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CityLinkers Group

Linking the world of opportunities

Introduction



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CityLinkers is a group of professionals in the areas of corporate finance, funding solutions, IPO consultancy in Hong Kong, financial assurance, tax planning, corporate services and legal advisory services. CityLinkers Group owned a team of professional accountants with over 20 years of audit and assurance experience. We have an international network of investment fund audit specialists, which can act under the lead of our Cayman Investment Fund Audit Services.





Key features of the HK LPF

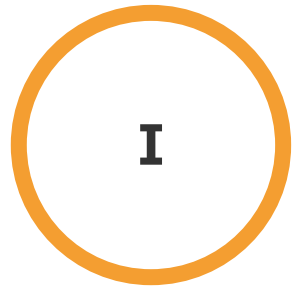
Eligibility and Registration <ul style="list-style-type: none">• a GP and at least one LP• constituted by an LPA• with a registered office in Hong Kong	An LPF itself is not a legal person	Must have an external partner within two years' from registration date

Contractual freedom

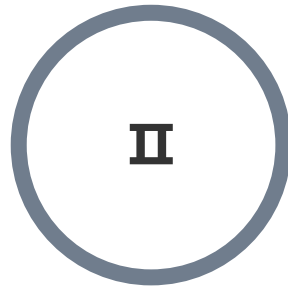


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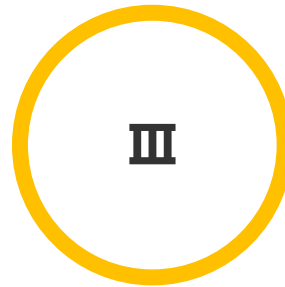
Covers, without limitation:



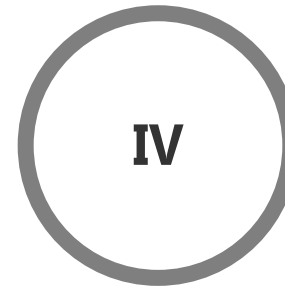
The scope of the fiduciary duties of the general partner



Remedies for default



Frequency of financial reporting and verifications of net asset value



Capital contributions, distribution of proceeds and clawback obligations



Fund dissolution procedures

Regulatory obligations



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Regulatory obligations (cont'd)

