通力律师事务所 LLINKS Law Offices

SHANGHAI
16F/19F, ONE LUJIAZUI
68 Yin Cheng Road Middle
Shanghai 200120 P.R.China
T: +86 21 3135 8666
F: +86 21 3135 8600

BEIJING
4F, China Resources Building
8 Jianguomenbei Avenue
Beijing 100005 P.R.China
T: +86 10 8519 2266
F: +86 10 8519 2929

HONG KONG
27F, Henley Building
5 Queen's Road Central
Central, Hong Kong
T: +852 2592 1978
F: +852 2868 0883

LONDON
1/F, 3 More London Riverside,
London SE1 2RE
United Kingdom
T: +44 (0)20 3283 4337
D: +44 (0)20 3283 4323

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Analysis on the Impact of New PFM Registration Rules

By Sandra Lu | Lily Luo | Yan Tao

On 28 February 2020, the Asset Management Association of China ("**AMAC**") issued the *Notice on Facilitating Application for Registration of Private Fund Managers* ("**Notice on Registration**"), and the standard checklists of application materials respectively for registration of private fund managers ("**PFM**") engaging in securities investment and those engaging in non-securities investment. AMAC also announced that the official website of AMAC (www.amac.org.cn) will have a new section for publicity of the status of applications for PFM registration under review, and that more information of the existing PFMs will be disclosed to the public. This article summarizes the impact of Notice on Registration on the PFM registration of foreign-invested entities.

I. Impact on the Existing PFMs

The Notice on Registration provides the checklists of application materials for PFM registration ("Standard Checklist"). For existing PFMs who have already completed registration with the AMAC, we deem there is no substantial impact except for the following:

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1. Extend the Scope of Public Disclosure of PFM

Starting from 1 March 2020, the *Publicity Platform for Private Fund Managers* of the AMAC (http://gs.amac.org.cn/) will additionally include the following information of an existing PFM:

(1) Name of the actual controller of a PFM;

(2) Name, position and work experience of the senior management personnel (the "**SMP**") including but not limited to the legal representative, the general manager and the head of compliance and risk control, while before the Notice on Registration, only the information of the legal representative will be publicized;

(3) Information of the affiliated PFMs controlled by the same actual controller.

In addition, the official website of the AMAC will subsequently provide functions for searching the shareholder information of PFMs and the law firms issuing PRC legal opinions for PFM registrations.

2. Change of Controlling Shareholder / Actual Controller Shall Follow the Standard Checklist

According to the AMAC's requirements, the change of the controlling shareholder / actual controller of an existing PFM shall refer to the Standard Checklist. Please read part II below for details.

II. Impact on the Application for PFM Registration

Previously, the specific requirements of application documents were inferred and summarized based on the AMAC's instructions, feedbacks on uploading and submitting application materials via Asset Management Business Electronic Registration System ("**AMBERS**"). The Notice for Registration, for the first time, provides comprehensive requirements on the list of application materials and set out specific requirements on the content and format of each material. Below we **briefly introduce the highlights of the Notice of Registration including the Standard Checklist**[1]**.**

1. AMAC's Review on the Completeness of Application Materials

According to the Notice on Registration, if the scope of materials submitted by the applicant fully align with the Standard Checklist, the AMAC will check and give feedbacks on the items already included in the Standard Checklist, and will not impose any burden beyond the Standard Checklist; Or

[1] The appendices of the Notice on Registration include the Standard Checklist for private securities fund managers and that for private non-securities fund managers. QDLP entity is required by AMAC to be registered as "other-type" of private fund manager, therefore it is possible that the Standard Checklist for private non-securities fund managers may apply. It is subject to further clarification by the AMAC and real case testing. Considering that most of the contents of the two Standard Checklists are identical except for some contents related to business plan, investment management experience of SMP and staff, this article will mainly introduce the Standard Checklist for private securities fund managers.

otherwise, the AMAC will return the application materials to the applicant through the AMBERS within 5 working days upon receipt of the incomplete application. If the applicant again fails to submit the complete package in accordance with the Standard Checklist, the AMAC will suspend the review of PFM registration. It is of great importance to produce the application documents in strict accordance with the Standard Checklist.

