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Diversification Tendency of Access to Publicly Offered Funds Management Business

By Sandra Lu and Lily Luo

It is provided in Article 12 of *Law of the People's Republic of China on Securities Investment Funds (“**New Funds Law**”)*, effective on 1 June 2013, that the fund manager of a publicly offered fund shall be a fund management company (“**FMC**”) or any other institution approved by China Securities Regulatory Commission (“**CSRC**”). This broadens the institutional types of fund managers and makes room for institutions other than FMCs to engage in publicly offered funds management businesses (“**Fund Business**”).

Article 13 of the New Funds Law prescribes the requirements on the establishment of an FMC, among which, the types of major shareholders (i.e. the domestic shareholder whose shareholding in the FMC is the highest and not less than 25%) has been expanded from commercial banks, securities firms and trust companies, to entities running financial business or managing financial institutions.

Under principled stipulations and authorization of New Funds Law, CSRC has promulgated a series of supporting regulations such as *Interim Provisions on Opening up Publicly Offered Securities Investment Funds Management Business by Asset Management Institutions* (“**Provisions**”) and *Pilot Measures for the Investment in Fund Management Companies by Insurance Institutions* (“**Measures**”).

Various Asset Management Institutions May Apply For a License to act as a Publicly Offered Funds Manager (“License”)

The Provisions clarify that the asset management institutions, including securities companies (or their asset management subsidiaries), insurance asset management companies and private funds management institutions (together as “**AMI**”) have access to Fund Business. AMIs are required

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to have established and operated another asset management business before applying for License. An AMI shall be regulated by CSRC in respect of its Fund Business (functional regulation) and shall also be regulated by its competent authority (institutional regulation), such as China Insurance Regulatory Commission ("**CIRC**"), in terms of an insurance asset management company.

Article 5 to Article 8 and Article 11 to Article 13 of the Provisions prescribe the conditions which AMIs must satisfy in order to apply for a License. The conditions are mainly related to capital and financial indicators, management experience, performance and scale of securities products, corporate governance and internal control, compliance, departments, personnel, IT system and membership of Asset Management Association of China ("**AMAC**").

It is said that CSRC, based on the factors of risk segregation and fair trading, prefers asset management subsidiaries of securities companies to apply for License. Orient Securities Asset Management Co. Ltd., the subsidiary of Orient Securities Company Limited, successfully obtained the License this August. The insurance asset management companies such as Taikang Asset Management Co. Ltd. are actively applying for the License. Although private funds managers may progress at a slower rate as the rules of registering as private funds managers with AMAC have yet to be issued, some leading private funds managers have obtained the membership of AMAC beforehand and are actively preparing for the application for the License.

New Entities Becoming Major Shareholders of FMCs

- Insurance Institutions

  Insurance institutions are now allowed to establish FMCs. China Life Asset Management Co. Ltd. recently set up a joint venture FMC with AMP Capital Investors Limited.

  Following the promulgation of New Funds Law, *Interim Measures on Equity Investment of Insurance Funds* by CIRC and the Measures by CSRC, there is no legal obstacle preventing insurance institutions from being major shareholders of FMCs. It is provided in Article 2 of Measures that insurance institutions shall refer to the insurance companies, insurance group (holding) companies, insurance asset management companies and other insurance institutions. From a practice perspective, insurance asset management companies are inclined to apply for the License rather than establishing or acquiring FMCs. Insurance institutions, as major shareholders, shall simultaneously satisfy the qualifications under New Funds Law, *Measures for the Administration of Securities Investment Fund Management Companies* and its implementing rules, *Interim Measures on Equity Investment of Insurance Funds* and the Measures, and shall first obtain the approval of CIRC before submitting application materials to CSRC.

- Pursuant to Article 13 of New Funds Law, other types of financial institutions and the holding companies of financial institutions may become major shareholders. Qualifications for such entities' acting as major shareholders are to be specified by CSRC.

Diversification Tendency of Access to Publicly Offered Funds Management Business

- Policies for Further Opening

    - Professional Shareholders

      The term "Professional Shareholders" appears in the consultation draft of *Measures for the Administration of Publicly offered Securities Investment Fund Managers* and its implementation provisions released by CSRC in May, 2013. Professionals may be allowed to hold an equity interest in FMC and even become major shareholders of FMCs.

    - Breakthrough of upper limit of foreign shareholding in FMC under *Economic Cooperation Framework Agreement* ("**ECFA**") and *Mainland and Hong Kong Closer Economic Partnership Arrangement* ("**CEPA**")

      Pursuant to *Cross-Strait Service Trade Agreement* signed in June, 2013, and *Supplement X to CEPA* signed in August 2013, financial institutions from Taiwan or Hong Kong can set up joint venture FMCs in the Mainland where the shareholding ratio in an FMC exceeds 50%. However, the major shareholders of such joint venture FMCs shall still be onshore entities.

With the implementation of New Funds Law and the shift of CSRC's regulation model on Fund Business, the possible ways to access Fund Business and the participants of it have become diversified, thus injecting great vitality to Fund Business.

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