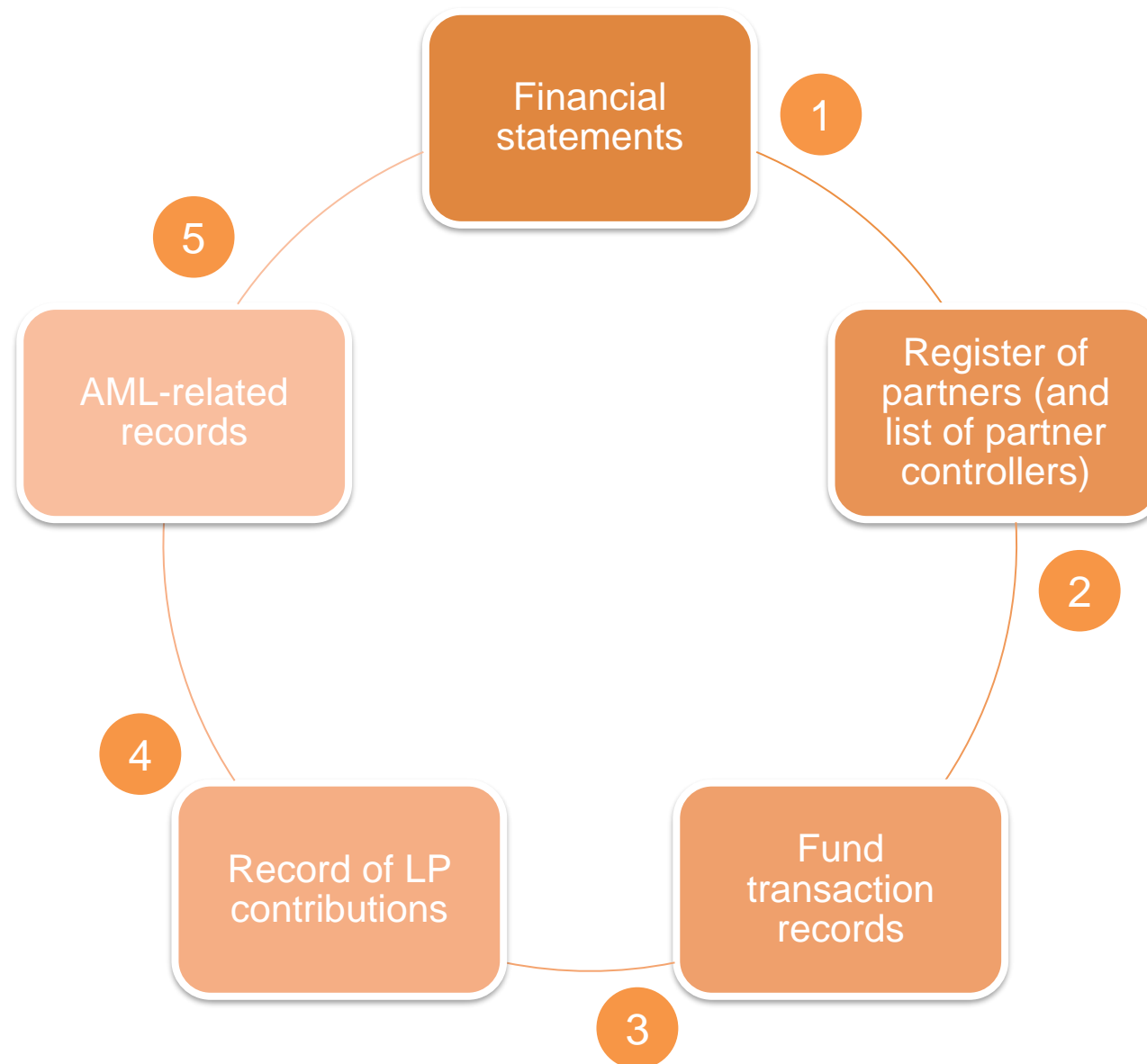
Ensure proper custody of assets

File annual return with the Registrar of Companies

Keep public register that sets out the fund particulars and notify the Registrar of Companies of any changes thereto

