

Hong Kong's New Capital Investment Entrant Scheme (New CIES)

March 2024

Background

As announced in the 2023-24 Budget, the Hong Kong Government launched the New Capital Investment Entrant Scheme (the '**Scheme**') on 1 March 2024. Successful applicants under the Scheme will be granted permission to enter and stay in Hong Kong, and may apply to become permanent residents after continuous residence in Hong Kong of at least seven years. All individuals who apply to enter/remain in Hong Kong pursuant to the Scheme are subject to the Rules for the Scheme (the '**Scheme Rules**')¹.

In this News Flash, we (i) give an overview of the Scheme, (ii) review the (a) application requirements and (b) continuous obligations under the Scheme Rules, (iii) explain the mechanism of investing through Open-Ended Fund Companies ('**OFCs**') and Limited Partnership Funds ('**LPFs**') under the Scheme and (iv) provide some fundamentals asset managers should consider when establishing OFCs and LPFs.

Scheme overview

The Scheme is mainly operated and supervised by the following two Government units:

Department	Responsibilities
The New Capital Investment Entrant Scheme Office ² (' New CIES Office ')	<ul style="list-style-type: none"> assessing the financial assets and investment of the Scheme Applicant monitoring the compliance of the Scheme applicants of the Investment Requirements³ and Portfolio Maintenance Requirements⁴
The Immigration Department ⁵ (' ImmD ')	<ul style="list-style-type: none"> assessing applications for visa/entry permit, extension of stay and unconditional stay in accordance with the Scheme

¹ The Scheme Rules are not applicable to the Capital Investment Entrant Scheme previously launched in 2003 and suspended since 15 January 2015.

² Under InvestHK and overseen by the Director-General of Investment Promotion ('**DGIP**').

³ For details of the Investment Requirements, see section 'Investment Requirements' below.

⁴ For details of the Portfolio Maintenance Requirements, see section 'Portfolio Maintenance Requirements' below.

⁵ Overseen by the Director of Immigration ('**DoI**').

Application requirements

Eligibility criteria

To be eligible for an Entry Application under the Scheme, applicants must satisfy the following criteria:

Criteria	Requirements
Age	✓ 18 or above
Nationality	<ul style="list-style-type: none"> ✓ foreign national; ✓ Chinese nationals with permanent resident status in a foreign country (interestingly, Chinese nationals residing in the Mainland do not appear to qualify for the Scheme); ✓ Macao Special Administrative Region residents; and/or ✓ Chinese residents of Taiwan
Net Asset Assessment⁶	✓ applied for a Net Asset Assessment which should demonstrate to the DGIP's satisfaction that they possess Net assets/Net equity holding a Market value of no less than HK\$30 million ⁷ Net throughout the two years prior to applying for the Net Asset Assessment (' Net Asset Requirement ')
Investment Requirements⁸	✓ invest a minimum of HK\$30 million ⁹ Net in Permissible Investment Assets ¹⁰ such as OFCs and LPFs on or after the launch date of the Scheme (i.e., 1 March 2024). ¹¹
No adverse record	<ul style="list-style-type: none"> ✓ no adverse immigration record; and ✓ meet immigration and security requisites
Others	✓ able to accommodate or support themselves and their dependants without reliance on employment or Permissible investment asset returns to the DOI's satisfaction

Investment Requirements

In order to satisfy the Investment Requirements, applicants must invest a minimum investment amount of (i) HK\$27 million and (ii) HK\$3 million in the following (a) Permissible Investment Assets and (b) CIES Investment Portfolio, respectively:

Minimum investment amount	Permissible Investment Assets
HK\$27 million	Permissible Financial Assets¹²
	(a) Equities
	<ul style="list-style-type: none"> - shares of companies listed on the Stock Exchange of Hong Kong ('SEHK') - traded in Hong Kong Dollars ('HKD') or Renminbi ('RMB')
	(b) Debt securities
	<ul style="list-style-type: none"> - listed on the SEHK traded in HKD or RMB - denominated in HKD or RMB - issued or fully guaranteed by listed companies or the Hong Kong Government, the Exchange Fund, the Hong Kong Mortgage Corporation, the MTR Corporation Limited, Hong Kong Airport Authority, and other corporations wholly or partly owned by the Government
	(c) Certificates of deposits
	<ul style="list-style-type: none"> - denominated in HKD or RMB - issued by authorised institutions as defined in the Banking Ordinance¹³ - with a remaining term to maturity of not less than 12 months at the time of acquisition¹⁴ by the applicant

⁶ As defined under rule 1.14 of the Scheme Rules.

