscellaneous

6.1 Asset Management Industry Bodies

The SFC is the main regulator of funds and fund managers in Hong Kong. The SFC derives its investigative, remedial and disciplinary powers from the SFO and subsidiary legislation. The SFO has empowered the SFC with multiple roles. The SFC's principal responsibilities include maintaining and promoting the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry. The SFC's scope of work includes licensing and supervising persons that conduct activities under the SFC's regulatory responsibility. As a financial regulator in an international financial centre, the SFC strives to strengthen and protect the integrity and soundness of Hong Kong's securities and futures markets for the benefit of investors and the industry.

6.2 Preference for Courts or Arbitration

Courts are generally seen by investors as an adequate method of dispute resolution, although some investors with acute privacy concerns may request arbitration in Hong Kong. If these arbitration agreements are granted, they would usually just cover bilateral disputes arising between the relevant investor, on the one hand, and the fund manager and its affiliated persons, on the other hand.

6.3 Level of Litigation/Arbitration

The SFC regularly initiates disciplinary actions against fund managers and advisers for misconduct. For example, the SFC recently reprimanded and fined an investment manager holding a Type 9 (asset management) licence for conducting cross trades that incurred material transaction costs and were not in the best interests of the fund investors. The SFC posts notices of enforcement actions to its website as a way of offering and providing insight into its regulatory approach and priorities.

6.4 Periodic Reporting Requirements

Fund managers in Hong Kong have certain reporting obligations under the SFO, the Code, the FMCC and other applicable codes and guidelines. For example, licensed or registered persons are required by the SFC, on an ongoing basis, to submit certain records of audited accounts, financial resources returns and annual returns. Pursuant to Section 9.1.1 of the FMCC, fund managers may need to provide additional information to the SFC on an ongoing, request basis to better enable the SFC to monitor systemic risk. Such information may relate to fund-level leverage, securities lending and other assets and liabilities. In addition, Section 12.5 of the Code requires licensed or registered persons to report to the SFC immediately upon the occurrence of certain enumerated events, including compliance breaches, the initiation of legal proceedings and the discovery of material defects in operation.

6.5 Powers of Attorney

There is no Hong Kong-specific prohibition on the ability to grant, by contract, a power of attorney in connection with a private fund investment.

The information contained herein is general in nature and based on information and guidance that are subject to change. This information does not constitute, and may not be construed to constitute, tax advice. Prospective investors in private funds should consult their tax advisers regarding the tax structuring and tax impact of a private fund investment.