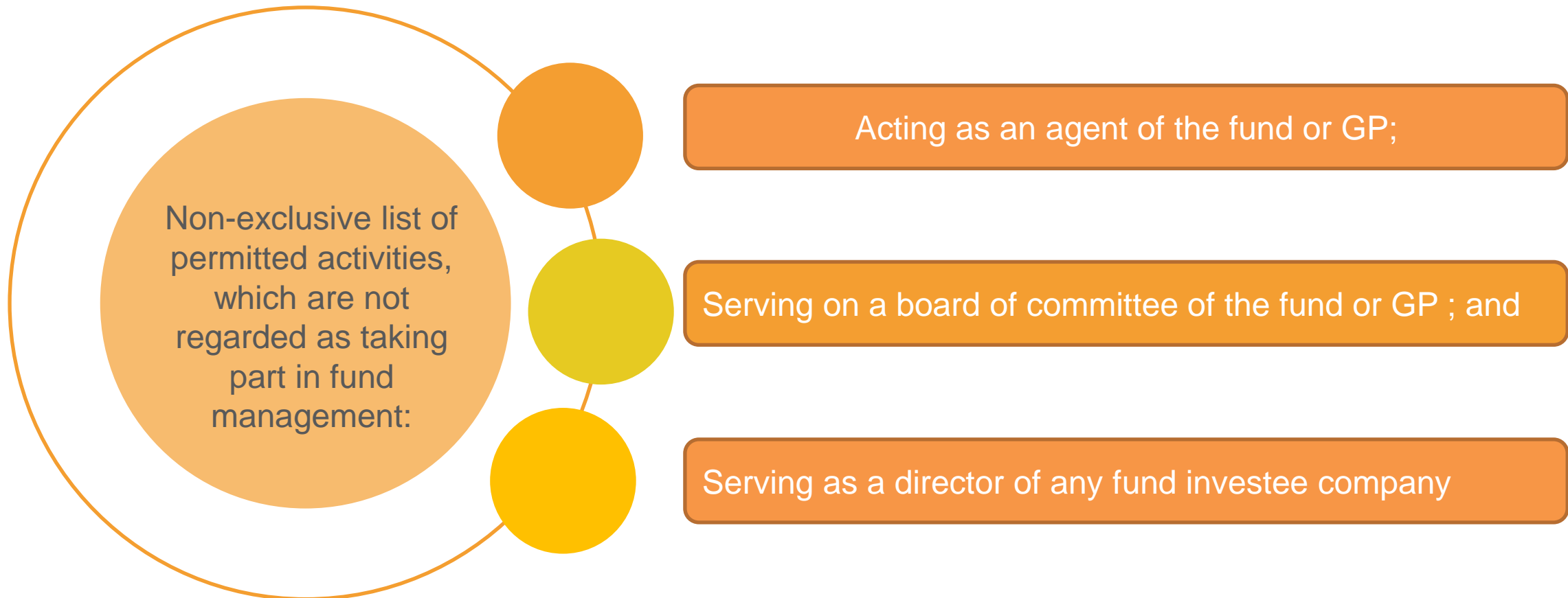


Private (& confidential) register





LPs' limited liability



Comparing Hong Kong against Singapore



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Similarly broad protection for:

- freedom of contract
- LPs' limited liability

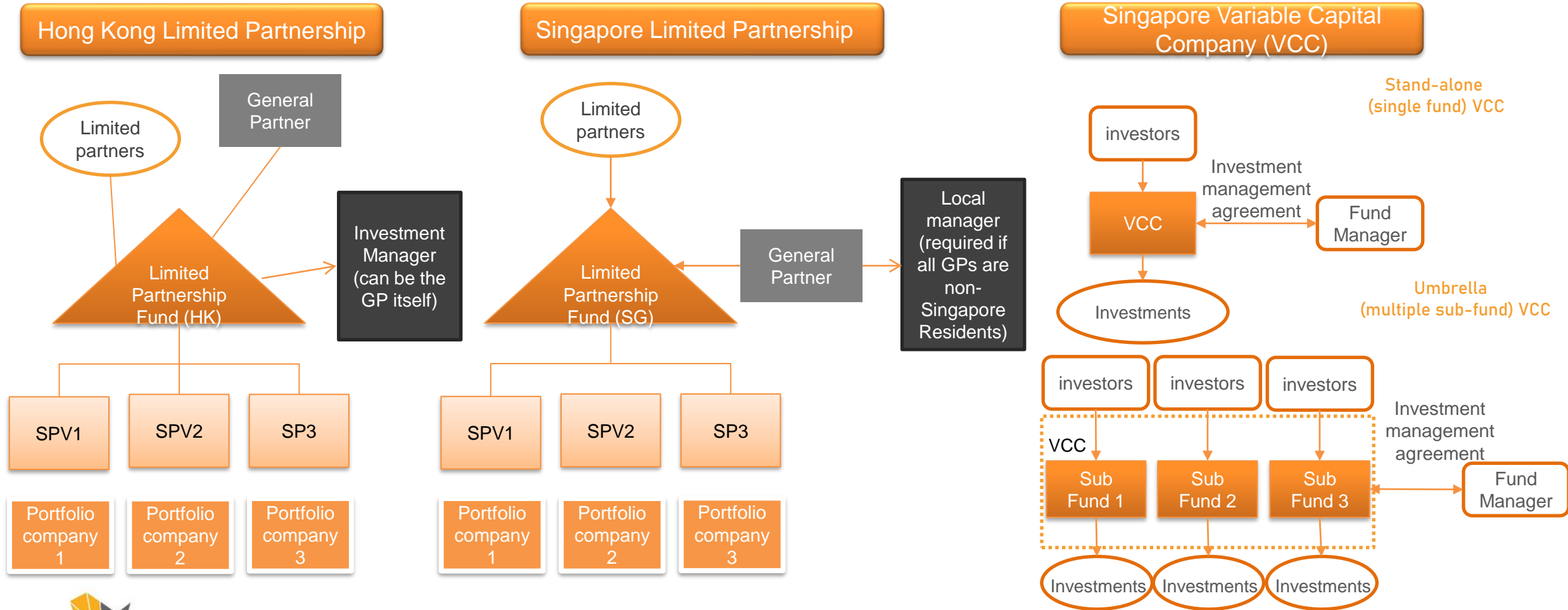
Similarly approach taken on:

- fund's lack of separate legal personality
- no re-domiciliation of foreign funds (as yet)
- use of 'master holding company' to enjoy treaty benefits

A typical onshore Private Equity / Venture Capital fund structure



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Comparison of the Limited Partnership Regimes



