



# ICLG

The International Comparative Legal Guide to:

## **Alternative Investment Funds 2019**

**7th Edition**

A practical cross-border insight into Alternative Investment Funds work

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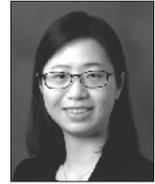
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# Hong Kong



Vivien Teu



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## 1 Regulatory Framework

### 1.1 What legislation governs the establishment and operation of Alternative Investment Funds?

Alternative Investment Funds (AIFs) that are offered in Hong Kong are primarily subject to the Securities and Futures Ordinance (SFO) regarding offers of securities (“securities” is widely defined in the SFO including forms of collective investment schemes). Relevant requirements apply to funds to be offered to the public which are subject to authorisation by the Securities and Futures Commission (SFC), and there are also applicable provisions relating to private placement offers including to “Professional Investors” as defined in the SFO.

The conduct of business in regulated activities relating to securities and futures market is subject to potential licensing requirements under the SFO. Persons engaged in the business of offering AIFs are required to be licensed by the SFC to carry on the Type 1 regulated activity of dealing in securities, unless any relevant exemption applies. Hong Kong managers of AIFs are required to be licensed by the SFC to conduct Type 9 regulated activity of asset management, and are thereby subject to regulation by the SFC in conducting its business of managing the AIFs, including applicable requirements under the SFC Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (Code of Conduct) and the SFC Fund Manager Code of Conduct (FMCC).

AIFs that are marketed or offered to the public in Hong Kong must be authorised by and are subject to the applicable requirements of the SFC, including requirements under the SFC Code on Unit Trusts and Mutual Funds (UT Code). AIFs may be authorised for public offer under the UT Code as “specialised schemes”, expressed to cover any scheme whose primary objective is not investment in equities and/or bonds, or any scheme whose features do not meet general requirements of the UT Code on investment restrictions or limits, or which fall under the categories in the UT Code which are regarded as “specialised schemes”. AIFs “specialised schemes” may be hedge funds, fund of hedge funds, structured funds or funds that invest primarily or extensively in financial derivative instruments, subject to complying with the requirements of the UT Code and authorised by the SFC for offer to the public.

Retail AIFs are prohibited under the UT Code from investing in any type of real estate (including buildings) or interests in real estate (including options or rights, but excluding shares in real estate companies or real estate investment trusts (REITs)), whereas the

establishment and operation of REITs in Hong Kong that are offered to the public and listed on the Hong Kong Stock Exchange are subject to prior authorisation by the SFC pursuant to and subject to the requirements under the SFC Code on REITs.

On the other hand, private AIFs that are offered by way of private placements only (and hence not authorised by the SFC) are not directly subject to specific legislation that governs their establishment and operation, but as mentioned above, intermediaries that offer AIFs or the managers or advisers to such AIFs are subject to licensing and regulation.

AIFs formed as Hong Kong domiciled open-ended fund companies (OFC) with variable capital would be subject to the detailed rules and code for open-ended fund companies promulgated by the SFC (OFC Rules and Code).

### 1.2 Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

As noted in question 1.1, Hong Kong managers of AIFs are required to be licensed by the SFC to conduct Type 9 regulated activity of asset management, and are thereby subject to regulation by the SFC in conducting its business of managing AIFs. AIFs that are not managed in Hong Kong are not subject to specific requirements by the SFC, other than the securities offering restrictions and the requirements for persons engaged in the marketing of the AIFs to hold a licence by the SFC to conduct Type 1 regulated activity of dealing in securities.

Hong Kong advisers to AIFs are required to be licensed by the SFC to carry on business in the Type 4 regulated activity of advising on securities, unless any relevant exemption applies, subject to applicable conditions. A Hong Kong adviser may provide the relevant advisory services solely to its group company under a group company exemption.

It is noteworthy that a firm that deals in, advises on or manages a portfolio of “private equity” or “venture capital” which does not involve securities (the definition of which excludes shares or debentures of a company that is a private company within the meaning of section 11 of the Companies Ordinance (Cap.622)) may not by itself attract a licensing requirement. In many other cases, however, where a firm deals in, advises on or manages shares or debentures of private offshore companies that fall outside the definition of a “private company” under the Companies Ordinance, it is likely that the firm in question will be required to be licensed, unless any relevant exemption applies.

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### 1.3 Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

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AIFs are not themselves required to be licensed or authorised unless they are marketed or offered to the public in Hong Kong. AIFs that are marketed or offered to the public in Hong Kong must be authorised by the SFC, such as AIFs falling within one of the categories of specialised schemes to be authorised in accordance with and subject to the applicable requirements of the UT Code, as mentioned in question 1.1.

Besides, AIFs that are established in the form of Hong Kong domiciled OFCs, whether public or private, will be subject to registration with and regulation by the SFC under the OFC Rules and Code. Public OFCs are also subject to SFC authorisation under the UT Code.

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### 1.4 Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity v hedge)) and, if so, how?

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The regulatory regime in Hong Kong does not distinguish between open-ended and closed-ended AIFs or otherwise differentiate between different types of funds or strategies, as AIFs are generally falling within the definition of “securities” as “collective investment schemes”. For AIFs that are to be offered to the public in Hong Kong, to be authorised by the SFC, the AIFs would need to comply with the relevant requirements of the SFC under the UT Code which may be specific to the type of funds or strategies.

AIFs to be established in the form of Hong Kong-domiciled OFC structure are subject to prescribed requirements under the OFC Rules and Code, including such as for private OFCs, at least 90% of the gross asset value of a private OFC must consist of (1) those asset types the management of which would constitute a Type 9 (asset management) regulated activity, and/or (2) cash, bank deposits, certificates of deposit, foreign currencies and foreign exchange contracts, with a maximum of 10% of gross asset value of the private OFC in other asset classes (10% *de minimis* limit). Given such limit, the OFC structure will likely be more suitable for open-ended funds (*vis-à-vis* closed-ended funds) and hedge funds (*vis-à-vis* private equity funds), although the possibility is not necessarily excluded.

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### 1.5 What does the authorisation process involve and how long does the process typically take?

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As noted in question 1.3, AIFs that are not marketed or offered to the public in Hong Kong are not required to be licensed or authorised by the SFC. The authorisation process for AIFs that are offered to the public in Hong Kong involves the review by the SFC of the funds themselves and the offering documents in respect of the funds, as well as the key operators of the funds pursuant to the requirements set out in the UT Code.

A new fund application for the authorisation of SFC is generally expected to take one to three months from the date the application is taken up by the SFC, depending on factors such as whether the fund under application is a sub-fund under an existing SFC-authorized umbrella fund, whether the fund is managed by existing approved managers managing other existing SFC-authorized funds with good regulatory records, the extent of the fund’s use of derivatives and any material issues or policy implications relating to the application. The

application will be subject to a six-month period from the SFC take-up date, at the expiry of which the application will in general lapse.

