



# Hong Kong Private Fund Offering Playbook

# Cooley

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# Part I. Hong Kong Regulatory Regime – Fund Manager Licensing Requirements

Hong Kong securities law is primarily governed by the Securities and Futures Ordinance (Cap. 571) (SFO). Fund managers are expected to comply with the codes and guidelines published by the Securities and Futures Commission (SFC), especially the Fund Manager Code of Conduct, the Code of Conduct for Persons Licensed by or Registered with the SFC and the SFC Licensing Handbook.

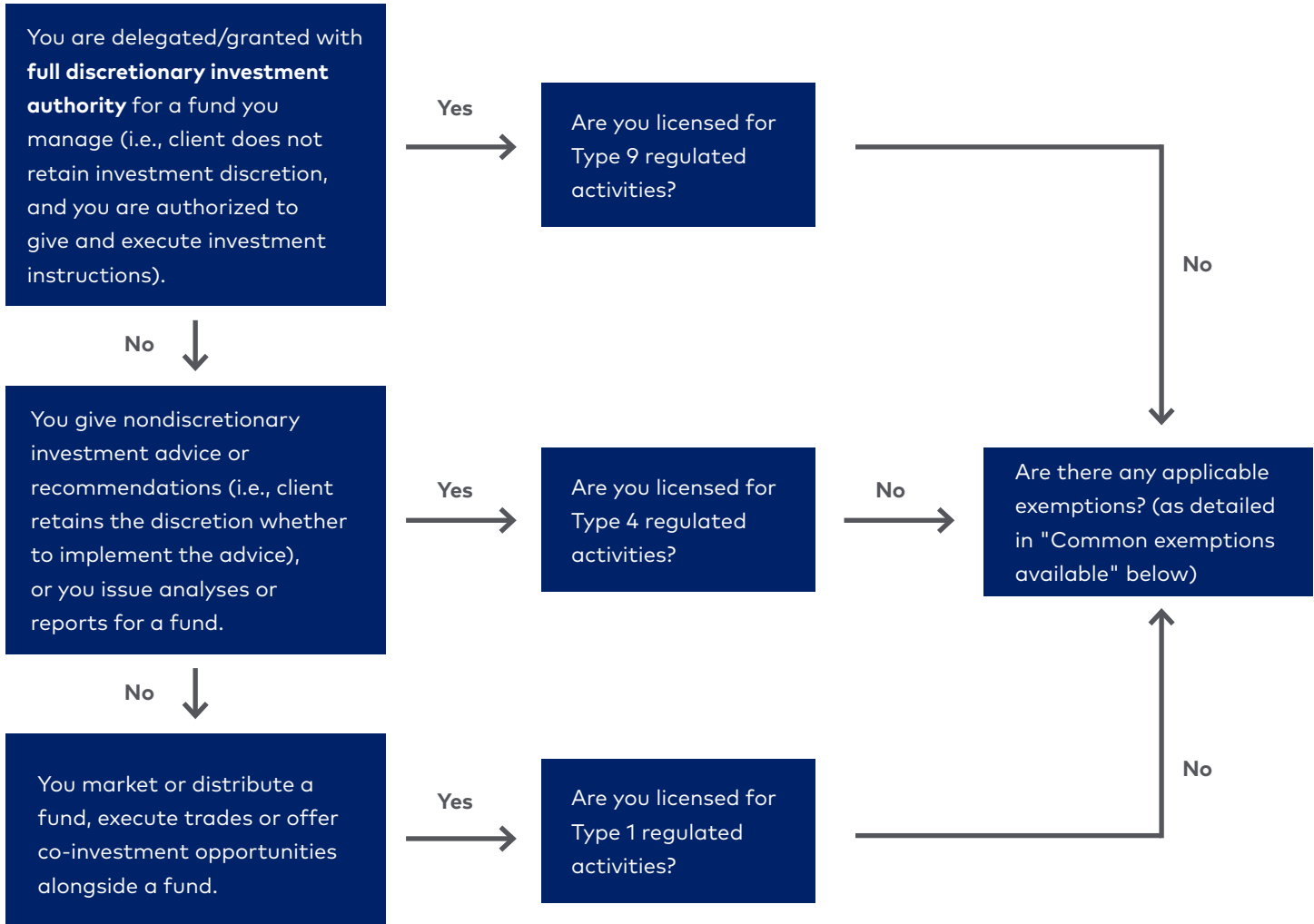
## Are you required to be licensed in Hong Kong?