	Hong Kong Limited Partnership Funds	Singapore Limited Partnership Act	Singapore VCC	Cayman Islands Exempted Limited Partnership
Day to day management and appointment of IM	<ul style="list-style-type: none"> GP (HK private company, non-HK company registered with the HK Companies Registry, a natural person, or a limited partnership) has unlimited liability for all the debts and obligations, as well as ultimate responsibility for management and control of the LPF An IM must be appointed by the GP (and can be GP itself) to carry out day to day investment management functions of the LPF IM (which may be the GP) appointed can be either a HK resident over 18 years old, a HK company or a non-HK company registered in HK. 	<ul style="list-style-type: none"> Similar to HK regime, the general partner will typically be involved in the day-to-day operations of the limited partnership (LP) and has unlimited liability for all the debts and obligations, as well as ultimate responsibility for management and control of the LPF An LP must have a local manager if all the general partners are not “ordinarily resident” in Singapore 	<ul style="list-style-type: none"> The VCC is to be governed by the Board which will hold the primary responsibility for the governance of the VCC VCC must have at least 1 director (non-authorized schemes) who is also a director or qualified representative of the fund management company that will be managing the VCC The VCC must be managed by a fund manager regulated or licensed by the MAS 	<ul style="list-style-type: none"> GP is considered to be the operator of the LPF. It has the ultimate responsibility for management and control of the LPF
Licensing requirements for GP/IM/Operator	<ul style="list-style-type: none"> Licensing requirements is outside of LPF regime If the IM carries out regulated activities in HK, it should hold the requisite SFC license(s) 	<ul style="list-style-type: none"> If the fund is managed by the general partner itself then it needs to be licensed; or If the GP assigns a local manager for discharging all obligations, then local manager should be licensed 	<ul style="list-style-type: none"> The VCC will require a Singapore regulated and licensed fund manager or it can use a Singapore licensed bank to be the fund manager 	<ul style="list-style-type: none"> New Private Funds Law 2020 – Registration with CIMA if exemptions are not met No specific requirement on manager licensing

Comparison of the Limited Partnership Regimes



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	Hong Kong Limited Partnership Funds	Singapore Limited Partnership Act	Singapore VCC	Cayman Islands Exempted Limited Partnership
AML/CTF Obligations	<ul style="list-style-type: none"> The GP must appoint a responsible person (who can be the GP) to carry out obligations under anti-money laundering and counter-terrorist financing (AML & CTF) Ordinance (authorised institutions, licensed corporations, accounting professional or legal professional) 	<ul style="list-style-type: none"> Mandatory for all fund managers to put in place an anti-money laundering framework to identify, assess, understand and address its money laundering and terrorism financing risks 	<ul style="list-style-type: none"> VCC shall engage a financial institution, from the classes of financial institutions set out by the regulators to conduct the necessary checks and perform the measures (e.g. Banks, licensed finance companies, licensed financial advisers, registered/licensed FMCs etc.) 	<ul style="list-style-type: none"> The operator (i.e. GP) of a regulated fund has the ultimate responsibility for ensuring that the fund conducts its affairs in accordance with all the anti-money laundering requirements
Re-domiciliation	<ul style="list-style-type: none"> Migration of existing HK LPO to LPF Re-domiciliation from another jurisdiction currently yet to be included in the bill 	<ul style="list-style-type: none"> Inward re-domiciliation is currently not available 	<ul style="list-style-type: none"> Inward re-domiciliation is possible 	<ul style="list-style-type: none"> Inward re-domiciliation is possible
Custody of Assets	<ul style="list-style-type: none"> The general partner must ensure that there are proper custody arrangements for the assets of fund as specified in the limited partnership agreement of the fund 	<ul style="list-style-type: none"> Mas required that assets under management be held by an independent custodian that are properly registered or authorized in their home jurisdiction, although it recognizes that PEVC funds can adopt other methods, subject to appropriate disclosures and other safeguards 	<ul style="list-style-type: none"> Appointment of custodian is not required for restricted schemes that are private equity or venture capital funds, provided that investors have both been informed of the absence of custodial arrangements and their acknowledgement has been obtained 	<ul style="list-style-type: none"> A Private Fund shall appoint a custodian for safekeeping of Fund assets. Such function may be performed in house by the Manager /GP, provided that the inherent conflicts of interest are addressed and disclosed to investors.

