

# **Dashun Foundation 2<sup>nd</sup> Webinar**

## **Reinforcing Hong Kong Auditors and Company Secretaries' Knowledge of the Open-ended Fund Companies Regime ("OFC regime")**

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### **Fund Domicile: Onshore vs. Offshore**

**25 November 2021**



# Onshore vs. Offshore

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# Background

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- 85% of private funds in Asia using Cayman Islands as offshore jurisdiction
- Other jurisdictions: BVI, Jersey, Bermuda
- Increasing compliance and regulatory pressures on offshore funds
- AEOI reporting – FATCA & CRS
- EU & OECD implementing BEPS
- G20 BEPS 2.0 pillar 2 → global minimum effective tax rate @15%
- Traditional onshore fund structure (HK Unit Trust) not user friendly
- HK's existing LP Ordinance (Cap. 37, 1912) is not relevant for funds
- China-US competition/conflicts → non-US connections?
- Shifting from offshore to mid-shore or onshore?

# No. of Entities licensed/registered by CIMA

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Period	Private Funds	Registered Funds	Excluded Persons	Registered Persons
2017	0	7,331	2,760	0
2018	0	7,654	2,926	0
2019	0	7,656	2,198	0
2020	12,695	7,972	0	1,650
Sep 2021	13,820	8,276	0	1,678

Source: Cayman Islands Monetary Authority

# Onshore or Offshore?

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SPC/  
Exempted  
Company

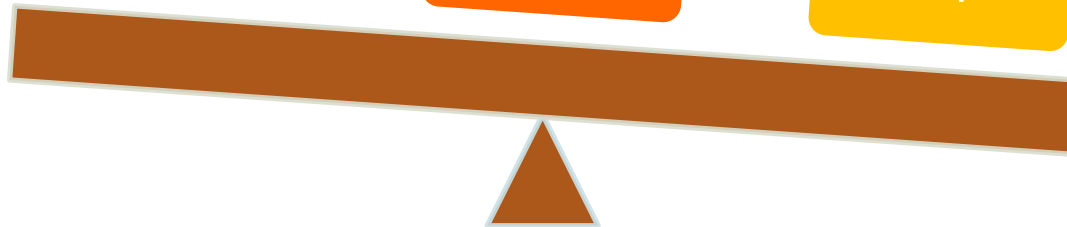
VCC

OFC

ELP

LP

LPF



# Changing Landscape: Onshore vs Offshore



- ▶ HK OFC legislation/OFC regime effective 30 Jul 2018
- ▶ Unified Fund Exemption Ordinance effective 1 Apr 2019
- ▶ DIPN 61 – profits tax exemption for funds on 30 Jun 2020
- ▶ LPF Ordinance effective 31 Aug 2020
- ▶ Carried interest tax concession effective 1 Apr 2020
- ▶ 10 May 2021: OFC Grant Scheme
- ▶ 1 Nov 2021: Re-domiciliation of foreign funds to HKOFC & LPF