The licensing regime under the SFO is activity-based. Fund managers that **carry on a business** in one or more **regulated activities in Hong Kong** are required to be licensed under the SFO. Regulated activities that are most relevant to a private fund manager are Type 1 (dealing in securities), Type 4 (advising on securities) and Type 9 (asset management).

- **Dealing in securities** means making or offering to make an agreement with another person, or inducing or attempting to induce another person to enter into or offer to enter into an agreement to acquire, dispose of, subscribe for or underwrite securities, or to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities.
- **Advising on securities** means giving advice or issuing analyses or reports for the purposes of facilitating the recipients of the analyses or reports to make decisions on whether, which, the time at which, or the terms or conditions on which securities should be acquired or disposed of.
- **Asset management** means real estate investment scheme management, or securities or futures contracts management.

Private equity and venture capital investment firms routinely engage in one or more of these regulated activities. It is common for these types of firms operating in Hong Kong to hold one or more licenses for carrying out the regulated activities under the SFO.

## Are you required to be licensed for regulated activities?



### Notes to fund managers:

- The term "securities" is broadly defined under the SFO and includes shares or debentures in private offshore companies, listed shares and interests in collective investment schemes (e.g., mutual funds and unit trusts).
- If a fund manager from outside of Hong Kong "actively markets" to the Hong Kong investing public services that would constitute regulated activities, the fund manager is required to obtain the relevant SFC license. This may include, for example, those who frequently call on Hong Kong investors and market their services and products, as well as those who run mass media programmes and/or internet promotions targeting the investing public in Hong Kong.

## Consider forming your fund entity in Hong Kong

The open-ended fund company (OFC) and the limited partnership fund (LPF) are the two most commonly adopted Hong Kong fund vehicles for private fund managers. An LPF is a Hong Kong limited partnership administered by the Companies Registry (CR) and primarily governed by the Limited Partnership Fund Ordinance (Cap. 637) (LPFO). An OFC is a Hong Kong corporation with limited liability and a board of directors and must be registered with the SFC under the SFO.

### Key features of OFCs and LPFs

	Key parties	Investor count	Establishment procedure	Hong Kong tax incentives	Umbrella structure (sub-funds) allowed?
OFC	Directors, custodian, investment manager	No limits	Application for registration of the OFC shall be submitted to the SFC	OFCs may benefit from profits tax exemptions	Yes, sub-funds (with different underlying assets, investment strategies and fund economics) may be established within one OFC, with segregated assets and liabilities of each sub-fund
LPF	General partner (GP)/limited partner (LP), investment manager (No custodian required)	At least one LP	Application for registration of the LPF shall be submitted to the CR by a Hong Kong law firm on behalf of the GP	LPFs may benefit from profits tax exemptions and exemptions on eligible carried interest received by a qualifying fund manager	No

In practice, we more often see an OFC adopted by hedge fund managers (including crypto hedge funds), due to its capability to house multiple segregated sub-funds under one single fund vehicle, which is aligned with the prevailing structure for open-ended funds in Asia. LPFs are more commonly used for closed-end funds, including single-deal project funds and special-purpose investment vehicles.

## Regulatory framework for OFCs and LPFs

	OFC	LPF
<b>Legislation and codes governing the vehicle</b>	<ul style="list-style-type: none"> <li>• SFO</li> <li>• Securities and Futures (Open-ended Fund Companies) Rules</li> <li>• Securities and Futures (Open-ended Fund Companies) (Fees) Regulation</li> <li>• Code on Open-Ended Fund Companies</li> <li>• SFC Products Handbook</li> </ul>	<ul style="list-style-type: none"> <li>• LPFO</li> <li>• Certain provisions of the Partnership Ordinance (Cap. 38)</li> <li>• Rules of equity and of common law</li> </ul>
<b>Is it required to appoint an investment manager?</b>	Yes, for managing the scheme property of the OFC	Yes, for carrying out the day-to-day investment management functions of the LPF
<b>Required to be licensed by the SFC?</b>	Yes, must be licensed for Type 9 regulated activities	Depends on whether the investment manager carries on any regulated activities under the SFO; if so, it would need to be licensed by the SFC

## Common exemptions available

Despite the foregoing requirements, there are statutory exemptions available. Below is a checklist of the most commonly applied exemptions from the SFC's licensing requirements:

### Incidental exemptions

Factors to consider for incidental exemptions:

- Is the activity subordinate to the carrying on of another regulated activity for which the fund manager is already licensed?
- Are discrete fees charged for the activity?
- Does the activity constitute a major part of the fund manager's business?