Comparison of the Limited Partnership Regimes



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	Hong Kong Limited Partnership Funds	Singapore Limited Partnership Act	Singapore VCC	Cayman Islands Exempted Limited Partnership
Fund Administrator	<ul style="list-style-type: none"> No requirements 	<ul style="list-style-type: none"> For the purposing of meeting the requirements of SG tax incentive schemes for funds – Section 13R and Section 13X, Singapore fund administrator is required 		<ul style="list-style-type: none"> No requirements
Valuations	<ul style="list-style-type: none"> Not specified 	<ul style="list-style-type: none"> Not specified 	<ul style="list-style-type: none"> Not specified 	<ul style="list-style-type: none"> Valuations shall be performed by an independent third party that is appropriately professionally qualified to conduct valuations in a non-high risk jurisdiction, an administrator or the manager or operator of the Private Fund (provided that the valuation function is independent from the portfolio management function or potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors). Valuations should be performed at least annually
Audit Requirement	<ul style="list-style-type: none"> Local auditors appointment No stipulation od specific GAAP requirements 	<ul style="list-style-type: none"> Local auditors appointment IFRS/SFRS/US GAAP 	<ul style="list-style-type: none"> Local auditors appointment IFRS/SFRS/US GAAP 	<ul style="list-style-type: none"> Local auditors appointment Financial Statements must be prepared in accordance with IFRS or the generally accepted accounting principles of the US, Japan, Switzerland or any other non-high risk jurisdiction

Comparison of Licensing Obligations



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To conduct regulated fund management activities under the Securities and Futures Act (SFA) of Singapore, a company must be a **Registered fund management company (RFMC)** or **Licensed fund management company (LFMC)**. LFMC can be of **3 types**.

- **Retail LFMCs**: Carrying on business in fund management with all types of investors, without restriction on the number of investors.
- Accredited/Institutional (**A/I LFMCs**): Carrying on business in fund management with **qualified investors** only, without restriction on the number of qualified investors
- **VC LFMCs**: LFMCs who only manage **venture capital funds**, **80%** of investments in companies incorporated **fewer than 10 years**
- Managers of PE and VC funds often seek to operate as either **A/I LFMCs, RFMCs or VC LFMCs**.



Comparison of Licensing Obligations

	Hong Kong	Singapore		
	Type 1, 4 and 9	A/I LFMCS	RFMC	VC LFMCS
Financial requirements	<p>Minimum Paid-up share capital</p> <p>Type 1 Approved introducing agent or a trader: No minimum requirement In the case where the corporation provides securities margin financing: HK\$ 10 million In any other case: HK\$ 5 million</p> <p>Type 4 and Type 9 A subject to the licencing condition that shall not hold client assets No minimum requirement In any other case: HK\$ 5 million</p>	<p>Minimum base capital of S\$250,000 Required to maintain financial resources which are in excess of its total risk requirements</p>	<p>Minimum base capital of S\$250,000</p>	<p>None</p>
Liquid capital requirements (HK) / Risk based capital requirements (SG)	<p>HK\$ 100k for corporations subject to the licensing condition that shall not hold client assets HK\$ 3 million for those holding client assets</p>	<p>Require to maintain financial resources which are in excess of its total risk requirements Financial resources are at 120% of the operational risk requirements Op Risk requirements – higher of S\$100k or 5% of average annual gross income if average annual gross income below S\$10m for 3 years (2% if above S\$10m)</p>	<p>NA</p>	<p>NA</p>
AUM restrictions	<p>No restrictions</p>	<p>No restrictions</p>	<p>No more than S\$250 million</p>	<p>No restrictions</p>
Number of investors	<p>No restrictions</p>	<p>No restrictions</p>	<p>Up to 30 accredited and institutional investors (of which up to 15 may be funds or limited partnership fund structures)</p>	<p>No restrictions</p>