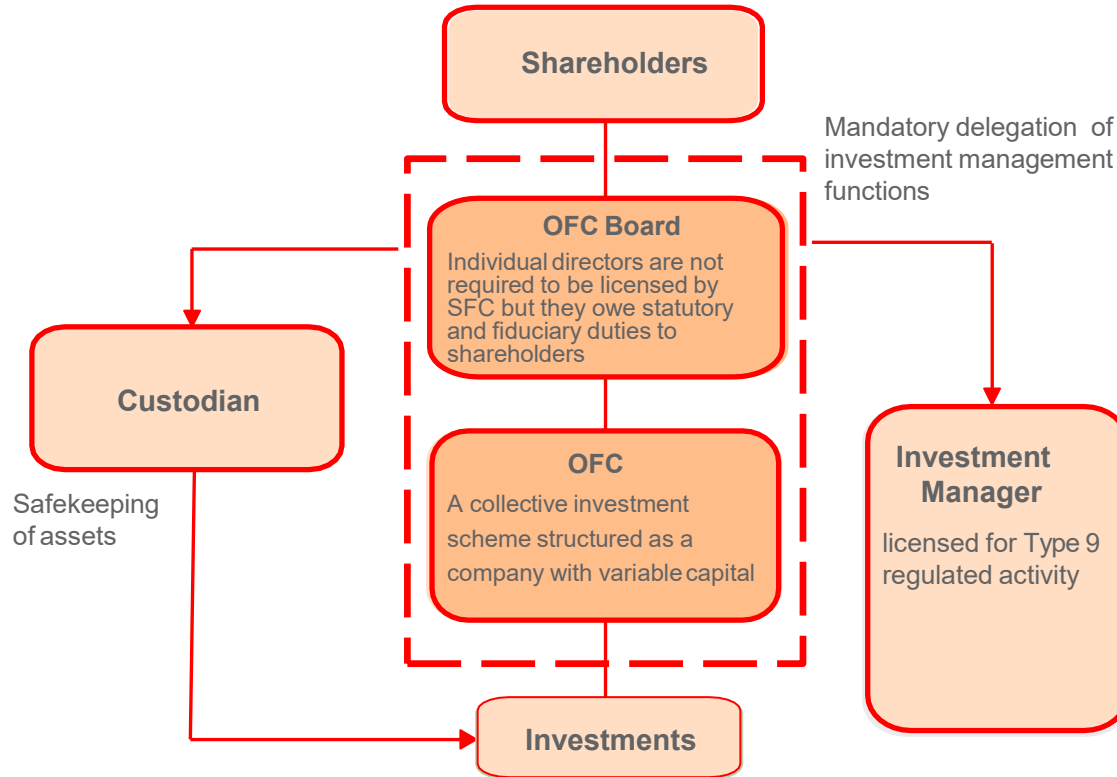


- ▶ AML Law 2017
- ▶ ES Law 2018 - substance requirements for a Registered Person
- ▶ Amendments to SIBL
- ▶ Filing of AML/CFT forms before 15 Aug 2019
- ▶ Private Funds Law 2020
- ▶ CIMA stepped up inspections of registered persons (IM)
- ▶ Removed from EU blacklist in Oct 2020



- ▶ Limited Partnership Act 2009
- ▶ Licensing/registration regime for FMC in 2012
- ▶ Variable Capital Companies (“VCC”) Act 2018 enacted on 15 Jan 2020
- ▶ More than 90 DTAs
- ▶ VCC Grant Scheme introduced in Sep 2020
- ▶ 414 VCCs & 551 LPs set up (as of Oct 2021)

# HKOFC Structure



- A new corporate structure (in addition to unit trust) for investment funds in Hong Kong
- Not subject to restrictions under Companies Ordinance on (1) capital reduction; (2) distribution out of capital

# OFC vs Cayman & Singapore Fund Company (1)

	Hong Kong OFC	Cayman Islands Exempted Co/SPC	Singapore VCC
Fund Type	<ul style="list-style-type: none"> <li>▶ Public &amp; private</li> <li>▶ Umbrella &amp; stand-alone</li> <li>▶ Listed &amp; unlisted</li> <li>▶ Open &amp; closed-ended</li> </ul>	<ul style="list-style-type: none"> <li>▶ Registered fund</li> <li>▶ Administered fund</li> <li>▶ Licensed fund</li> <li>▶ Open &amp; closed-ended</li> </ul>	<ul style="list-style-type: none"> <li>▶ Retail &amp; private</li> <li>▶ Umbrella &amp; stand-alone</li> <li>▶ Open &amp; closed-ended</li> </ul>
Regulator	<ul style="list-style-type: none"> <li>▶ SFC</li> </ul>	<ul style="list-style-type: none"> <li>▶ CIMA</li> </ul>	<ul style="list-style-type: none"> <li>▶ MAS</li> </ul>
Director	<ul style="list-style-type: none"> <li>▶ Minimum 2 (1 independent)</li> <li>▶ Fit &amp; proper</li> <li>▶ Need to be approved by SFC</li> </ul>	<ul style="list-style-type: none"> <li>▶ Minimum 1</li> <li>▶ Need to register with CIMA</li> <li>▶ No CIMA approval required</li> </ul>	<ul style="list-style-type: none"> <li>▶ Minimum 1 resident director</li> <li>▶ Minimum 1 director representative of manager (can be same individual)</li> </ul>
Investment Manager	<ul style="list-style-type: none"> <li>▶ SFC Type 9 licensed</li> <li>▶ Must remain fit &amp; proper</li> </ul>	<ul style="list-style-type: none"> <li>▶ SIBA Registered Person</li> <li>▶ and/or SFC type 9</li> </ul>	<ul style="list-style-type: none"> <li>▶ MAS regulated fund manager (RFMC)</li> </ul>