For establishing private AIFs in the form of Hong Kong domiciled OFCs, an application for registration would first need to be made to the SFC with a specified form and provide prescribed information (including the instrument of incorporation and the profile of key operators) to be submitted to the SFC, and upon the SFC approval on the registration, the incorporation can then be made with the Companies Registry. The offering document of the fund shall be filed as soon as practicable with the SFC upon issuance.

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### 1.6 Are there local residence or other local qualification requirements?

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Hong Kong managers are not restricted under any local requirements to form or establish Hong Kong-domiciled investment funds, and the SFO does not differentiate between local funds or offshore funds in the conduct of regulated activities of licensed persons or offers of securities (which may hence cover collective investment schemes or AIFs of any jurisdiction).

Private AIFs may be formed as a Hong Kong domiciled unit trust or a Hong Kong domiciled open-ended fund company. However, AIFs are not restricted to Hong Kong domiciled funds and may be domiciled in other jurisdictions by adopting legal vehicles available in the relevant jurisdiction. Hong Kong managers of AIFs quite commonly adopt fund vehicles in the form of an open-ended or closed-ended fund company or limited partnership structure in an offshore tax neutral jurisdiction.

This is also the case for retail AIFs where the regulations do not prescribe whether the funds are Hong Kong domiciled or foreign funds to be authorised by the SFC for offers to the public in Hong Kong. For example, Cayman domiciled funds may and have been established and authorised by the SFC as retail funds offered to the public in Hong Kong, subject to the SFC authorisation process and complying with the requirements of the UT Code. Foreign funds may also be authorised in Hong Kong, broadly speaking under two available schemes: (1) schemes established in recognised jurisdictions (the “Recognised Jurisdiction Schemes” (RJS) (the majority of which are UCITS funds domiciled in Luxembourg, Ireland and the United Kingdom)); and (2) schemes to be authorised under the mutual recognition of funds (MRF) arrangements currently with jurisdictions including Mainland China, France, Switzerland, United Kingdom and Luxembourg.

Under the UT Code, the management company of a retail AIF can be based outside Hong Kong in one of the acceptable inspection regimes published by the SFC provided that the retail AIF, if non-Hong Kong based, is required to appoint a Hong Kong representative. Similarly, there is no local domicile or local qualification requirements on the manager of a private AIF, who can be based in or outside Hong Kong. However, under the OFC Rules and Code, an AIF, whether retail or private, that adopts the structure of a Hong Kong domiciled open-ended fund company must appoint at least one Hong Kong licensed manager (see question 1.7).

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### 1.7 What service providers are required?

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The service providers that are typically required for AIFs would include the fund manager, the investment manager or investment advisor (if distinct from the fund manager), the trustee (if established as a unit trust structure)/custodian (in the case of mutual fund corporations), fund administrator, valuation agent (if distinct from the fund administrator), auditor, prime broker (in the case of hedge funds) and marketing agent/distributor.

Having said that, Hong Kong law and regulations do not specifically prescribe requirements for having specific service providers or the qualifications of service providers of AIFs, unless the AIFs are to be offered to the public in Hong Kong which would then be subject to the requirements under the UT Code applicable to the service providers, including on the fund manager, investment manager, trustee/custodian and auditor. Besides this, under the OFC Rules and Code, there are specific requirements on the board of directors of OFCs, on the investment manager (at least one investment manager licensed or registered to conduct Type 9 (asset management) regulated activity must be appointed), and also on the custodian and auditor of OFCs.

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### **1.8 What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?**

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The SFO governs funds offered in Hong Kong or targeted to the Hong Kong public, or the conduct of businesses relating to regulated activities in securities or futures that are carried out in Hong Kong or the active marketing to the public in Hong Kong (whether in Hong Kong or from a place outside Hong Kong), of any services which would constitute a regulated activity if provided in Hong Kong. Foreign managers or advisers that engage in any activity falling within the aforesaid may be subject to licensing requirements and would need to be properly licensed by the SFC if required for the conduct of relevant regulated activities.

Foreign managers or advisers wishing to manage, advise or otherwise operate AIFs for public offer in Hong Kong would be subject to the applicable requirements of the SFC, such as under the UT Code regarding the management company (or its delegates) of SFC authorised funds.

Foreign managers or advisers that may consider to manage, advise or otherwise operate retail or private AIFs to be established in the form of a Hong Kong domiciled open-ended fund company should note that the OFC Rules and Code require that there must be at least one investment manager licensed or registered for Type 9 regulated activity.

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### **1.9 What co-operation or information sharing agreements have been entered into with other governments or regulators?**

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Over the years, the SFC has signed a number of bilateral or multilateral agreements with local, Mainland China and overseas regulatory bodies.

To ensure a consistent regulatory approach, the SFC has entered into memoranda of understanding (MOU) with local regulatory bodies such as the Hong Kong Monetary Authority, Insurance Authority, Mandatory Provident Fund Schemes Authority, Hong Kong Exchanges and Clearing Limited, the Stock Exchange of Hong Kong Limited, etc.

The SFC has signed agreements with the regulators of Mainland China including the China Securities Regulatory Commission (CSRC), Administration and Supervision Department of the State Administration of Foreign Exchange, China Banking Regulatory Commission, China Insurance Regulatory Commission (now part of the China Banking & Insurance Regulatory Commission), People's Bank of China, Shanghai Stock Exchange, Shenzhen Stock Exchange, setting out co-operative frameworks, including investigatory assistance, exchange of information, and market or product-related arrangements.

The SFC has also entered into cooperative arrangements for investigatory assistance, exchange of information, and market or product-related arrangements in the form of memoranda of understanding, confidentiality undertakings, memoranda regarding administrative arrangements and memoranda of regulatory cooperation, and the IOSCO Multilateral Memorandum of Understanding (MMOU) (which was the first global information-sharing arrangement among securities regulators) with overseas regulators such as the UK Financial Conduct Authority.

In the context of authorised funds, the SFC has also entered into mutual recognition of funds arrangements with jurisdictions such as Mainland China, France, Switzerland, United Kingdom and Luxembourg, establishing framework for retail funds in one jurisdiction to seek authorisation to be offered as retail funds in the other jurisdiction.

Co-operation or information sharing agreements for tax purposes including with respect to the Common Reporting Standard are discussed in Section 6 on taxation.

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## **2 Fund Structures**

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### **2.1 What are the principal legal structures used for Alternative Investment Funds?**

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AIFs in Hong Kong may be formed as a Hong Kong domiciled unit trust constituted under a trust deed governed by Hong Kong law, or for open-ended AIFs, as a Hong Kong domiciled OFC which shall be subject to the OFC Rules and Code.