2. Transitional Period

For the applications already submitted <u>before</u> 1 March 2020, the rules of transition period are:

(1) If the applicant has received the feedback from the AMAC before 1 September 2019 but has not reverted the response and supplementary materials through the AMBERS by 29 February 2020, it shall resubmit the application materials according to the Standard Checklist;

(2) For the applicants that have submitted application materials through the AMBERS (including the applications that were initially submitted and those that were submitted in the form of supplementing materials per AMAC's feedbacks) in the period from 1 September 2019 to 29 February 2020, they can exempted from the application of Standard Checklist;

(3) Starting from 1 September 2020, the Standard Checklist will mandatorily apply to all the applications that have not been approved by then;

For the applications to be submitted <u>on or after</u> 1 March 2020, the Standard Checklist shall apply.

3. Specific Requirements of the Notice on Registration

(1) Basic Information of the Applicant

The application materials to be uploaded in this section include the Undertaking Letter (template could be found on the AMBERS), Certificate of Paid-in Capital, the Articles of Association, Organization Code Certificate / Tax Registration Certificate / Business License, Resumes and Social Insurance Certificate of all employees, Certificate for the Office Premises, Business Plan, Rationality Statement of Establishing a New Private Fund Manager of the Same Type (as applicable), Commitment Letter of Joint and Several Liability and Self-disciplinary Punishments of Affiliated Private Fund Managers (as applicable) and other relevant supporting documents. Among them, some are newly required by the AMAC, and some are required by the AMAC to include more specific and detailed content. For example:

(a) Resume and Social Insurance Certificate of All Employees

The resume of all employees shall cover the basic information, education background, work experience, etc. of the employees; the social insurance payment record shall show the name of the employee and the name of the applicant; those who are newly insured without payment record can provide the social insurance record which shows the onboarding of such new employees; for the payment proceeded by the third-party human resource service agency, the payment agreement signed by the applicant, the human resource service qualification certificate, the payment record should be uploaded; and for those who are reemployed after retirement, please upload the retirement certificate.

(b) Certificate for the Office Premises

To ensure the authenticity of the office premises, the photocopies of the lease agreement and property ownership certificate shall be provided if such premises is/are obtained through direct lease; If such premises is/are obtained through sublease, the original lease agreement, sublease agreement, and the confirmation document that the owner or property manager agrees to sublease shall be provided; if it is provided and obtained free of charge by shareholders or affiliates, it shall provide the original lease agreement or property ownership certificate, free use certificate, and the confirmation document that the property owner or property manager allows such use.

(c) Business Plan

The business plan shall further elaborate on the applicant's business development plan, such as the introduction of the investment team, investment policies, fundraising methods, methods of selecting investment objects, etc. Moreover, information on the trading model, source of funds and investment strategy of the products, as well as the company's development plan, operational plan and current business needs, shall also be specified.

In addition to the above requirements, based on our experience in previous WFOE PFM projects, the AMAC cares about the investment and trading model of a WFOE PFM. It is suggested that the investment and trading system, and the trading model of the funds (especially the first fund) be included in the business plan.

(2) Internal Policies

The policies to be submitted by the applicant include operational risk control policy, information disclosure policy, internal transaction recording policy, investment and trading policy guarding against insider dealing and conflicts of interests, risk disclosure policy for qualified investors, internal review and approval procedures and relevant policy concerning qualified investors, relevant standard and policy concerning the marketing, promotion and fund-raising of a private fund, fair trade policy, reporting policy concerning securities trading by practitioners, and other policies (such as policy for control on related-party transactions, policy for preventing tunneling).

Taking into account of other self-disciplinary rules of the AMAC, it is suggested that the applicants supplement and submit such additional internal policies as investment research policy, policy for managing and supervising private fund outsourcing service, finance and accounting policy, policy for prevention of potential conflicts of interest and ensuring reasonable working hours (in case of dual-hatting arrangement).

(3) Information of Affiliates

If the affiliate's business scope contains any business in conflict with private fund management business specified by the AMAC, the applicant and the relevant affiliates shall jointly issue a commitment letter that there is no tunneling, and undertake that neither the applicant nor the private funds the PFM manages in the future will get involved in any business in conflict with private fund management business.

The affiliates carrying out any of mini-lending, financing leasing, commercial factoring, financing guarantee, online finance, pawning and any business in conflict with private fund management business (excluding real estate) shall provide the formal permits/license granted by relevant competent authorities.

(4) Credit Information

If the applicant has been subject to criminal punishment, administrative punishment or other circumstances in the past three years that have effects on its credit status, it is required to submit the relevant documents and statement.