⁷ Or foreign currency equivalent.

⁸ In accordance with the requirement under rule 5 of the Scheme Rules (please see section 'Investment Requirements' below for the detailed requirement).

⁹ Or foreign currency equivalent.

¹⁰ Means Permissible Financial Assets, non-residential real estate and CIES Investment Portfolio referred to by that name in paragraphs 5.1 to 5.4 of the Scheme Rules or referred hereto below.

¹¹ However, any such assets acquired prior to the launch of the Scheme (i.e., 1 March 2024) will not count towards fulfilling the threshold of investment.

¹² Means the assets referred to by that name in paragraph 5.1(a) to (f) under the Scheme Rules or (a) to (f) below.

¹³ Cap. 155 of the Laws of Hong Kong.

¹⁴ This acquisition must take place after Approval-in-Principle has been granted by the DOI and thereafter the applicant be absolutely beneficially entitled to the invested certificates of deposits throughout its term. These certificates of deposits on reaching maturity must be replaced by certificates of deposits with a remaining term to maturity of not less than 12 months at the time of acquisition by the Applicant or by other Permissible Investment Assets.

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	- subject to a cap of 10% (i.e. HK\$3 million) of the minimum investment threshold
(d) Subordinated debt	- denominated in HKD or RMB - issued by authorised institutions in compliance with Schedules 4B and 4C of the Banking (Capital) Rules ¹⁵
(e) Eligible collective investment schemes	
(1) SFC-authorized funds¹⁶	- managed by corporations licensed by / institutions registered with the SFC for Type 9 (asset management) regulated activity (' Type 9 Managers ')
(2) SFC-authorized real estate investment trusts	- managed by Type 9 Managers
(3) SFC-authorized Investment-Linked Assurance Schemes¹⁷	- issued by issuers permitted to carry on Class C business ¹⁸
(4) OFCs¹⁹	- managed by Type 9 Managers - ownership interest in private OFCs is subject to an aggregate cap of HK\$10 million
(f) Ownership interest in LPFs²⁰	- ownership interest in private LPFs is subject to an aggregate cap of HK\$10 million
(g) Non-residential real estate	- subject to a cap of HK\$10 million
<i>HK\$3 million</i>	CIES Investment Portfolio set up and managed by the Hong Kong Investment Corporation Limited

Ongoing obligations

Portfolio Maintenance Requirements

To qualify and remain qualified under the Scheme, applicants must

- (i) deposit their Permissible Financial Assets within a designated account that is operated by an eligible financial intermediary (the '**Portfolio**');
- (ii) use the designated account exclusively for the transaction of Permissible Financial Assets;
- (iii) not reduce the committed investment in respect of the Portfolio while permitted to stay in Hong Kong under the Scheme;
- (iv) comply with all the Portfolio Maintenance Requirements²¹ in respect of their Permissible Investment Assets; and
- (v) provide all such material information in writing to the DGIP's satisfaction with regard to these assets as DGIP may request in order to assess the applicants' eligibility and entitlement under the Scheme.

Ring-fencing of the Portfolio

(I) Changes in the value of investment

Subject to certain exceptions²², the Permissible Investment Assets that qualify the applicant's entry into and continued stay in Hong Kong will be ring-fenced (i.e. locked and not allowed to be withdrawn anytime while under the Scheme) within the Scheme and may be reinvested only under the Scheme Rules:

(A) Market value drops below the required minimum threshold

Where the Market value of the Portfolio drops below the required minimum threshold of HK\$30 million Net²³, the applicant is not required to increase the value of his/her investment in Permissible Investment Assets.

(B) Market value rises above the required minimum threshold

Even if the subsequent Market value of the Portfolio rises above the requisite minimum level of HK\$30 million Net, the Applicant is not allowed to withdraw or remove excess in the Portfolio value under the Scheme.²⁴

¹⁵ Cap. 155L of the Laws of Hong Kong.

¹⁶ Referring to unit trusts and mutual funds authorised by the SFC under the Code on Unit Trusts and Mutual Funds.