However, AIFs are not restricted to Hong Kong domiciled funds or specific forms and may be, and quite commonly are, established by adopting legal vehicles domiciled in other jurisdictions such as the Cayman Islands, subject to considering ease and costs of establishing and operating, applicable legal and regulatory requirements in the jurisdiction of the fund domicile, familiarity to investors and other factors such as tax implications.

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### **2.2 Please describe the limited liability of investors.**

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The limitation of liability of investors or any exception thereto must be clearly provided for in the constitutive document of the AIFs and disclosed to investors in the offering document. An investor generally shall not be liable to make any further payment after the investor has paid the monies agreed to be paid by such investor in respect of the units, shares or interests held by such investor and no further liability can be imposed on the investor in respect of the units, shares or interests held by such investor.

For retail AIFs (e.g. hedge funds), the UT Code requires that the liability of holders must be limited to their investment in the fund and that this must be clearly stated in the offering document.

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### **2.3 What are the principal legal structures used for managers and advisers of Alternative Investment Funds?**

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Hong Kong fund managers and advisers tend to be companies incorporated in Hong Kong with limited liability and are subject to be licensed by the SFC to conduct the relevant regulated activities (usually at a minimum Type 9 regulated activity of asset management and/or Type 4 regulated activity of advising on securities).

As it is quite common for Hong Kong fund managers or fund promoters to establish AIFs that are domiciled in an offshore jurisdiction, when doing so, such as when establishing an offshore (e.g. Cayman) limited partnership fund, a Hong Kong manager or adviser (or its parent company) may establish an offshore company as the general partner of the limited partnership fund. Depending on the management and operational arrangement of the particular fund management group, as well as the investment strategies or investment process, the parent company or subsidiary of the Hong Kong managers or advisers may also form, or be formed as, an offshore manager or an investment adviser in the particular jurisdiction(s) where a fund shall invest. Such manager or investment adviser would need to comply with any requirements including registration or licensing that may apply in the relevant jurisdiction where it is established or operates.

#### **2.4 Are there any limits on the manager's ability to restrict redemptions in open-ended funds or transfers in open-ended or closed-ended funds?**

For retail hedge funds, the UT Code requires that there must be at least one regular dealing day per month except for a closed-ended fund authorised pursuant to 8.11 of the UT Code. The maximum interval between the lodgement of a properly documented redemption request for redemption of units/shares (whether a notice period is required or not) and the payment of redemption money to the holder may not exceed one calendar month (unless the fund is a closed-ended fund where the permitted period is 90 calendar days or unless a substantial portion of the investments is in a market that is subject to foreign currency control). The manager may restrict redemptions in open-ended funds or transfers in open-ended or closed-ended funds only in certain circumstances, such as during massive redemption, and there should be full disclosure in the offering documents on permitted circumstances.

For private AIFs, there are no specific limits or restrictions on managers' ability to restrict redemptions or transfers under Hong Kong law or regulations. However, under new requirements of the revised FMCC effective from November 2018 (Revised FMCC), Hong Kong managers who are responsible for the overall operation of a fund would need to adopt appropriate liquidity management measures including the redemption policy of the fund; the liquidity risks of the fund, the liquidity management policies and an explanation of any tools or exceptional measure that could affect redemption rights would also need to be disclosed to fund investors. These requirements are relevant to open-ended funds as well as closed-ended funds.

Under the Revised FMCC, there are also specific provisions relating to the use of any side pocket by a Hong Kong fund manager who is responsible for the overall operation of a fund, and to provide clear disclosure to fund investors on the creation, features and implications of a side pocket including the impact or lock-up on redemption for a side pocket.

#### **2.5 Are there any legislative restrictions on transfers of investors' interests in Alternative Investment Funds?**

Transfers of investors' interests in AIFs are not specifically regulated under Hong Kong law or regulations. Therefore, transfers of investors' interests in AIFs would be subject to the specific provisions in the constitutive document, and would be subject to such process as prescribed in the constitutive document (typically transferable by the appropriate instrument of transfer signed by the transferor and the transferee and registered in the register of

members of the fund), subject to the applicable anti-money laundering laws and policies, and may be subject to consent or approval requirement (if any) of the relevant fund governance body.

#### **2.6 Are there any other limitations on a manager's ability to manage its funds (e.g. diversification requirements, asset stripping rules)?**

There are certain investment restrictions that apply under the UT Code on retail funds covering spread of investments and diversification limits, restrictions on certain types of instruments or assets, and limits on short selling. Private AIFs are not subject to specific investment limits or restrictions. AIFs should have a set of clearly defined investment and borrowing parameters in its constitutive and offering documents and the offering document should clearly explain the types of investments or financial instruments in which the fund will invest; the extent of diversification or concentration of investments or strategies; the extent and basis of leverage (including the maximum level of leverage); and the related risk implications of the investment and borrowing parameters.

### **3 Marketing**

#### **3.1 What legislation governs the production and offering of marketing materials?**

The SFO governs the offers of securities (including collective investment schemes as widely defined) in Hong Kong including the production and issue of marketing materials relating to offers of funds. The Companies (Winding Up and Miscellaneous Provisions) Ordinance (CWUMPO) governs the offer of shares in the Hong Kong corporate structure.

For retail AIFs, the SFC Advertising Guidelines Applicable to Collective Investment Schemes Authorised under the Product Codes (Advertising Guidelines) are applicable to all forms of product advertisements for SFC-authorized collective investment schemes.

#### **3.2 Is the concept of "pre-marketing" (or equivalent) recognised in your jurisdiction? If so, how has it been defined (by law and/or practice)?**

There is no concept of "pre-marketing" or equivalent under Hong Kong law.

#### **3.3 What are the key content requirements for marketing materials, whether due to legal requirements or customary practice?**

The key content requirements for marketing materials for SFC-authorized funds are set out in the Advertising Guidelines. The general principles that govern the content of advertisements for SFC-authorized funds are that the advertisements should (1) not be false, biased, misleading or deceptive, (2) be clear, fair and present a balanced picture of the fund with adequate risk disclosures, and (3) contain information that is timely and consistent with its offering document, and that the advertisements may not refer to unauthorised funds except as otherwise permitted. Detailed requirements are set out in the Advertising Guidelines on the content of advertisements including language and graphics, performance information, warning statements, etc.

The Advertising Guidelines do not apply to marketing materials for private funds. However, the FMCC provides that where the advertisements and marketing materials are not required to be authorised by the SFC (which is the case for private funds), a fund manager should nonetheless ensure that marketing materials are accurate and not misleading and only contain performance claims that can be verified.