# OFC vs Cayman & Singapore Fund Company (2)

	Hong Kong OFC	Cayman Islands Exempted Co/SPC	Singapore VCC
Custodian	<ul style="list-style-type: none"> <li>▶ Bank or trust company (under UT Code, no need to be HK based)</li> <li>▶ Type 1 licensed entity</li> </ul>	<ul style="list-style-type: none"> <li>▶ Broker/Prime Broker</li> </ul>	<ul style="list-style-type: none"> <li>▶ Not required for non-retail funds</li> </ul>
Valuation	<ul style="list-style-type: none"> <li>▶ Investment Manager's remit</li> <li>▶ Outsourcing possible</li> </ul>	<ul style="list-style-type: none"> <li>▶ Director's responsibility</li> <li>▶ Outsourcing to administrator</li> </ul>	<ul style="list-style-type: none"> <li>▶ Director's responsibility</li> <li>▶ Outsourcing to administrator</li> </ul>
Auditor	<ul style="list-style-type: none"> <li>▶ Must be independent of the Investment Manager, the Custodian and the directors</li> </ul>	<ul style="list-style-type: none"> <li>▶ Must appoint Cayman licensed auditors</li> </ul>	<ul style="list-style-type: none"> <li>▶ Must appoint local auditor and prepare audited financial statements</li> </ul>
Tax	<ul style="list-style-type: none"> <li>▶ Unified Fund Exemption Regime</li> </ul>	<ul style="list-style-type: none"> <li>▶ Both Cayman fund and manager are tax exempted</li> </ul>	<ul style="list-style-type: none"> <li>▶ Eligible for 13R/13X exemptions</li> <li>▶ DTA benefits</li> <li>▶ Single tax return</li> </ul>