Comparison of Licensing Obligations

	Hong Kong Limited Partnership Funds	Singapore Limited Partnership Act	Singapore VCC	Cayman Islands Exempted Limited Partnership
	Type 1, 4 and 9	A/I LFMC	RFMC	VC LFMCs
Staffing requirement	<ul style="list-style-type: none"> Appoint no fewer than 2 Responsible Officers; At least one of the proposed ROs must be an executive director One Manager-in-charge (MIC) for each of the eight core functions 	<ul style="list-style-type: none"> Minimum if 2 full-time Singapore-based employees Each with at least 5 years of relevant experience 		<ul style="list-style-type: none"> Minimum of 2 full time Singapore-based employees No minimum experience required
Submission of Financial Resources Returns (FRR) (Hong Kong) / Submission of Risk-based Capital Returns (quarterly) (Singapore)	<ul style="list-style-type: none"> Type 1 Licensed corporations are required to submit monthly FRR to the SFC Type 4 and Type 9 licences subject to the condition that they shall not hold client assets, are only required to submit semiannual FRR 	Require to submit the following quarterly returns to MAS within the first 14 days after each quarter. <ul style="list-style-type: none"> (a) Form 1 Statement of Assets and Liabilities (b) Form 2 Statement of Financial Resources. Total Risk Requirement and Aggregate Quarterly & Annually Indebtedness (c) Income & Expenditure Statements 	<ul style="list-style-type: none"> NA 	<ul style="list-style-type: none"> NA
Submission of audited accounts and other documents	<ul style="list-style-type: none"> LC is required to submit the audited accounts, account disclosure document, BPMQ and other required documents within 4 months after the end of each financial year Auditor to submit compliance report and audit questionnaire 	<ul style="list-style-type: none"> Require to submit internal control report (Form 5) and audited financial year end. 	<ul style="list-style-type: none"> Require to submit audited financial statement for the latest completed financial year within 5 months of financial year end. 	<ul style="list-style-type: none"> Annually to submit Form 25A – Annual Declarations

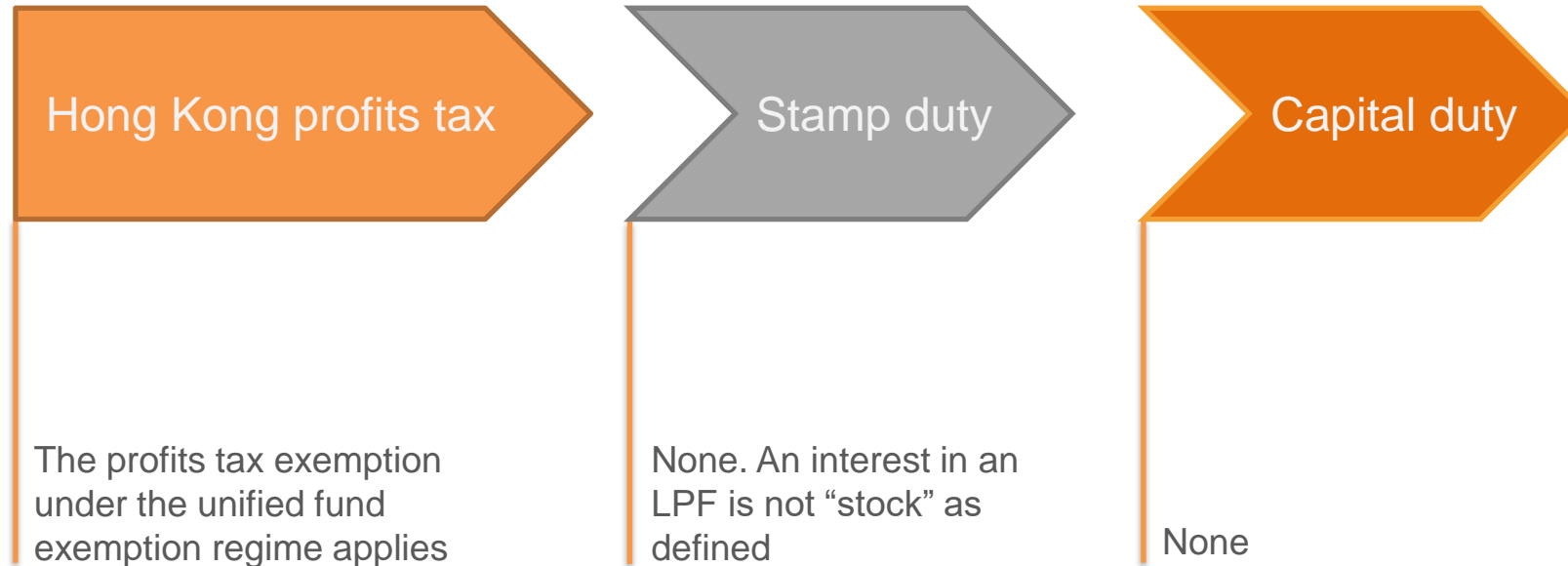
Tax considerations



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Overall taxation of HK LPF regime

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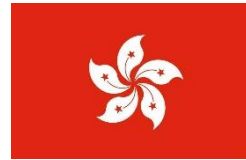
The preferred fund management centre Hong Kong vs Singapore



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What do they have going for them?