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### 3.4 Do the marketing or legal documents need to be registered with or approved by the local regulator?

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The marketing or legal documents relating to offers of SFC-authorized retail funds are subject to the prior approval or authorisation of the SFC before they can be issued; although advertisements or marketing materials issued by intermediaries licensed by the SFC to conduct Type 1 (dealing in securities) regulated activity, Type 4 (advising on securities) regulated activity, and Type 6 (advising on corporate finance) regulated activity are exempted from prior authorisation by the SFC. However, if the marketing documents relate to certain funds, such as mandatory provident fund schemes and their constituent funds, occupational retirement schemes and insurance contracts, then the prior vetting of SFCs is still required.

The marketing or legal documents relating to the offer of private funds that are offered in Hong Kong on a private placement basis will not need to be approved by or registered with the SFC, such as AIFs that are primarily offered to “Professional Investors” as defined under the SFO.

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### 3.5 What restrictions are there on marketing Alternative Investment Funds?

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Private AIFs do not need to be authorised in order to be marketed in Hong Kong. Retail AIFs, on the other hand, must be authorised by the SFC pursuant to the requirements under the UT Code before they can be marketed to the public in Hong Kong.

Persons engaged in the business of offering investment funds, whether retail or private, are required to be licensed by the SFC to conduct Type 1 regulated activity of dealing in securities, unless any relevant exemption applies.

Private funds should not be offered to the public in Hong Kong, and under Hong Kong securities offering laws, an offer to a section of the public may constitute an offer to the public. An offer may be made to “Professional Investors” as defined in the SFO only (unlimited in number) and/or no more than 50 people by way of private placement, among other circumstances that may be relevant to be exempted or excluded as a public offer. For private funds in Hong Kong corporate form, another exemption is where an offer involves a minimum investment of at least HK\$500,000 per investor or not exceeding a specific overall size of HK\$5 million.

When a licensed person is engaged in the offer of any investment funds, whether retail or private, the licensed person needs to satisfy applicable suitability requirements and other know-your-customer (KYC) requirements as set out in the Code of Conduct in the offering of funds. Now scheduled to be effective from July 2019, a licensed person is required to determine whether the AIF it is marketing is a complex product, and they are subject to more stringent suitability requirements, such as being restricted from selling to any individual investor (including any individual professional investors) unless the AIF satisfied to be suitable for such investor. The licensed intermediary marketing an AIF is expected to exercise due care, skill and diligence to determine

whether the AIF is a complex product, and should consider several elements including whether the AIF is a derivative product/fund, the liquidity (illiquid or restricted liquidity likely to be complex) and any particular features or terms that increases the risk profile of the product.

Under the UT Code effective on 1 January 2019, subject to transition arrangements, a fund with a net derivative exposure of more than 50% of its net asset value would be a “derivative fund”. The SFC has issued a “Guide on the Use of Financial Derivative Instruments for Unit Trusts and Mutual Funds” which includes guidance on calculating net derivative exposure, which are instructive for retail AIFs and relevant to be considered for private AIFs. Intermediaries are likely to refer to the categorisation of a retail fund as a “derivative fund” or not, in determining whether a fund is a complex product subject to the stricter suitability and derivative knowledge assessment under the new conduct requirements (5.1A and 5.3) of the Code of Conduct to be effective July 2019.

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### 3.6 Can Alternative Investment Funds be marketed to retail investors?

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An AIF (e.g. a hedge fund) can be marketed to retail investors in Hong Kong provided that they are authorised by the SFC in accordance with the UT Code. As outlined in question 1.1, AIFs may be authorised for public offer under the UT Code as “specialised schemes”, expressed to cover any scheme whose primary objective is not investment in equities and/or bonds, or any scheme whose features do not meet general requirements of the UT Code on investment restrictions or limits, or which fall under the categories in the UT Code which are regarded as “specialised schemes”. AIFs “specialised schemes” may be hedge funds, fund of hedge funds, structured funds or funds that invest primarily or extensively in financial derivative instruments, subject to complying with the requirements of the UT Code and authorised by the SFC for offer to the public.

Having said that, AIFs are usually offered in Hong Kong on a private placement basis, primarily to “Professional Investors” as defined in the SFO.

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### 3.7 What qualification requirements must be carried out in relation to prospective investors?

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As noted in question 3.5, a licensed person engaged in the offering of funds to prospective investors should satisfy applicable suitability requirements and other know-your-customer requirements in relation to prospective investors, pursuant to the Code of Conduct.

When offering to “Professional Investors” as defined in the SFO, the licensed person would need to put in place procedures to limit offers to “Professional Investors” only and to verify the qualification of “Professional Investors”. The licensed person should also comply with the relevant know-your-customer and suitability requirements under the Code of Conduct, to the extent such requirements apply, depending on the category of the “Professional Investors”.

Broadly speaking, “Individual Professional Investors” or “Corporate Professional Investors” mean individuals or corporates, respectively, that meet the relevant minimum-net-worth or net assets requirements (broadly speaking, individuals with a portfolio of at least HK\$8 million, or a trust corporation, corporation or partnership with a portfolio of at least HK\$8 million or net assets of HK\$40 million), while “Institutional Professional Investors” refer to financial institutions and specific bodies as prescribed in the SFO.

A licensed person may be exempted from certain requirements of the Code of Conduct including the suitability requirements, when dealing with (1) “Corporate Professional Investors” as defined in the Code of Conduct who have satisfied the relevant assessment criteria as set out in the Code of Conduct in relation to relevant products and/or markets, and (2) “Institutional Professional Investors”.

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### 3.8 Are there additional restrictions on marketing to public bodies such as government pension funds?

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Among the categories of financial institutions and intermediaries that are specified in the definition of “Professional Investor” in the SFO, any registered mandatory provident fund scheme or its constituent fund (or an approved trustee, service provider or investment manager of such scheme or constituent fund), any occupational retirement schemes, as well as any government or institution which performs the functions of a central bank all fall to be categorised as “Institutional Professional Investors”. Accordingly, funds may be marketed to such bodies on a private placement basis, and in respect of which a licensed person is exempted from the suitability requirement and certain other investor protection requirements under the Code of Conduct.

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### 3.9 Are there any restrictions on the use of intermediaries to assist in the fundraising process?

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There are no specific restrictions on the use of intermediaries to assist in the fundraising as long as the intermediary is properly licensed by the SFC (unless any relevant exemption applies).

Under the Revised FMCC, Hong Kong licensed managers will be subject to additional specific requirements where the Hong Kong manager is responsible for the overall operation of the fund. In respect of marketing/fundraising activities, a fund manager should ensure that any representations made by it or its representatives to a client are accurate and not misleading, and that all advertisements and marketing materials are accurate and not misleading where such materials are not required to be authorised by the SFC. This should apply even where the fund manager has appointed intermediaries to assist in the fundraising.