### If you hold a Type 1 license:

- May not need to be licensed for Type 4 or Type 9 if the activities are wholly incidental to Type 1 activities
- For example, stockbrokers providing investment advice (Type 4) or managing discretionary accounts for their clients (Type 9)

### If you hold a Type 9 license:

- May not need to be licensed for Type 1 or Type 4 if the activities are carried out solely for the purposes of Type 9 activities
- For example, fund managers placing trade orders to dealers (Type 1) or providing investment advice (Type 4) to clients in the course of managing such clients' portfolio of securities

## Professional investor exemptions

- Applicable to **Type 1** regulated activities (dealing in securities)
- A person **as principal** dealing with professional investors as defined under Schedule 1 to the SFO
- Special care should be given to the legal structure and circumstances regarding whether you are indeed acting as a principal

**Note: "Professional investor" in this exemption does not include high net worth individuals.**

## Group company exemptions

What is a group company under this exemption?

Each of companies A, B and C is a group company.



### Providing advice or services to a group company:

- May not need to be licensed for Type 4 if you provide nondiscretionary investment advice or research reports to the group company for its own consumption.  
**Note: Not applicable to a fund manager advising its group company in respect of that group company's client assets**
- May not need to be licensed for Type 9 if you provide asset management services to a group company in respect of that group company's assets.  
**Note: Not applicable to the management of a group company's client assets**

### Note:

- If you only hold a Type 4 license, there is no incidental exemption that you may rely on.

# Part II. Hong Kong Anti-Money Laundering Statutory Requirements

Hong Kong is a founding member of the Asia/Pacific Group on Money Laundering (APG) and a member of the Financial Action Task Force (FATF). Private funds are subject to Hong Kong's anti-money laundering (AML) obligations to uphold international standards.

In particular, with respect to LPFs, a responsible person (RP) must be appointed by the general partner (GP) to carry out AML and counter-terrorist financing (CTF) functions under the LPFO. Besides appointment of the RP, LPFs are required to maintain records – including a register of partners, documents of each transaction carried out by the fund and the controller of each of the partners of the fund.

## The Anti-Money Laundering and Counter-Terrorist Financing Ordinance (AMLO)

The AMLO is the cornerstone of the AML and CTF regime in Hong Kong and provides relevant authorities with power to supervise compliance and publish guidelines for operation of the statutory provisions. LPFs are subject to the AMLO, and an overview of the requirements under Schedule 2 is as follows:

### Customer due diligence (CDD)

- Adopt a risk-based approach when carrying out CDD measures – the extent of this should be commensurate with the money laundering and terrorist financing risks associated with the business relationship.

### Record-keeping

- Keep the originals or copies of transaction records, CDD information, and other records regarding each customer and each transaction for at least five years.

### Monitor business relationships

- Continuously monitor business relationship with clients – including documents and information obtained from CDD – and monitor and identify unusual transactions.

### Checklist of AML and CTF obligations for LPF

- Appointment of RP

### Ongoing obligations

- Maintain records under LPFO
- CDD
- Record-keeping under AMLO
- Monitor business relationships



## What else?

In addition to the AMLO, Hong Kong has put in place several pieces of legislation concerning the AML and CTF regime. There is a statutory obligation to make suspicious transaction reports where a person knows or suspects that any property is connected with:

- An indictable offence – Organized and Serious Crimes Ordinance (Cap. 455)
- Drug trafficking – Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405)
- Terrorist property – United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575)

The Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526) prohibits the provision of services that will or may develop, produce, acquire or stockpile weapons of mass destruction, and the United Nations Sanctions Ordinance (Cap. 537) imposes sanctions against places outside of the People's Republic of China arising from Chapter 7 of the Charter of the United Nations, with regulations relevant to AML and CTF.