- Easy to understand tax regime
- Tax treaty network
- Indirect taxes
- Tax exemption
 - Mutual funds
 - Hedge funds
 - PE funds
 - Credit funds
- Individual tax – progressive up to ...
- taxation of fund managers



✓
Limited but expanding

None

✓

✓

✓

✗

15%

16.5% BUT offshore non-taxable claim possible so effective rate could be lower



✓
Extensive

GST @ 7%

✓

✓

✓

✓

22%

10 or 17%

Hong Kong vs Singapore



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Fund exemption schemes

	Hong Kong	Singapore	
Types of fund exemption schemes	Unified Tax Exemption Regime	Singapore Resident Fund (S13R)	Enhanced-Tier Fund Scheme (S13X)
Approval requirement	No	Yes	Yes
Shareholding test	Shareholding test in respect of HK resident investors Impact the Hong Kong resident investors but not the Fund	Shareholding test in respect of Singapore resident investors Impact the Singapore resident investors but not the Fund	No restriction

Hong Kong vs Singapore



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Fund exemption schemes

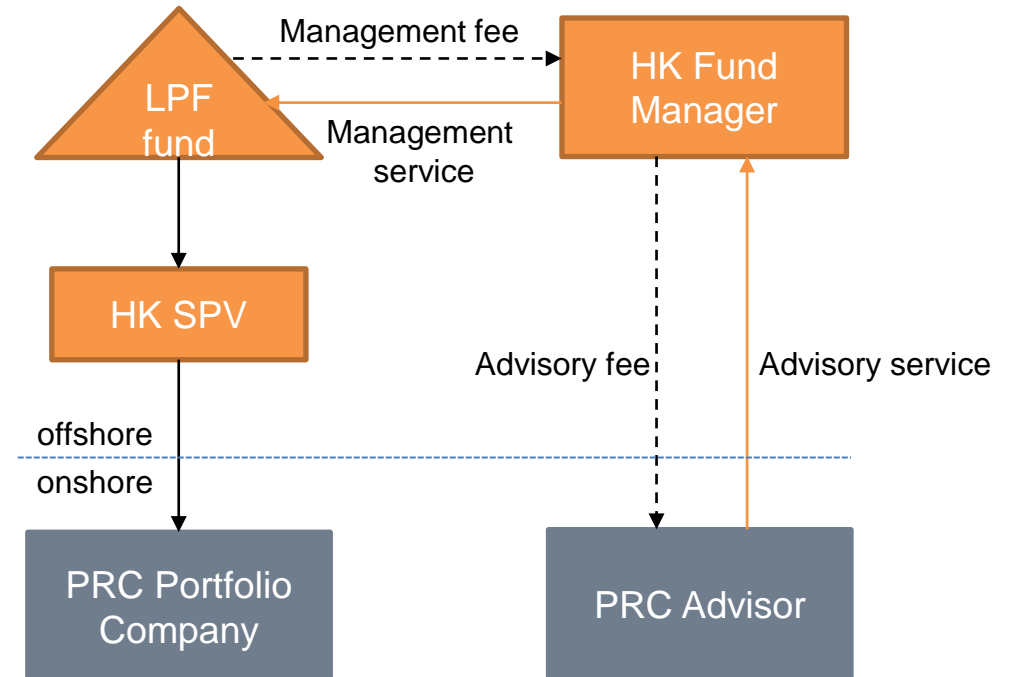
	Hong Kong	Singapore	
Types of fund exemption schemes	Unified Tax Exemption Regime	Singapore Resident Fund (S13R)	Enhanced-Tire fund Scheme (S13X)
Economic conditions	None	S\$200,000 annual business spending	<ul style="list-style-type: none">- S\$200,00 annual local business spending- S\$50 million min fund size at point of application- Fund management company employs at least 3 investment professionals
Tax filing requirements	Not required	Required	Required

PRC Tax considerations



Better mitigation of Permanent Establishment (“PE”) risk

- LPF Fund is managed from Hong Kong instead of from “No where”
- HK Fund Manager’s presence in China should be less than 183 days in any 12-month period
- HK Fund Manager could delegate part of advisory work to PRC advisor travel of further mitigate aforementioned PE risk caused by frequently travel of HK personnel.
- Advisory fee charged by PRC Advisor shall base on arm length principle.