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### 3.10 Are there any restrictions on the participation in Alternative Investment Funds by particular types of investors, such as financial institutions (whether as sponsors or investors)?

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There are no specific restrictions on the participation in AIFs by particular types of investors such as financial institutions (whether as sponsors or investors). The fund manager or operator and other service providers are not restricted from participating in the funds, however any conflict of interests should be properly disclosed to investors.

## 4 Investments

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### 4.1 Are there any restrictions on the types of activities that can be performed by Alternative Investment Funds?

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Retail AIFs (e.g. hedge funds) that are authorised by SFC would be subject to certain core requirements and restrictions contained in the UT Code covering areas such as prohibition on real estate investments, limitations on making loans, and acquiring assets that involve the assumption of unlimited liability.

There are no specific restrictions on the types of activities that can be performed by private AIFs. However, under the Revised FMCC, Hong Kong licensed managers of private funds will be subject to additional specific requirements where the Hong Kong manager is responsible for the overall operation of the fund, specifically covering several areas that are considered risk areas and for managing systemic risks, such as in relation to use and disclosure of leverage, cross trades, liquidity management, risk management, use of side pockets, and managing conflicts of interest.

For example, the Revised FMCC requires that where the fund manager is responsible for the overall operation of a fund, it should disclose to fund investors (i) the expected maximum level of leverage which it may employ on behalf of the fund, and (ii) the basis of calculation of leverage which should be reasonable and prudent.

For cross trades, according to the Revised FMCC, a fund manager cannot undertake sale and purchase transactions between client accounts (i.e. cross trades) unless: (a) the sale and purchase decisions are in the best interests of both clients and fall within the investment objective, restrictions and policies of both clients; (b) the trades are executed on arm’s length terms at current market value; (c) the reasons for such trades are documented prior to execution; and (d) such activities are disclosed to both clients.

With respect to liquidity management, the Revised FMCC requires that a fund manager that is responsible for the overall operation of a fund should establish, implement and maintain appropriate and effective liquidity management policies and procedures to monitor the liquidity risk of the fund, taking into account the investment strategy, liquidity profile, underlying assets and obligations, and redemption policy of the fund, and consider the appropriateness of using liquidity management tools and exceptional measures, taking into account the nature of assets held by the fund and its investor base.

Regarding conflicts of interest, a fund manager should maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to identify, prevent, manage and monitor any actual or potential conflicts of interest, including conducting all transactions in good faith at arm’s length and in the best interests of the fund on normal commercial terms. Where an actual or potential conflict arises, the conflict should be managed and minimised by appropriate safeguards and measures to ensure fair treatment of fund investors, and any material interest or conflict should be properly disclosed to fund investors.

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### 4.2 Are there any limitations on the types of investments that can be included in an Alternative Investment Fund’s portfolio whether for diversification reasons or otherwise?

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The UT Code sets out certain investment restrictions including on the spread of investments that apply to SFC-authorised retail funds depending on the type of retail funds. However, these restrictions may not apply to retail hedge funds. For retail hedge funds, the UT Code requires that the fund must have a set of clearly defined investment parameters in its constitutive and offering documents. The offering document must clearly explain: the types of financial instruments in which the fund will invest; the extent of diversification or concentration of investments or strategies; and the related risk implications of the investment parameters.

There are no specific limits on the types of investments that can be included in a private AIF’s portfolio whether for diversification reasons or otherwise. However, under the Revised FMCC, Hong Kong licensed managers of private funds will be subject to

additional specific requirements where the Hong Kong manager is responsible for the overall operation of the fund, specifically covering several areas that are considered risk areas and for managing systemic risks, such as securities lending, repo and reverse repo transactions. The Revised FMCC requires that the fund manager should put in place a collateral valuation and management policy and a cash collateral reinvestment policy governing securities lending, repo and reverse repo transactions and any cash collateral reinvestments in respect of collateral received by the funds managed by the fund manager. Further, the fund manager should have in place an eligible collateral and haircut policy in determining the types of acceptable collateral and their corresponding haircut in connection with securities lending, repo and reverse repo transactions. The fund manager of a fund that engages in securities lending should stress test the ability of a cash collateral reinvestment portfolio to meet foreseeable and unexpected calls for the return of cash collateral on an ongoing basis.

For private AIFs established in the form of Hong Kong domiciled OFCs, as stated in question 1.4, the portfolio of such AIFs would be subject to the 10% *de minimis* limit.

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#### **4.3 Are there any restrictions on borrowing by the Alternative Investment Fund?**

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The UT Code contains certain borrowing restrictions that apply to SFC-authorized retail funds. The maximum borrowing of an SFC-authorized retail fund generally may not exceed 10% of its total net asset value (back-to-back loans do not count as borrowing), although this restriction does not apply to retail hedge funds. For retail hedge funds, the UT Code requires that the fund must have a set of clearly defined borrowing parameters in its constitutive and offering documents. The offering document must clearly explain the extent and basis of leverage (including the maximum level of leverage) and the related risk implications of the borrowing parameters.

There are no specific restrictions on borrowing by private funds.

## **5 Disclosure of Information**

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### **5.1 What public disclosure must the Alternative Investment Fund or its manager make?**

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SFC-authorized retail funds must issue an up-to-date offering document containing the required information as listed in the UT Code and a product key facts statement (KFS) which shall be deemed to form part of the offering document and serve as a summary of key fund features and risks. The offering document must be accompanied by the retail fund's most recent audited annual report and accounts together with its semi-annual report if published after the annual report. For retail AIFs (e.g. hedge funds), the UT Code requires that the front cover of the offering document must display prominently certain prescribed warning statements, and the offering document must disclose all relevant matters relating to the investment operations and risk management aspects of the fund and give lucid explanations of the investment strategy of the fund and the risks inherent in the fund. The manager of the retail hedge fund must disclose the measures and safeguards put in place for the management of conflicts of interest in relation to the operation of the fund.

There are no specific legal or regulatory requirements on the disclosure to be made by private AIFs that are offered in Hong Kong on a private placement basis.

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### **5.2 Are there any requirements to provide details of participants (whether owners, controllers or investors) in Alternative Investment Funds or managers established in your jurisdiction (including details of investors) to any local regulator or record-keeping agency, for example for the purposes of a public (or non-public) register of beneficial owners?**

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There is currently no such requirements to provide details of participants in AIFs or managers established in Hong Kong to the regulator or record-keeping agency.