(5) Financial Information

If the applicant has been incorporated more than one fiscal year, the audit report shall be submitted; or otherwise, the audit report is optional while the recent management report (balance sheet, profit and loss statement and cash flow statement) shall be uploaded. If the interval between the date of the latest audited annual report and the submission date is lengthy, the recent quarterly financial report (which can be an unaudited one) shall be uploaded.

(6) Shareholder Information

The materials to be submitted in this section include the Business License or Incorporation Certificate (for an institution), scanned copy of ID Certificate, Degree/ Academic Certificate (for a natural person), Proof of Capital Injection, and the newly required ones (i.e. Rationality Statement of Shareholding Structure of the applicant, Holding Company's Commitment Letter Undertaking Not to Carry Out Business, Proof of Shareholder's Capital Contribution Capacity).

(a) Rationality Statement of Shareholding Structure of the Applicant

If the shareholding structure of the applicant is more than three layers, the applicant shall explain the rationality and necessity of the establishment of the multi-layer shareholding structure, and if such shareholder is SPV, the purpose of establishment and source of funding shall be explained. Based on our experience in previous WFOE PFM projects, a WFOE PFM may need to be traced to the top layer entity or ultimate beneficiaries, by penetration of the multi-layer shareholding structure. It is necessary to explain the rationality and necessity of setting up the multi-layer shareholding structure.

(b) Holding Company's Commitment Letter Undertaking Not to Carry Out Operational Business

According to AMAC FAQ No. 10, the shareholder of WFOE PFM must be a foreign licensed financial institution, this requirement does not apply to WFOE PFM.

(c) Proof of Shareholder's Capital Contribution Capacity

According to the Standard Checklist, if the shareholder's proof of capital contribution capacity is based on operating revenue, the rationality and legality of the source of revenue shall be demonstrated on top of the date of incorporation, the actual business situation and the revenue, and supported by the audit report, etc. It can be inferred that the proof of capital contribution capacity may vary among different sources of funds.

(7) Actual Controller

The application materials to be submitted in this section include the Business License or Incorporation Certificate (for an institution), scanned copy of ID Certificate, Degree/ Academic Certificate (for a natural person), the Relationship Chart between the Actual Controller and the PFM, the Actual Controller's Commitment Letter to Maintain Actual Control and to Assume Joint Liability towards Compliance Issues and Self-disciplinary Punishments of PFM. The Relationship Chart shall fully show all immediate shareholders and their shareholding ratios, and upward trace the shareholding relationship layer by layer till the top layer.

(8) SMP

The application materials to be submitted in this section include scanned copy of ID Certificate, Degree/ Academic Certificate, Labor Contract and Social Insurance Payment Record, SMP's Commitment Letter and Proof of Investment/Management Experience of SMP and Employees.

(a) The supporting materials for traceable track records of the SMP or investment personnel (including but not limited to the supporting materials about managing securities products or trading records of stocks, futures, excluding mock trading) for more than six consecutive months in the past three years, showing the capital scale, investment period, performance, portfolio investment and track records.

The AMAC gave feedbacks in some cases for product filing of private funds, requiring to provide supporting materials for portfolio manager's track records traceable for more than six consecutive months in the past three years. Now, this material is formally included as application materials for PFM registration. When recruiting SMP or investment personnel, the obtainability of such supporting materials should be taken into account.

(b) Supporting materials about expertise and competence of SMP and employees of the applicant should be submitted.

(9) PRC Legal Opinion for PFM Registration

The AMBERS has added a part for the lawyer issuing the PRC legal opinion for the PFM registration to upload due diligence materials. For now, the provision of due diligence materials to AMAC is not mandatory.

4. Publicizing the Process of the Registration of the Applicant

Starting from 1 March 2020, the status of PFM registration applications can be check and traced on the official website of the AMACs. The public and the applicant can get access to the basic information of the applicant, the latest processing status, the law firm and responsible lawyers issuing PRC legal opinion for the PFM registration.

If you would like to know more information about the subjects covered in this publication, please contact:

Sandra Lu
+86 21 3135 8776
Sandra.lu@llinkslaw.com

Lily Luo
+86 21 3135 8732
Lily.luo@llinkslaw.com

For any further questions on this subject or other business consultation,

please feel free to contact us: master@llinkslaw.com

SHANGHAI	BEIJING	HONG KONG	LONDON
T: +86 21 3135 8666 F: +86 21 3135 8600	T: +86 10 8519 2266 F: +86 10 8519 2929	T: +852 2592 1978 F: +852 2868 0883	T: +44 (0)20 3283 4337 D: +44 (0)20 3283 4323

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