¹⁷ Referring to investment-linked assurance schemes authorised by the SFC under the Additional Guidance on Internal Product Approval Process.

¹⁸ As specified in Part 2 of Schedule 1 to the Insurance Ordinance (Cap. 41 of the Laws of Hong Kong).

¹⁹ Registered under the Securities and Futures Ordinance (Cap. 71 of the Laws of Hong Kong).

²⁰ Registered in accordance with Cap. 637 of the Laws of Hong Kong.

²¹ Under rule 6 of the Scheme Rules

²² With the exceptions for the amount required to redeem his outstanding mortgage on non-residential real estate, Surplus Equity, and cash dividend income, interest income and rents arising directly from the Permissible Investment Assets, if any.

²³ Even in the event of total loss.

²⁴ With the exceptions for the amount required to redeem his outstanding mortgage on non-residential real estate, Surplus Equity, and cash dividend income, interest income and rents arising directly from the Permissible Investment Assets, if any.

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(II) Switching between Permissible Investment Assets

Applicants are allowed to switch between their Permissible Investment Assets in accordance with the following ring-fencing principles²⁵:

Switch from	Switch to	Ring-fencing principles
Non-residential real estate	Non-residential real estate	Date of the sale contract and the date of completion of the purchase must not be more than 3 calendar months
Permissible Financial Assets	Permissible Financial Assets	Date of the sale contract and the date of completion of the purchase must not be more than 14 calendar days
Non-residential real estate	Permissible Financial Assets	The date of the contract for the purchase must be not more than (i) 2 calendar months after the date of the contract for the sale, or (ii) 14 calendar days after the date of completion of the sale, whichever is the earlier.
Permissible Financial Assets	Non-residential real estate	Date of the sale contract and the date of completion of the purchase must not be more than 2 calendar months
Permissible Financial Assets become non-permissible ²⁶		<ul style="list-style-type: none"> • There is no requirement for mandatory switching to another Permissible Financial Asset so long as the financial asset is still beneficially held by the applicant.²⁷ • However, if a Permissible Financial Asset is no longer deposited in the applicant's designated account,²⁸ the applicant is required to reinvest in another Permissible Investment Asset equivalent to the Market value of the outgoing Permissible Financial Asset²⁹ in order to meet the committed investment and continue to be qualified under the Scheme.

Application procedure

To make an application under the Scheme, applicants should take the following steps:

Relevant unit	Procedure
New CIES Office	<ul style="list-style-type: none"> • Verify with the New CIES Office whether they have fulfilled the Net Asset Requirement - Applicants must also engage a Practising Certified Public Accountant (at the applicant's own cost) to assist in demonstrating the fulfilment of the Net Asset Requirement.
Dol	<ul style="list-style-type: none"> • Upon the New CIES Office's verification of the fulfilment of the Net Asst Requirements, submit an Entry Application to Dol

Entry, stay and permanent residency

After submitting an Entry Application to the Dol, applicants may be granted either an (i) Approval-in-Principle or (ii) Formal Approval which give them the following rights to enter and stay in Hong Kong:

Approval type	Permission to entry and stay
Approval-in-Principle	Issued with a visa/entry permit for Hong Kong entry and stay on visitor status for no longer than 180 days.
Formal Approval	Permission to stay for not more than 24 months on time limitation only, ³⁰ further extensions will normally be granted on the same conditions and basis upon subsequent successful applications for extension of stay.

Permanent residency

Following a period of continuous ordinary residence in Hong Kong for seven years, applicants and their dependents may apply to become permanent residents of Hong Kong.³¹

OFCs and LPFs

Among the list of Permissible Investment Assets under the Scheme, OFCs and LPFs may provide the maximum flexibility for

²⁵ Rule 8.2 of the Scheme Rules.

²⁶ For whatever reason, e.g., the Permissible Financial Asset cannot be liquidated due to total loss.

²⁷ That financial asset is still deemed to be permissible, for the purpose of fulfilling the Portfolio Maintenance Requirements of the applicant's specific application.

²⁸ For whatever reason (e.g. the asset is seized by a third party for satisfying a debt).

²⁹ Assessed on the date it is seized.

³⁰ Subject to the condition that the Applicant continues to satisfy the requirements of the Scheme throughout the period.

³¹ Subject to requirements set forth under the Immigration Ordinance (Cap. 115 of the laws of Hong Kong).