# OFC vs Cayman & Singapore Fund Company (3)

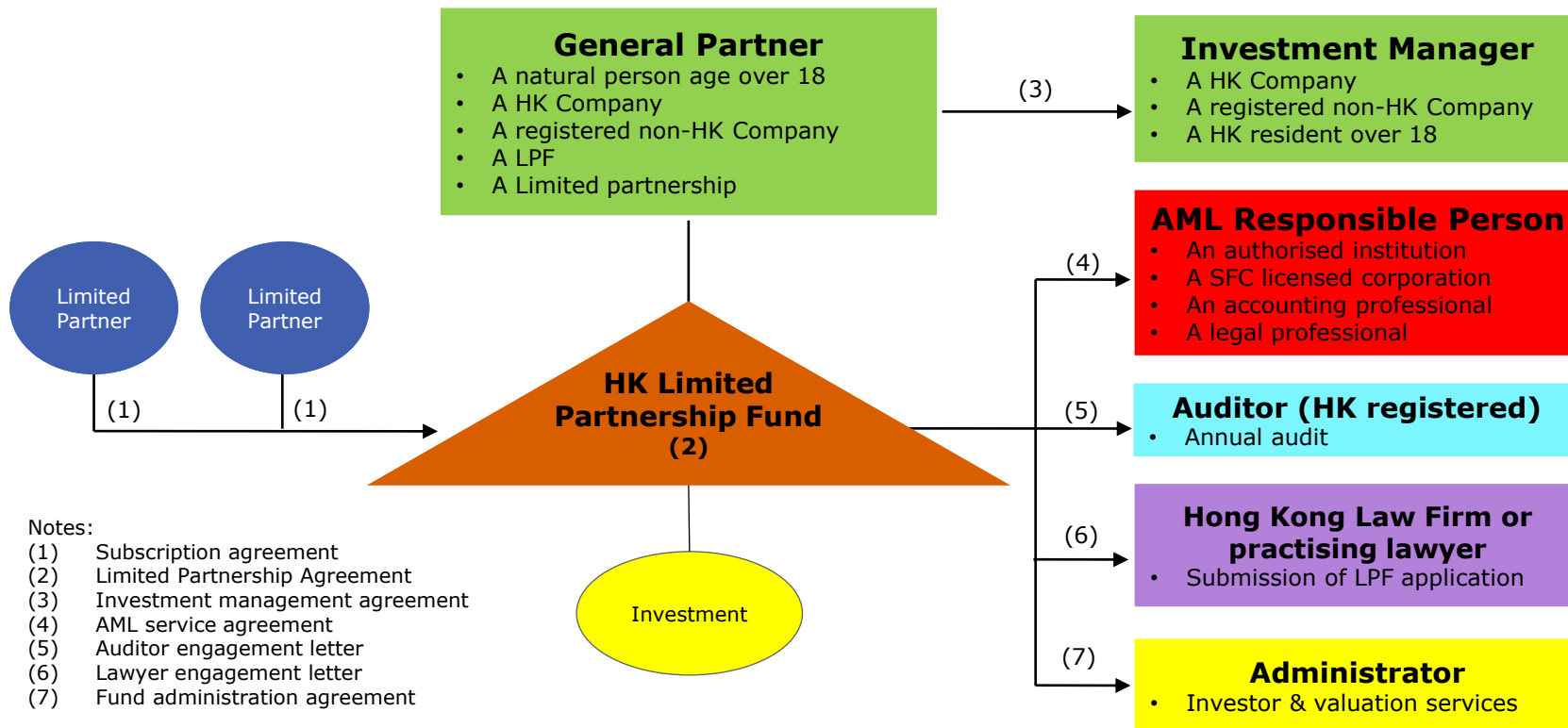
	Hong Kong OFC	Cayman Islands Exempted Co/SPC	Singapore VCC
Investment Strategies	<ul style="list-style-type: none"> <li>▶ No investment restrictions – private OFCs can invest in all asset classes without any limit</li> </ul>	<ul style="list-style-type: none"> <li>▶ No specific requirement</li> </ul>	<ul style="list-style-type: none"> <li>▶ No restrictions on investment strategy</li> </ul>
Changes requiring regulatory approval	<ul style="list-style-type: none"> <li>▶ Change of OFC name</li> <li>▶ Change of director</li> <li>▶ Change of IM and custodian</li> <li>▶ Material change to Instrument of Incorporation such as investment strategy</li> </ul>	<ul style="list-style-type: none"> <li>▶ No such requirements</li> <li>▶ Material changes to offering need filing to CIMA</li> </ul>	<ul style="list-style-type: none"> <li>▶ No MAS approval required for amendments</li> </ul>
Annual filing	<ul style="list-style-type: none"> <li>▶ Annual report</li> </ul>	<ul style="list-style-type: none"> <li>▶ FAR filing to CIMA</li> </ul>	<ul style="list-style-type: none"> <li>▶ Annual returns filed with ACRA</li> </ul>