**Cooley's Hong Kong office boasts a team of professionals qualified in Hong Kong law in the areas of corporate law, securities regulations and asset management. We represent entrepreneurs, investors, fund managers and select multinationals and help them navigate commercial contractual arrangements and complex regulatory matters. Our lawyers are a combination of seasoned practitioners and Hong Kong-native solicitors who bring a knowledge of local statutes with a global perspective, ensuring comprehensive solutions to navigate the complexities of Hong Kong's legal landscape and beyond.**





# 香港 私募基金发行 操作手册

Cooley 科律

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# 第一部分 香港监管制度——基金管理人持牌要求

香港证券法主要受《证券及期货条例》（香港法例第571章）管辖。基金管理人应遵守证券及期货事务监察委员会（“证监会”）公布的守则和指引，特别是《基金经理操守准则》、《证券及期货事务监察委员会持牌人或注册人操守准则》和《发牌手册》。

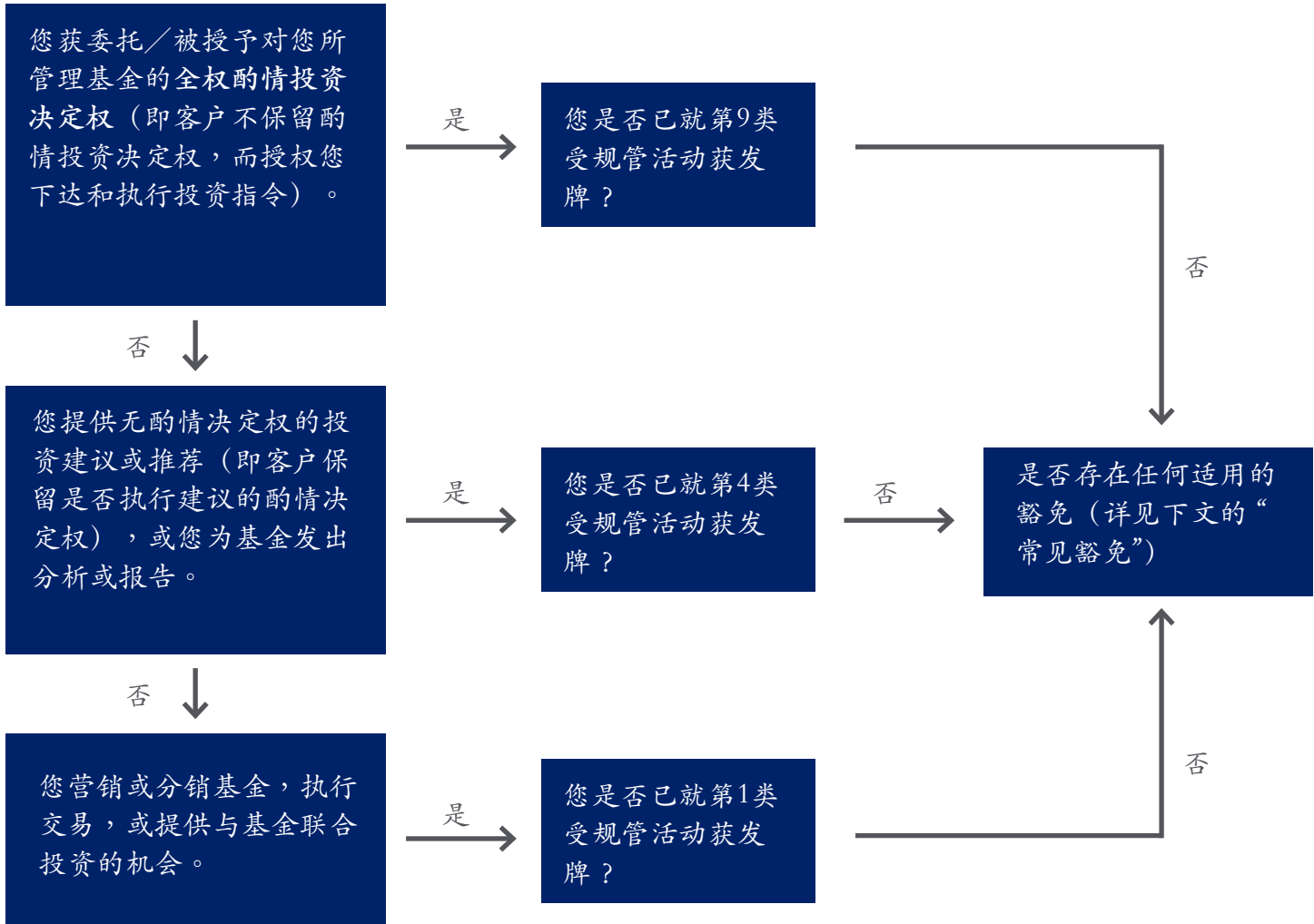
## 您是否需要在香港获取牌照？

《证券及期货条例》下的发牌制度以具体活动为基础。根据《证券及期货条例》，在香港经营一类或多类受规管活动的业务的基金管理人，必须取得相关牌照。与私募基金管理人最相关的受规管活动包括第1类（证券交易）、第4类（就证券提供意见）和第9类（提供资产管理）。