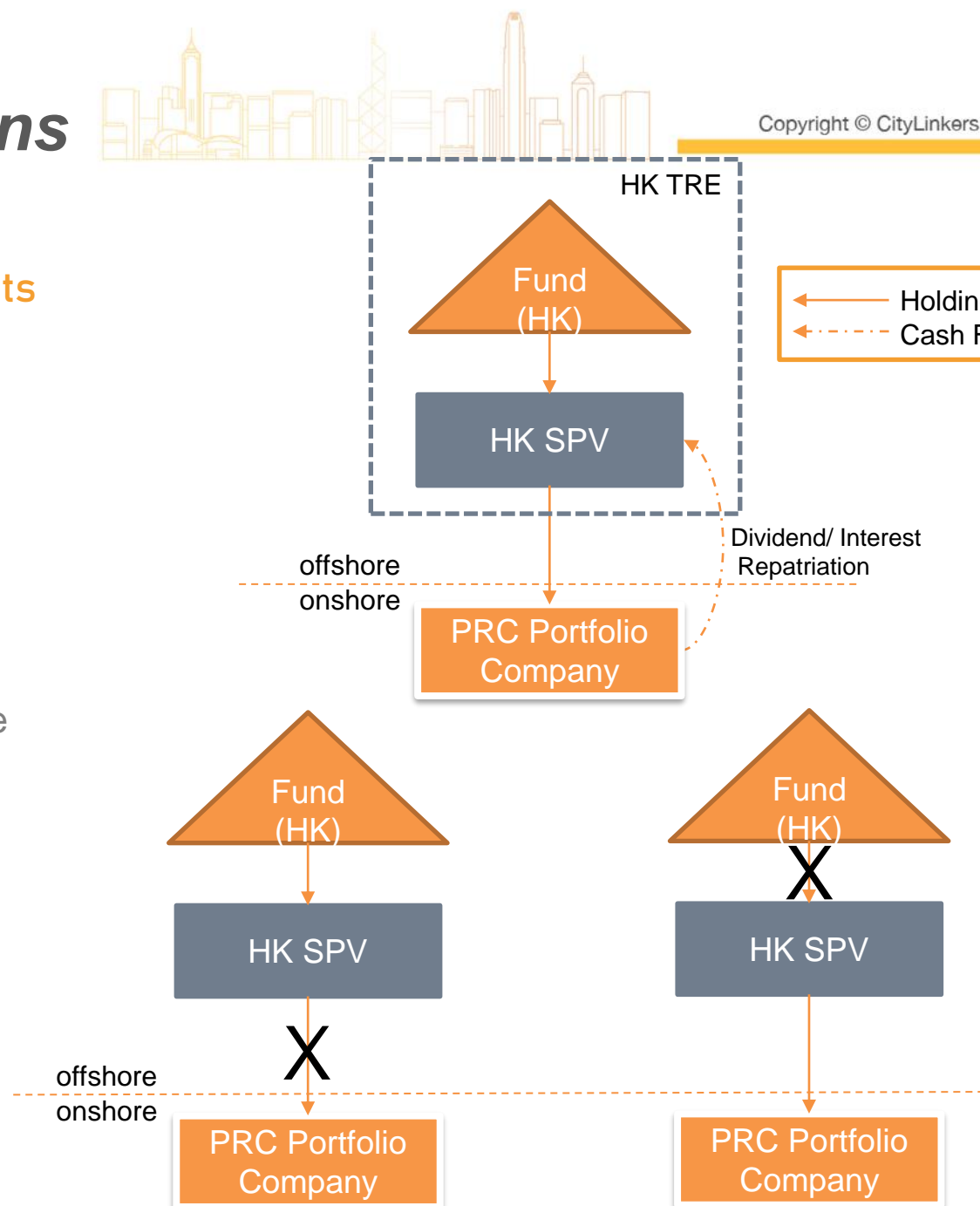
PRC Tax considerations



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Enhance chance Of accessing treaty benefits

- Prerequisite
- ✓ Better chance to obtain Residency Certificate
- Substantial requirements
- ✓ More robust commercial substance to pass the Principle Purpose Test (“主要目的测”)
- ✓ Dividend/Interest repatriation | similar challenge in passing the beneficial owner test
- ✓ Capital gain | no beneficial owner test is required.



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