# Cost Comparison

Fees/Costs	Hong Kong OFC	Cayman Islands Exempted Co/SPC	Singapore VCC
Application & registration Fee	<ul style="list-style-type: none"> <li>▶ Single OFC: HKD5,000</li> <li>▶ Umbrella OFC: HKD10,000</li> <li>▶ Each sub-fund: HKD1,250</li> <li>▶ Post registration: HKD300 for each item of change</li> </ul>	<ul style="list-style-type: none"> <li>▶ Mutual Fund: USD5,000</li> <li>▶ SIBA Registered Person: USD6,100</li> </ul>	<ul style="list-style-type: none"> <li>▶ Registration with ACRA</li> <li>▶ Filing fee: SGD8,500</li> </ul>
Director	<ul style="list-style-type: none"> <li>▶ No registration fee</li> </ul>	<ul style="list-style-type: none"> <li>▶ Registration fee</li> <li>▶ Individual: USD860 p.a.</li> <li>▶ Corporate: USD9,760 p.a.</li> </ul>	<ul style="list-style-type: none"> <li>▶ No registration fee</li> </ul>
AML Officers	<ul style="list-style-type: none"> <li>▶ No such requirement</li> </ul>	<ul style="list-style-type: none"> <li>▶ USD5,000-10,000 p.a.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Must appoint eligible FI to perform AML/CFT function</li> </ul>
Economic Substance	<ul style="list-style-type: none"> <li>▶ Not applicable</li> </ul>	<ul style="list-style-type: none"> <li>▶ Cayman director: USD5,000-10,000 p.a.</li> <li>▶ Local office &amp; staff: USD20,000-40,000 p.a.</li> </ul>	<ul style="list-style-type: none"> <li>▶ Not applicable</li> </ul>

All professional fees are for indicative purposes only

# HKLPF Structure



## HKLPF vs Cayman & Singapore LP (1)

	Hong Kong LPF	Cayman ELP	Singapore LP
Governing Law	<ul style="list-style-type: none"> <li>▶ Limited Partnership Fund Ordinance</li> </ul>	<ul style="list-style-type: none"> <li>▶ Exempted Limited Partnership Act</li> </ul>	<ul style="list-style-type: none"> <li>▶ Limited Partnership Act</li> <li>▶ Limited Partnership Regulations</li> </ul>
Registration	<ul style="list-style-type: none"> <li>▶ Companies Registry (CR)</li> <li>▶ Registered Office in HK</li> </ul>	<ul style="list-style-type: none"> <li>▶ Registrar of ELP</li> <li>▶ Registered Office in Cayman Islands</li> <li>▶ Private Fund registration with CIMA</li> </ul>	<ul style="list-style-type: none"> <li>▶ Accounting &amp; Corporate Regulatory Authority (ACRA)</li> <li>▶ Singapore Principal Place of business</li> </ul>
Capital Duty on LP's contributions	<ul style="list-style-type: none"> <li>▶ No Capital Duty</li> </ul>	<ul style="list-style-type: none"> <li>▶ Same</li> </ul>	<ul style="list-style-type: none"> <li>▶ Same</li> </ul>
Legal Personality	<ul style="list-style-type: none"> <li>▶ No separate legal personality</li> <li>▶ Must act by its GP</li> </ul>	<ul style="list-style-type: none"> <li>▶ Same</li> </ul>	<ul style="list-style-type: none"> <li>▶ Same</li> </ul>
Eligibility	<ul style="list-style-type: none"> <li>▶ Must have one GP and at least one LP</li> </ul>	<ul style="list-style-type: none"> <li>▶ Must have at least one GP and one LP</li> </ul>	<ul style="list-style-type: none"> <li>▶ Must have at least one GP and one LP</li> </ul>