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### **5.3 What are the reporting requirements in relation to Alternative Investment Funds or their managers?**

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SFC-authorized retail funds must publish at least two financial reports each financial year, being the annual reports and accounts published and distributed to holders within four months of the end of the fund's financial year, and the interim reports within two months of the period they cover. These reports will need to be filed with the SFC. For retail hedge funds, the SFC has published the Guidelines on Hedge Funds Reporting Requirements (Appendix H to the UT Code) setting out the minimum amount of information that is required to be disclosed in regular reporting to investors. Retail hedge funds are required to publish quarterly reports in addition to the annual reports and semi-annual reports.

There are no specific legal or regulatory requirements on the reporting to be made by private AIFs that are offered in Hong Kong on a private placement basis. However, under the Revised FMCC, Hong Kong licensed managers of private funds will be subject to additional specific requirements where the Hong Kong manager is responsible for the overall operation of the fund. Requirements include having appropriate policies and procedures for the valuation of fund assets and calculation of net asset value, independent review of the valuation policies, procedures and process, and also a requirement to ensure an independent auditor is engaged to perform an audit of the financial statements of the fund in order to prepare an audited report at least annually, which should be made available to fund investors upon request. Where the fund engages in securities lending, repo or reverse repo transactions, the Hong Kong fund manager who is responsible for the overall operation of the fund is also required to provide to the fund investors, at least on an annual basis, certain prescribed minimum information on the fund's securities lending, repo and reverse repo transactions.

A Hong Kong fund manager is required to appoint an independent auditor to perform an audit of the financial statements of the fund manager, and the audited accounts should be filed in accordance with applicable statutory requirements and be made available to the fund upon request. There are also reporting obligations to the SFC, and specifically, a Hong Kong fund manager would be subject to requirements to provide appropriate information to the SFC upon request such as on fund assets, leverage, liquidity, securities lending, repo and reverse repo transactions, and to respond to requests and enquiries from the SFC promptly and in an open and co-operative manner.

#### 5.4 Is the use of side letters restricted?

There is no restriction on the use of side letters by private funds or their fund managers/operators. Therefore, Hong Kong managers are able to use side letters to supplement or modify the terms of a fund's offering document, subscription agreement or constitutive document for the purpose of granting strategic investors certain preferential treatment; however, a relevant disclosure should be made in the fund's offering document that side letters may be entered into and that certain investors may be given preferential terms.

In a circular previously issued by the SFC and addressed to managers of hedge funds, the SFC indicated that to ensure fair treatment of investors, it is good practice to disclose material terms to all existing and potential investors, and highlight where applicable that side letters have been entered into only with investors with significant shareholding or interest. Further, the Revised FMCC contains a general requirement that where a fund manager is responsible for the overall operation of a fund, it should make adequate disclosure of information (as well as any material changes to the information) on the fund which is necessary for fund investors to be able to make an informed judgment about their investment into it. Specifically, the Revised FMCC provides that where a fund manager has granted preferential treatment (e.g. side letters) to certain investors, it should disclose such fact and the material terms in relation to redemption in the side letters to all relevant potential and existing fund investors.

## 6 Taxation

### 6.1 What is the tax treatment of the principal forms of Alternative Investment Funds identified in question 2.1?

Under Hong Kong's tax framework (and more specifically, the general charging principles under the Inland Revenue Ordinance (IRO)), profits derived from the carrying on of business, trade or profession in Hong Kong would be subject to Hong Kong profits tax at the rate of 16.5% (a lower rate of 8.25% applies for the first HK\$2 million of profits under the "two-tiered" profits tax regime introduced from 1 April 2018).

In principle, profits sourced outside Hong Kong are not chargeable to tax in Hong Kong, and Hong Kong does not levy tax on the basis of remittance or receipt in Hong Kong or apply worldwide taxation on foreign-sourced profits or income of Hong Kong tax residents. A non-resident or overseas company is potentially liable to Hong Kong profits tax if it carries on a trade, profession or business in Hong Kong and has profits derived from Hong Kong from such trade, profession or business. Accordingly, where an AIF derives Hong Kong sourced profits from carrying on a business in Hong Kong (in respect of its investment activities), it may be subject to Hong Kong profits tax.

Certain types of AIFs may be exempted from Hong Kong profits tax, as outlined in question 6.8.

### 6.2 What is the tax treatment of the principal forms of investment manager / adviser identified in question 2.3?

The taxation of a Hong Kong investment manager or adviser would be subject to the general charging principles of the IRO. Where

management fees are regarded as Hong Kong-sourced (i.e. if the services giving rise to the investment manager's income are performed in Hong Kong), the (net) income will be held liable to profits tax in Hong Kong. On the other hand, where the investment manager derives service fee income from services performed outside Hong Kong (e.g. marketing, fundraising, investor relations, maintaining relationships with investees, etc.), such income will be regarded as offshore-sourced and thus potentially fall outside the charge to profits tax in Hong Kong.

The investment advisor's taxability in Hong Kong is also determined under the (same) general taxation principles of the IRO. Where the investment advisor performs investment advisory activities in Hong Kong and receives fees from the investment manager for providing such services, it will be held liable to profits tax in Hong Kong on the profits arising from the provision of such services in Hong Kong. There are potential charge to tax where the Inland Revenue Department (IRD) regard certain income or receipts of the investment manager or adviser as (part of the) management/performance fees that are Hong Kong-sourced, and considered as derived from asset management services rendered in Hong Kong.

The IRD has issued practice notes which explains the IRD's interpretation and practice in relation to the taxation of management fees and carried interest. In particular, the IRD reiterated that funds operating in Hong Kong should ensure that true arm's length fees are paid to the Hong Kong manager and/or advisor for the risks and functions performed. Furthermore, the IRD noted that any performance fee or "carried interest" arrangement would be closely examined by the IRD if it considers that the Hong Kong investment manager or advisor is not adequately remunerated for its level of services, after considering the functions, assets and risks attributable to the operations in Hong Kong.

### 6.3 Are there any establishment or transfer taxes levied in connection with an investor's participation in an Alternative Investment Fund or the transfer of the investor's interest?

The transfer of interests in an AIF domiciled in Hong Kong is subject to Hong Kong stamp duty, unless exempted. Stamp duty is chargeable at the rate of 0.1% of the consideration or value of the instrument of transfer of Hong Kong stock (the definition of which covers shares of Hong Kong companies, also units in unit trusts) or in certain circumstances at a nominal fixed duty.

An exemption exists for both the *ad valorem* stamp duty and the nominal stamp duty in respect of a transfer by the authorised manager(s) of a unit trust fund if it is effectuated by selling the units back to the said manager(s) who, in their turn, either extinguish the units or resell the units to another investor(s) within two months. The allotment, transfer and redemption of shares in qualifying open-ended fund companies may *vis-à-vis* be treated as if they are units under unit trust schemes in respect of the above-explained exemption.