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applicants to structure and diversify their investments:

What is an OFC?

An OFC is an open-ended collective investment scheme which is structured in corporate form with limited liability and variable share capital. The main purpose of an OFC is to serve as an investment fund vehicle and manage investments for the benefit of its shareholders. In many respects, the OFC's features and mechanics are very similar to structures such as the Singaporean Variable Capital Company (VCC) and the Cayman Islands' exempted limited corporation (which are also popular choices for fund vehicles). For instance, an OFC can be established as an umbrella fund with multiple sub-funds with assets that are ring-fenced from each other sub-fund (similar to a Cayman Islands SPC). There are two types of OFC, namely public OFC and private OFC. The key difference is that a private OFC can only be offered to professional investors, which should be the preferred choice for applicants looking to invest through OFCs under the Scheme.

Additionally, the SFC is operating a grant scheme to provide subsidies for qualified OFCs to set up in Hong Kong, which covers 70% of eligible expenses incurred in relation to the incorporation or re-domiciliation of an OFC paid to Hong Kong-based service providers, subject to a cap of \$1 million per OFC and a maximum of 3 OFCs per investment manager.

What is an LPF?

An LPF is a private fund that is structured in a limited partnership form and is used for the purpose of managing investments for the benefit of its investors. An LPF must have at least one limited partner ('**LP**'), which is not liable for the debts and obligations of the LPF beyond the amount of the partner's agreed contribution, and one general partner ('**GP**'), who has the ultimate responsibility for the management and control of the LPF and assumes unlimited liability with respect to the debts and liabilities of the LPF.

Unlike an OFC, an LPF is not a legal person and is constituted by a partnership agreement, which allows for a degree of flexibility in terms of how the LPF is operated. Also, an LP is allowed to participate, to a certain extent, in the management of an LPF without assuming unlimited liability in the LPF (e.g. serving on a board or committee of the LPF or GP, discussing with, advising or approving the GP or investment manager of the LPF, calling, requesting, attending or participating in the LPF's partners meeting).

Establishing OFCs and LPFs

To invest through OFCs and LPFs under the Scheme, applicants should carefully consider the following:

- **Scheme requirements** (e.g., whether the proposed investments in the OFCs and LPFs comply with the Scheme's requirements)
- **Legal requirements** (e.g., legal structure, residency requirements, statutory duties and ongoing obligations)
- **Application procedures** (e.g., application timeline, required documents, registration fee, formality of different departments)
- **Structuring considerations** (e.g., umbrella structure or standalone, open-ended/closed-ended or 'hybrid solution')
- **Management structure** (e.g., board composition, onshore or offshore investment advisor, sub-advisor or sub-manager)
- **Fee structure** (e.g., carried interest, American or European waterfall, valuation policy, independent valuer, performance fee)
- **Underlying investments** (e.g., additional requirements on virtual assets, commodities or government-owned assets)
- **Investment strategies** (e.g., flexibility in investment policy, setting of investment restrictions, risk management policy)
- **Exit terms** (e.g., fixed term or conditions for extending the fund's term, other closing terms, terms of selling ownership interests)
- **Documentation** (e.g., instrument of incorporation or partnership agreement, offering documents, service provider contracts)
- **Service providers** (e.g., existing SFC Type 9 Manager, legal counsel, custodian, administrator, auditor, tax advisor)
- **Tax advice** (e.g., profits tax/carried interest concession regime, stamp duty calculations, onshore or offshore tax filings)
- **Financial reporting** (e.g. annual report preparation/filing/publication, audited financial statements requirements)

How we can help?

With extensive experience in establishing and structuring funds, and together with our PwC colleagues in tax advisory, audit, risk assurance, corporate services and business strategy, we can advise you on all of the considerations above to take full advantage of the Scheme. Managers or sponsors in Hong Kong looking to develop investment products such as an OFC or an LPF will find that the Scheme vastly expands the investor universe from which they can attract capital. Applicants looking to qualify under the Scheme may also find the flexibility of structures such as the OFC or LPF (and their ability to be customised to particular investor needs) an attractive option.

Come speak to the experts from either Tiang & Partners' Funds team or PwC AWM team today if you'd like to find out more about the Scheme generally, or structuring specific OFC and/or LPF products.

Let's talk

For a deeper discussion of how this impacts your business, please contact us.

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