## HKLPF vs Cayman & Singapore LP (2)

	LPF	Cayman ELP	Singapore LP
General Partner	<ul style="list-style-type: none"> <li>▶ Individual, company, LPF or limited partnership</li> </ul>	<ul style="list-style-type: none"> <li>▶ Individual, company or partnership</li> <li>▶ Prescribed fiduciary duty</li> </ul>	<ul style="list-style-type: none"> <li>▶ Individual, company or Singapore LLP</li> </ul>
Limited Partner	<ul style="list-style-type: none"> <li>▶ No restriction or registration requirement</li> <li>▶ No minimum capital requirement</li> </ul>	<ul style="list-style-type: none"> <li>▶ Same as LPF</li> </ul>	<ul style="list-style-type: none"> <li>▶ Must be registered with ACRA</li> <li>▶ No minimum capital requirement</li> </ul>
Safe Harbour activities of LPs	<ul style="list-style-type: none"> <li>▶ Non-exhaustive list of activities set out in statute</li> </ul>	<ul style="list-style-type: none"> <li>▶ Same as LPF</li> </ul>	<ul style="list-style-type: none"> <li>▶ Same as LPF</li> </ul>
Management & Control	<ul style="list-style-type: none"> <li>▶ GP bears ultimate responsibility for the management and control</li> </ul>	<ul style="list-style-type: none"> <li>▶ GP is responsible for the management and control of the ELP</li> </ul>	<ul style="list-style-type: none"> <li>▶ Same as LPF</li> </ul>
Investment Management	<ul style="list-style-type: none"> <li>▶ Must appoint an investment manager (can be the GP itself)</li> <li>▶ No restriction on strategy</li> </ul>	<ul style="list-style-type: none"> <li>▶ No such requirement</li> <li>▶ No restriction on investment strategy</li> </ul>	<ul style="list-style-type: none"> <li>▶ Singapore licensed manager (or can be the GP itself)</li> <li>▶ No restriction on strategy</li> </ul>

## HKLPF vs Cayman & Singapore LP (3)

	LPF	Cayman ELP	Singapore LP
Auditor	<ul style="list-style-type: none"> <li>▶ Must appoint an independent auditor</li> </ul>	<ul style="list-style-type: none"> <li>▶ Must appoint a CIMA approved auditor</li> </ul>	<ul style="list-style-type: none"> <li>▶ No prescribed audit requirements</li> </ul>
Custody	<ul style="list-style-type: none"> <li>▶ Duty to ensure proper custody of assets</li> </ul>	<ul style="list-style-type: none"> <li>▶ Assets of the ELP are held or deemed to be held by the GP on statutory trust as an asset of the ELP</li> </ul>	<ul style="list-style-type: none"> <li>▶ No prescribed custody requirements</li> </ul>
Liabilities of the GP & LP	<ul style="list-style-type: none"> <li>▶ GP will be liable for all debts and obligations</li> <li>▶ LP's liability capped at committed capital, unless LP takes part in the management of the LPF</li> </ul>	<ul style="list-style-type: none"> <li>▶ Same as LPF</li> </ul>	<ul style="list-style-type: none"> <li>▶ Same as LPF</li> </ul>
Transfer of LP interest	<ul style="list-style-type: none"> <li>▶ Subject to terms of LPA</li> <li>▶ No stamp duty</li> </ul>	<ul style="list-style-type: none"> <li>▶ Same as LPF</li> </ul>	<ul style="list-style-type: none"> <li>▶ Same as LPF</li> </ul>

## HKLPF vs Cayman & Singapore LP (4)

	LPF	Cayman ELP	Singapore LP
Annual Return	<ul style="list-style-type: none"> <li>▶ GP must file a specified annual return form with CR</li> </ul>	<ul style="list-style-type: none"> <li>▶ GP must file an annual return with the Registrar of ELP</li> </ul>	<ul style="list-style-type: none"> <li>▶ None, but must pay registration fee annually or every 3 years to ACRA</li> </ul>
AML Officers	<ul style="list-style-type: none"> <li>▶ A "Responsible Person" to carry out AML/CFT functions</li> </ul>	<ul style="list-style-type: none"> <li>▶ Natural persons as AML Compliance Officer: AMLCO, MLRO &amp; DMLRO</li> </ul>	<ul style="list-style-type: none"> <li>▶ No specific requirement</li> </ul>
Public registers (confidentiality)	<ul style="list-style-type: none"> <li>▶ Name of LPF, GP and the investment manager or authorized representative will be in the public register, but not the LPs</li> </ul>	<ul style="list-style-type: none"> <li>▶ The Registrar maintains a record of each limited partnership and registered ELP and all statements filed in relation to the ELP</li> <li>▶ Only limited information is publicly available on payment of a fee</li> </ul>	<ul style="list-style-type: none"> <li>▶ Details of the fund and GP made publicly available, but not the LPs</li> </ul>