### 6.4 What is the tax treatment of (a) resident, (b) non-resident, and (c) pension fund investors in Alternative Investment Funds?

There is no Hong Kong withholding tax on any dividends or distributions or other gains to be paid to fund investors, regardless of the category of investors. However, where the payments from the AIFs are actually income such as fees or salaries derived by an investors in connection with any business, trade or profession

carried out in Hong Kong, the investor may be subject to salaries tax or profits tax on such income or profits, and this, in the case of a corporate, is regardless of its location of central management and control, its size or the purpose that it serves.

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### **6.5 Is it necessary or advisable to obtain a tax ruling from the tax or regulatory authorities prior to establishing an Alternative Investment Fund?**

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As the Hong Kong tax framework in general and the application of the profits tax exemptions for funds are consistent, it is usually not necessary to obtain an advance tax ruling from the IRD prior to (and for the purpose of) establishing an AIF. For AIFs investing in private equity, venture capital, real estate or in an unusual structure or instrument, it is advisable to obtain specific advice on the potential tax implications.

Where considered necessary, such as in circumstances involving related party transactions between associated entities, it is possible to seek an advance pricing arrangement (APA) with the IRD. A Formal regime for APAs has also been established (as of July 2018), which facilitates taxpayers entering into unilateral or bilateral APAs. As noted in question 6.2, where the investment manager and investment advisor are closely-connected parties for Hong Kong profits tax purposes, consideration has to be given to whether the fees charged by the former to the latter are arm's length. This has been one of the most contentious tax matters in respect of the taxability of funds in Hong Kong in recent years.

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### **6.6 What steps have been or are being taken to implement the US Foreign Account and Tax Compliance Act 2010 (FATCA) and other similar information reporting regimes such as the Common Reporting Standard?**

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Hong Kong has signed Model II IGA for FATCA, which is supplemented by an agreement with the United States for exchange of information relating to taxes; this forms the necessary basis for Hong Kong to provide for the exchange of information upon requests made in relation to the information reported by financial institutions in Hong Kong to the US under FATCA.

Hong Kong has implemented the Common Reporting Standard (CRS) and the automatic exchange of financial account information in tax matters (AEOI) on a reciprocal basis with all of the CRS partners, in respect of which the first exchanges started in 2018. Currently, Hong Kong has concluded comprehensive avoidance of double taxation agreements with 40 jurisdictions and tax information exchange agreements with seven countries.

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### **6.7 What steps are being taken to implement the OECD's Action Plan on Base Erosion and Profit-Shifting (BEPS), in particular Actions 6 and 7, insofar as they affect Alternative Investment Funds' operations?**

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In June 2016, Hong Kong accepted the invitation of the OECD to join the inclusive framework for global implementation of the Base Erosion and Profit Shifting (BEPS) measures, and in June 2017, China signed the "Multi-lateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Sharing" (MLI) on behalf of Hong Kong, although with rights reserved with respect to most articles of the MLI.

Hong Kong has expressed its commitment to the implementation of the four minimum standards of the OECD's BEPS Action Plan, namely: (i) countering harmful tax practices (Action 5); (ii)

preventing treaty abuse (Action 6); (iii) imposing country-by-country reporting (Action 13); and (iv) improving the cross-border dispute resolution regime (Action 14). To implement these BEPS Actions, the Inland Revenue (Amendment) (No.6) Bill 2017 was published in the Gazette on 29 December 2017 and passed on 4 July 2018. In particular, the codification of OECD transfer pricing rules and, in this connection, the new provisions (i) empowering the IRD to adjust profits or losses where a transaction between related parties is considered not arm's length and has created a Hong Kong tax advantage, and (ii) applying the arm's length principle also to dealings between different parts of an enterprise (such as the head-office and a permanent establishment) may have potential tax implications for AIFs and operators of AIFs as of the year of assessment 2018/19, respectively, 2019/20 onwards.

Hong Kong has also taken into account the EU Council's concerns about the (at that time existing) profits tax exemption regimes for (privately offered) offshore funds and onshore open-ended fund companies having ring-fencing features and other elements which may potentially constitute harmful tax practice in the EU's opinion. As of 1 April 2019, Hong Kong has a new profits tax exemption regime for (privately offered) investment funds operating in Hong Kong, regardless of their location of central management and control, their size or the purpose that they serve, to be able to enjoy tax exemption for transactions in specified assets subject to meeting certain conditions. A fund may enjoy the tax exemption in connection with its investment in both overseas and local private companies.

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### **6.8 Are there any tax-advantaged asset classes or structures available? How widely are they deployed?**

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SFC-authorized retail funds are generally exempt from Hong Kong profits tax. Profits tax exemption may also apply to a mutual fund, unit trust or investment scheme which is a *bona fide* widely held investment scheme, and which complies with the requirements of a supervisory authority within an acceptable regulatory regime.

For privately offered funds operating in Hong Kong, as explained above, Hong Kong has a new profits tax exemption regime. Essentially, any vehicle which meets the definition of "fund" under the IRO (which mirrors the definition of "collective investment scheme" in the SFO) can potentially enjoy the tax exemption in connection with its investment in both overseas and local private companies.

Furthermore, the said profits tax exemption also requires that the qualifying transactions for the tax exemption are carried out through or arranged by a "specified person", meaning a corporation licensed or registered for carrying out specified regulated activity under the SFO and which would include Hong Kong licensed managers.

Last but not least, the investments have to be made in qualifying assets, incidental transactions (subject to a 5% limit) or in non-qualifying transactions. Broadly speaking, qualifying transactions are transactions in specified asset classes including securities, future contracts, foreign exchange contracts, bank deposits, foreign currencies, certificates of deposits and OTC derivative products. With respect to the said tax exemption, the "non-qualifying assets" also covers investments in (both Hong Kong and overseas) private companies (or interposed special purpose vehicles) provided that certain tests can be met. Hence, subject to meeting relevant conditions and falling within the prescribed scope, private equity funds may also avail the exemption.

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## 6.9 Are there any other material tax issues for investors, managers, advisers or AIFs?

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As explained under questions 6.2 and 6.7, a Hong Kong investment manager or adviser would be subject to Hong Kong profits tax on its income derived from carrying on its business, trade or profession in Hong Kong. The new provisions in the IRO empowering the IRD to make transfer pricing adjustments to transactions which they consider not being arm's length for Hong Kong profits tax purposes can potentially trigger material tax issues for associated entities within a group of companies, particularly in respect of the fund promoter, manager or adviser, for the management or advisory fees charged, respectively, paid.