- 证券交易指与另一人订立或要约与另一人订立协议，或诱使或企图诱使另一人订立或要约订立协议，而目的是取得、处置、认购或包销证券，或目的是使任何一方从证券的收益或参照证券价值的波动获得利润。
- 就证券提供意见指就以下各项提供意见，或发出分析或报告，而目的是为帮助该等分析或报告的受众就以下各项做出决定：应否取得或处置证券，须取得或处置哪些证券，于何时取得或处置证券，或按哪些条款或条件取得或处置证券。
- 资产管理指房地产投资计划管理，或证券或期货合约管理。

私募股权和风险资本投资机构通常从事一类或多类上述受规管活动。在香港经营相关业务的机构通常都持有一个或多个从事《证券及期货条例》项下受规管活动的牌照。

## 您是否需要就受规管活动领取牌照？



### 提请基金管理人注意：

- 根据《证券及期货条例》，“证券”一词的定义宽泛，包括私人离岸公司的股份或债权证、上市股份以及在集体投资计划（如互惠基金及单位信托）中的权益。
- 若香港境外的基金管理人向香港投资大众“积极推广”会构成受规管活动的服务，则该基金管理人必须取得相关的证监会牌照。举例而言，这可能包括经常造访香港投资者并推广其服务及产品的基金管理人，以及以香港投资大众为对象而举办大众传媒节目及／或互联网推广活动的基金管理人。

## 考虑在香港成立基金实体？

开放式基金型公司（OFC）和有限合伙基金（LPF）是私募基金管理人最常采用的两种香港基金工具。LPF是由公司注册处（CR）管理的香港有限合伙企业，主要受《有限合伙基金条例》（香港法例第637章）管辖。OFC性质上属于香港有限责任公司，设有董事会，且须根据《证券及期货条例》向证监会注册。

### OFC和LPF的主要特征

	主要当事方	投资者数量	设立程序	香港税收激励	是否允许采用伞型结构（子基金）？
OFC	董事、托管人、投资经理	无限制	OFC的注册申请应提交证监会	OFC可享受利得税豁免	是，可在一个OFC内设立多个具有不同性质的底层资产、投资策略以及经济条款的子基金，各子基金的资产与负债分立
LPF	普通合伙人（GP）／有限合伙人（LP）、投资经理（无需托管人）	至少一名LP	LPF的注册申请应由一家香港律师事务所代表GP向CR提交	LPF可享受利得税豁免，符合条件的基金经理获得的合格附带权益也可享受豁免	否

在实践中，我们更多看到对冲基金（包括加密对冲基金）的管理人采用OFC架构，因其能够在单一基金实体下容纳多个相互独立的子基金，这与亚洲开放式基金的主流结构一致。而LPF则更常运用于封闭式基金，包括单一交易项目基金／特殊目的投资工具。

## OFC和LPF的监管框架

	OFC	LPF
适用法例和守则	<ul style="list-style-type: none"> <li>• 《证券及期货条例》</li> <li>• 《证券及期货（开放式基金型公司）规则》</li> <li>• 《证券及期货（开放式基金型公司）（费用）规例》</li> <li>• 《开放式基金型公司守则》</li> <li>• 《证监会有关单位信托及互惠基金、与投资有关的人寿保险计划及非上市结构性投资产品的手册》</li> </ul>	<ul style="list-style-type: none"> <li>• 《有限合伙基金条例》</li> <li>• 《合伙条例》（香港法例第38章）的某些条款</li> <li>• 衡平法和普通法的规则</li> </ul>
是否需要委任投资经理？	是，负责管理OFC的计划财产	是，负责执行LPF的日常投资管理职能
是否需要获发证监会牌照？	是，必须获发第9类受规管活动牌照	取决于投资经理是否从事《证券及期货条例》规定的任何受规管活动。如是，则需要获发证监会牌照

## 常见豁免

尽管有上述要求，但也存在法定豁免。以下是最常适用的获豁免遵守证监会发牌要求的情况：

### 附带豁免

附带豁免的考虑因素：

- 有关活动是否附属于基金管理人已获发牌的另一类受规管活动？
- 是否就有关活动收取独立的费用？
- 有关活动是否构成基金管理人业务的主要部分？



## 如您已就第1类受规管活动获发牌：

- 假如您拟进行的第4类或第9类受规管活动完全附带于第1类受规管活动，便无须就这两类受规管活动领牌
- 例如，股票经纪为其本身的客户提供投资意见（第4类）或管理委托账户（第9类）