## HKLPF vs Cayman & Singapore LP (5)

	LPF	Cayman ELP	Singapore LP
Migration & Re-domiciliation	<ul style="list-style-type: none"> <li>▶ An existing partnership established under the existing LPO can be registered as an LPF, subject to meeting the relevant requirements</li> <li>▶ LPFO allows LP funds established in other jurisdictions to re-domicile to HK</li> </ul>	<ul style="list-style-type: none"> <li>▶ Existing partnership established in any other jurisdiction may apply to be registered as an ELP</li> <li>▶ ELPs are also able to deregister and transfer out of the Cayman Islands into another jurisdiction under processes set out in the ELP Act</li> </ul>	<ul style="list-style-type: none"> <li>▶ Proposal to introduce a re-domiciliation regime for foreign LPs to migrate to Singapore</li> </ul>
Termination	<ul style="list-style-type: none"> <li>▶ Voluntary dissolution in accordance with LPA</li> <li>▶ Automatic dissolution in the absence of GP</li> <li>▶ Court ordered dissolution or winding up</li> <li>▶ Strike off by CR</li> <li>▶ GP files a notification of dissolution with CR within 15 days after LPF is dissolved</li> </ul>	<ul style="list-style-type: none"> <li>▶ Voluntary dissolution in accordance with LPA</li> <li>▶ Voluntary dissolution by GP with 2/3 LP consent</li> <li>▶ Automatic dissolution in the absence of GP</li> <li>▶ Court ordered dissolution</li> <li>▶ Strike off by the Registrar of ELP</li> </ul>	<ul style="list-style-type: none"> <li>▶ Voluntary dissolution in accordance with LPA</li> <li>▶ Automatic dissolution in the absence of GP</li> <li>▶ Court ordered dissolution</li> <li>▶ GP to lodge notice of cessation and dissolution online</li> </ul>

## Cost Comparison (1)

Fees/Costs	LPF	Cayman ELP	Singapore LP
Initial set up & first year maintenance fees	<ul style="list-style-type: none"> <li>▶ Initial registration fee: <b>US\$390</b> (HK\$3,034)</li> <li>▶ Business registration fee and levy: <b>US\$32</b> (HK\$250)</li> </ul>	<ul style="list-style-type: none"> <li>▶ Initial registration fee: <b>US\$1,822</b></li> <li>▶ CIMA private fund registration fee: <b>US\$4,634</b></li> </ul>	<ul style="list-style-type: none"> <li>▶ 1-year registration fee: <b>US\$84</b> (SG\$115); or</li> <li>▶ 3-year registration fee: <b>US\$128</b> (SG\$175)</li> </ul>
General partner	<ul style="list-style-type: none"> <li>▶ Incorporation of HK company: <b>US\$220</b> (HK\$1,720)</li> <li>▶ Business registration fee and levy: <b>US\$32</b> (HK\$250)</li> </ul>	<ul style="list-style-type: none"> <li>▶ Incorporation of a Cayman exempted company: <b>US\$1,350</b></li> </ul>	<ul style="list-style-type: none"> <li>▶ Incorporation of SG company: <b>US\$230</b> (SG\$315)</li> <li>▶ Company registration fee: <b>US\$220</b> (SG\$300)</li> </ul>
Total	<ul style="list-style-type: none"> <li>▶ <b>US\$674</b></li> <li>▶ Excluding RO and/or company secretary services</li> </ul>	<ul style="list-style-type: none"> <li>▶ <b>US\$7,806</b></li> <li>▶ Excluding RO/RA fees</li> </ul>	<ul style="list-style-type: none"> <li>▶ <b>US\$534</b> (1-year registration)</li> <li>▶ <b>US\$578</b> (3-year registration)</li> </ul>