Another material issue, as mentioned under question 6.2, is the manner or form in which managers of AIFs may receive performance fees or carried interest from the fund and also the remuneration of fund executives, which may become subject to profits tax, respectively, salaries tax in Hong Kong. The IRD has indicated that general anti-avoidance provisions may be applied to distributions of management fees or carried interest to fund executives from a general partner limited partnership, or carried interest limited partnership, if the distributions are genuine investment returns.

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## 6.10 Are there any meaningful tax changes anticipated in the coming 12 months?

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As explained under question 6.7, following the passing of the Inland Revenue (Amendment) (No.6) Bill 2017 on 4 July 2018, it remains to be seen how the large number of (and substantial) amendments (potentially with broad implications) will be applied in practice, including amongst others a statutory codification of the IRD's transfer pricing practice, statutory provisions for unilateral, bilateral and multilateral advance pricing agreements, the definitions of permanent establishment and provisions between associated persons, provisions on double taxation relief, and a dispute resolution mechanism, etc.

Aside from this, the introduction of economic substance rules in no or nominal tax jurisdictions on 1 January 2019 may have an impact on the use of entities in offshore jurisdictions such as the Cayman Islands, possibly resulting in an increase of funds and/or managers (to be) domiciled in other jurisdictions which are not on the EU blacklist, such as Hong Kong.

## 7 Reforms

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### 7.1 What reforms (if any) are proposed?

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The SFC has issued a Circular to management companies of SFC-authorized unit trusts and mutual funds to address green or environmental, social and governance (ESG) funds. As stated in the Circular of 11 April 2019, the aim is to enhance disclosure comparability between similar types of SFC-authorized Green or ESG funds and their transparency and visibility in order to facilitate investors making informed investment decisions in this evolving investment areas. Admitting that the Circular is an initial step in the SFC's efforts to enhance the disclosure standard of green or ESG funds, the SFC will keep local and international market and regulatory developments in view, and may provide further guidance or impose additional requirements for green or ESG funds, where appropriate.

For SFC-authorized funds, the SFC has issued the Guide on the Use of Financial Derivative Instruments for Unit Trusts and Mutual Funds (FDI Guide). The FDI Guide published in December 2018 provides guidance on the use of financial derivative instruments (FDIs) including the calculation of the net derivative exposure of an SFC-authorized fund. All SFC-authorized funds must in their KFS disclose the purpose of and the expected maximum net derivative exposure arising from FDIs. Pursuant to the FDI Guide, fund managers shall determine/categorise whether their SFC-authorized fund is or is not a derivative fund, based on the net exposure arising from the fund's investments in FDI, and they will have a 12-month transition period from 1 January 2019 to update fund disclosures. The SFC has included in its public register of authorised funds a new column indicating whether an SFC-authorized fund is or is not a derivative fund. Intermediaries are likely then to rely on the categorisation/registration of a fund as published on the SFC's register of authorised funds in determining whether a fund is a derivative fund and therefore a complex product which would attract stricter suitability or distribution requirements under the Code of Conduct.

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Vivien Teu is the founding and managing partner of Vivien Teu & Co LLP. She has extensive and in-depth experience as a corporate and commercial lawyer specialising in the financial services sector, funds and wealth management. Vivien carries diverse legal practice with top tier and magic circle firms in the areas of tax, trusts, banking and financial services, investment funds, securities regulatory and financial institutions set-up as well as mergers & acquisitions. Along with a significant in-house counsel experience at a global investment firm, Vivien brings unique insights and practical commercial approaches in her practice, and with extensive China knowledge.

Vivien's experience in the areas of asset management covers diverse forms of investment funds include Hong Kong SFC authorisation of retail funds (including UCITS funds and domestic HK fund series), Mainland-Hong Kong Mutual Recognition of Funds, China-theme investment funds including QFII and RQFII China A Share Funds, RMB Fixed Income Funds, Stock Connect, accessing China-Interbank Bond Market, and advising in relation to ETFs and REITs. Vivien also regularly advises on China QDII matters, structured finance and securitisation, SFC licensing and regulatory matters, Hong Kong securities regulatory and compliance advice; and assisting clients of diverse background with establishing private investment funds including hedge funds, private equity funds, real estate funds, institutional segregated account mandates and other investment arrangements; advising on fund distribution matters, custody structure, investment and trading matters. Vivien's experience also includes joint ventures or mergers & acquisitions of financial institutions or asset management firms, advising on shareholders agreements, corporate governance, general corporate and commercial advice, private and corporate trusts, tax issues and tax structuring.

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Sarah currently specialises in asset management and financial services, focusing on the structuring, formation and operation of private investment funds, and regulatory matters related to investment funds and fund managers. Sarah has advised Asian fund sponsors on the formation of various types of funds, including private equity fund, co-investment fund, project fund, hedge fund, real estate fund and fund of funds structured in different forms. She has also represented investors in funds pursuing private equity investment strategies.

Sarah's experience also covers the SFC's authorisation of retail funds in Hong Kong, in particular, the SFC's authorisation of Mainland retail funds under the Mainland-Hong Kong Mutual Recognition of Funds (MRF) arrangement and the post-authorisation compliance issues of SFC-authorised retail funds.

Sarah also advises on the structuring and issuance of debt securities under securitisation transactions, and represents China QDII investors in making cross-border investments through such transactions.

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Vivien Teu & Co LLP is a Hong Kong corporate and commercial law practice established with the philosophy of a boutique law firm, with particular focus on investment funds, asset management and financial services, private wealth, tax and trusts. The lawyers at Vivien Teu & Co LLP carry in-depth Hong Kong and international legal practice experience, combined with deep and broad knowledge of China and regional markets.

The asset management practice of Vivien Teu & Co LLP serves local and international clients who are establishing or operating asset management platform in Hong Kong, or otherwise accessing investors or investment opportunities in the Greater China region and beyond.

Our lawyers are experienced in advising clients in understanding and navigating the business, legal and regulatory environment in Hong Kong for asset management, assisting with incorporation and structuring of investment management or advisory services entities, advising on licensing and compliance requirements for such licensed entities, and assisting clients in obtaining necessary licences or registrations with financial regulatory authorities in Hong Kong for providing investment management or advisory services. With its lawyers having extensive China knowledge, Vivien Teu & Co LLP is a go-to firm for offering seamless Hong Kong law support on cross-border Mainland China and Hong Kong matters relating to asset management, investment funds, cross-border securities and investments, China market entry strategies, joint ventures and acquisitions.

Besides an enviable corporate and institutional client-base including global and regional investment management firms and financial institutions, the firm is also increasingly serving private clients and high net worth entrepreneurs, in its wider financial services, private wealth, tax and trusts practice. Besides, the firm carries strong tax capability, as an integral part of its corporate and commercial practice and a value-add that augments its asset management and financial services practice, and as a distinct practice covering tax planning, advisory and managing tax disputes.

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