## 如您已就第9类受规管活动获发牌：

- 假如您拟进行的第1类或第4类受规管活动纯粹是由于第9类受规管活动而产生，便无须就这两类受规管活动领牌
- 例如，基金管理人为其本身的客户管理证券投资组合时，向交易商发出交易指示（第1类）或提供投资意见（第4类）

## 与专业投资者进行交易的豁免

- 适用于第1类受规管活动（证券交易）
- 您作为主事人与专业投资者（《证券及期货条例》附表1所界定者）交易
- 应特别注意相关法律架构和具体情况，以确定您是否确实以主事人身份行事

注：此项豁免中的“专业投资者”不包括高净值个人

## 涉及集团成员公司的豁免

此项豁免下所称的集团成员公司包括哪些？  
甲、乙和丙公司均属集团成员公司。



## 向集团成员公司提供意见或服务：

- 假如您向集团成员公司提供无酌情决定权的投资意见或研究报告以供其自行使用，便无须就第4类受规管活动领牌  
注：不适用于基金管理人向其集团成员公司就该集团成员公司的客户资产提供意见的情况
- 假如您向集团成员公司就该集团成员公司的资产提供资产管理服务，便无须就第9类受规管活动领牌  
注：不适用于管理集团成员公司的客户资产的情况

### 注：

- 如您仅持有第4类受规管活动的牌照，则没有可适用的附带豁免。

## 第二部分 香港反洗钱法定要求

香港是亚太反洗钱工作组(APG)的创始成员，也是金融行动特别工作组(FATF)的成员。私募基金须遵守香港的打击洗钱(AML)义务，以维护国际标准。

具体而言，就LPF而言，普通合伙人(GP)必须委任一名责任人(RP)，以履行《有限合伙基金条例》规定的打击洗钱及恐怖分子资金筹集(CTF)职能。除任命责任人外，LPF还须保存记录——包括合伙人记录册、基金进行的每项交易的文件以及基金的每名合伙人的控权人。

### 《打击洗钱及恐怖分子资金筹集条例》(AMLO)

《打击洗钱及恐怖分子资金筹集条例》是香港打击洗钱及恐怖分子资金筹集制度的基石，赋予有关当局权力监管法例条文的遵行情况，并发布执行指引。LPF须受《打击洗钱及恐怖分子资金筹集条例》规管，该条例附表2规定的要求概述如下：

#### 客户尽职审查(CDD)

- 在采取CDD措施时，根据具体风险采用相应方法——其程度应与业务关系涉及的洗钱及恐怖分子资金筹集风险相称

#### 备存记录

- 将有关每位客户和每笔交易的交易记录、CDD信息及其他记录的原件或副本至少保存五年

#### 监察业务关系

- 持续监察与客户的业务关系——包括通过CDD获取的文件及信息，并监察和识辨异常交易

#### LPF的AML及CTF义务核对清单

- 委任RP

#### 持续性义务

- 根据LPFO保存记录
- CDD
- 根据AMLO 备存记录
- 监察业务关系



## 其他相关法例？

除《打击洗钱及恐怖分子资金筹集条例》外，香港还制定了多项有关AML及CTF制度的法例。如果任何人获悉或怀疑任何财产与以下情况有关，则有法定义务报告可疑交易：

- 可公诉罪行——《有组织及严重罪行条例》（香港法例第455章）
- 贩毒——《贩毒（追讨得益）条例》（香港法例第405章）
- 恐怖分子财产——《联合国（反恐怖主义措施）条例》（香港法例第575章）

《大规模毁灭武器（提供服务的管制）条例》（香港法例第526章）禁止提供将会或可能发展、生产、取得或贮存大规模毁灭武器的服务，而《联合国制裁条例》（香港法例第537章）则根据《联合国宪章》第7章对中华人民共和国以外的地方实施制裁，并订立与AML及CTF有关的规例。

科律香港拥有一支在公司法、证券法规和资产管理领域具有香港法律执业资格的卓越团队。我们代表创业者、投资人、基金管理人和知名跨国公司，帮助其驾驭各类商业合同安排和复杂的监管事宜。我们的律师既有经验丰富的资深从业人员，也有香港本土事务律师，他们不仅熟悉本地法规，而且具备全球视野，有能力确保提供全面的法律解决方案，助力客户灵活应对香港及其他地区复杂的法律环境。