## Cost Comparison (2)

Fees/Costs	LPF	Cayman ELP	Singapore LP
Maintenance fees (2nd year onwards)	<ul style="list-style-type: none"> <li>▶ Annual fee: <b>US\$14</b> (HK\$105)</li> <li>▶ Business registration fee and levy: <b>US\$32</b> (HK\$250)</li> </ul>	<ul style="list-style-type: none"> <li>▶ Annual fee: <b>US\$2,439</b></li> <li>▶ CIMA registered private fund annual fee: <b>US\$4,634</b></li> </ul>	<ul style="list-style-type: none"> <li>▶ Annual fee: <b>US\$22</b> (SG\$30)</li> </ul>
General partner	<ul style="list-style-type: none"> <li>▶ Annual fee: <b>US\$14</b> (HK\$105)</li> </ul>	<ul style="list-style-type: none"> <li>▶ Annual fee: <b>US\$1,079</b></li> </ul>	<ul style="list-style-type: none"> <li>▶ Annual fee: <b>US\$30</b> (SG\$40)</li> </ul>
Total	<ul style="list-style-type: none"> <li>▶ <b>US\$28</b></li> <li>▶ Excluding RO and/or company secretary services</li> </ul>	<ul style="list-style-type: none"> <li>▶ <b>US\$8,151</b> (CIMA registered private fund)</li> <li>▶ Excluding RO/RA fees</li> </ul>	<ul style="list-style-type: none"> <li>▶ <b>US\$52</b></li> <li>▶ Excluding local corporate service fees</li> </ul>

**Note:**

(1) Additional costs may be incurred for AML Officers and economic substance for Cayman ELP

(2) All professional fees are for indicative purposes only

# Considerations

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- Savings in costs vs tax
- Investor preference
- Change of operating model
- Qualified in-house professionals
- Type of investment strategy
- Choice of service providers



# Speaker's Profile

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## Qualifications and awards

- Master of Science, University of Salford (MSc)
- Fellow of the Hong Kong Institute of Directors (FHKIoD)
- Member of the Society of Trust and Estate Practitioners (STEP)
- Member of the Hong Kong Trustees' Association (HKTA)
- Member of the Hong Kong Independent Non-Executive Director Association (HKiNEDA)
- Member of the Hong Kong General Chamber of Commerce (HKGCC)
- Associate Member of Hong Kong Venture Capital & Private Equity Association (HKVCA)
- Affiliate Member of the Association of Chinese Internal Auditors (ACIA)
- Asian Investor Magazine's Achievement Awards: Hong Kong MPF Master Trust of the Year (2007)
- HFM Asia Hedge Fund Services Awards: Best Administrator – small and start-up firms (2015)
- HFM Asia Hedge Fund Services Awards: Best Administrator – under \$30bn fund of hedge funds (2016)

## Summary of experience and professional career

Charles joined Sino Fund Services as Managing Director in October 2017 which provides full alternative fund administration services to clients in Asia.

Charles has over 20 years of working experience in Asia across banking, insurance, pension and fund administration, asset management, trust and custody services. His experience in fund service encompasses all aspects of traditional and alternative funds which include private equity, venture capital, infrastructure, property and real estate funds, hedge funds, fund of funds, discretionary and private funds.

Charles held various senior management positions in the financial industry in Asia. Prior to joining Sino, he was Executive Director & Head of Fund Services of Intertrust Hong Kong helping the company expand its fund service business in Asia. Before this role, he was the Managing Director and Head of Fund Services Asia of Vistra Group in Hong Kong; Regional Managing Director of Orangefield Trust (formerly ING Trust) in Asia and Director & Chief Executive of Bank of East Asia (Trustees) Limited.

Charles had led various regional business development projects in Asia, including M&A, new office set up and new services launch. He was instrumental in the set up and launch of alternative fund services of Orangefield, Vistra and Sino Fund Services in Hong Kong and Singapore.