LLINKS Law Offices
通力律师事务所

上海
中国上海市银城中路68号
时代金融中心16楼和19楼
邮编: 200120
电话: +86 21 3135 8666
传真: +86 21 3135 8600
master@llinkslaw.com

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
www.llinkslaw.com

上海 SHANGHAI | 北京 BEIJING | 香港 HONG KONG | 伦敦 LONDON

Client Alert (July 2nd, 2019)

Acceleration of the WFOE Public Fund Management Company in China

On July 2nd, 2019, Mr. Li Keqiang, the Prime Minister of China, announced that China will bring forward the complete removal of the foreign ownership limit on public fund management companies in 2020, which is one year ahead of the previously set agenda 2021. This means global asset managers may apply for a wholly foreign-owned public fund management company ("WFOE FMC") with CSRC in 2020 (specific date to be announced).

A WFOE FMC may conduct the following business in China according to the existing PRC laws:

(1) Raising and managing public funds
(2) Raising and managing ETF and ETF feeder funds
(3) Raising and managing FOF products
(4) Raising and managing retirement targeted products like TDF, TRF
(5) Raising and managing public funds investing in HK stock under Stock Connect
(6) Segregated account management business managing assets entrusted by qualified investors
(7) Carrying out mutual recognition fund business
(8) Acting as the investment manager for QFII/RQFII
(9) Raising and managing QDII funds subject to additional QDII license and quota
(10) Managing social security funds subject to a separate license from National Council for Social Security Fund
(11) Managing corporate annuity funds subject to a separate license from the Ministry of Human Resources and Social Security
(12) Managing the third pillar pension funds
(13) Managing mandate from the insurance company subject to a separate license from CBIRC

Below are the key requirements and procedures to be satisfied and completed if a global asset manager intends to set up a WFOE FMC in China:

1. Conditions to be satisfied by a global asset manager to become a shareholder of a WFOE FMC:

(1) It is duly incorporated and lawfully existing according to the laws of the country or region where it is incorporated

(2) It is a licensed financial institution

(3) It has asset management experience related to public-offered funds, pension funds, charity funds and donation funds, etc.

(4) It has a stable financial condition and a credible record

(5) It has not been subject to any penalty imposed by regulatory authorities or the judiciary in the most recent 3 years

(6) The net asset of the institution is no less than the equivalent of RMB200 million in a convertible currency

(7) The domicile country or region is governed by a comprehensive body of securities law and regulatory system, the securities regulatory authority of such country or region has entered into a memorandum of understanding with CSRC or other institutions as recognized by CSRC and is has maintained an effective cooperation relationship with CSRC

2. The WFOE FMC proposed to be incorporated shall satisfy the following conditions:

(1) Eligible shareholder

(2) If any, eligible actual controller who shall not

(a) be penalized due to criminal liability and the penalty has been executed and finished for no more than 3 years
(b) have a net asset less than 50% of the paid in capital, or have contingent liabilities reaching 50% of the net asset
(c) be unable to repay all the debts falling due

(3) The Articles of Association are in compliance with the provisions stipulated in the *PRC Securities Investment Funds Law*, the *PRC Companies Law*, and such provisions set out by CSRC

(4) Registered capital of no less than RMB100 million and shall be fully paid in cash upon the incorporation of WFOE FMC

(5) The proposed senior management and personnel who carry out research, investment, trading, valuation, sales, technology, etc. are eligible under the laws, administrative regulations and provisions of CSRC; there shall be no less than 15 people in the positions of as such proposed senior management and business practitioners; and all of them shall have obtained the PRC fund practitioner qualification (It should at least have its legal representative, general manager and chief compliance officer be confirmed before submitting the application for FMC establishment to CSRC. The latest market benchmark is 25 to 30 people in place to pass the CSRC onsite inspection)

(6) Eligible directors (no less than 3 independent directors and the number of such independent directors shall be no less than 1/3 of the total number of directors, and should be confirmed before submitting the application for FMC establishment to CSRC)

(7) Compliant business premise, safety measures and other facilities related pubic fund business

(8) Internal organizations and posts with reasonable division of functions and clear duties

(9) Internal policies such as compliance and internal audit policy, risk control policy according to CSRC's requirement

(10) Other conditions as stipulated by CSRC.

3. Key materials to be submitted for the application to set up a WFOE FMC:

(1) Letter of undertaking

(2) Confirmation letter

(3) Application report

(4) Business plan

(5) Basic information of the global asset manager

(a) Basic information form of the global asset manager (CSRC template)

(b) Business license of the global asset manager, certificate of the entity's legal status, certificate of financial license

(c) Information about whether the global asset manager has been subject to any penalty imposed by the regulatory authorities or the judiciary of its domicile country or region in the most recent 3 years, and the confirmation issued by the securities regulatory authority or other relevant authority of the domicile country or region

(d) Audited financial reports of the most recent 3 accounting years

(e) History of the global asset manager's business in asset management; the size, product type, performance and such other information of the public funds, pension funds, charity funds, donation funds and other funds under its management in the most recent 3 years

(f) The strategy and development report about WFOE FMC, which explains its understanding to China's fund industry, its investment purpose, its development strategy and arrangements in the China market

(g) Information and charts about the shareholder of WFOE FMC and its group affiliates; disclosure of the shareholding structure to the ultimate level is required; if any of the global asset manager or its affiliates has set up branches or wholly foreign-owned or joint venture enterprises, or has directly or indirectly carried out business activities related to banking, securities or insurance, or has invested in China's securities market as a QFII/RQFII, it should submit a written report to provide relevant information

(h) Information about whether the global asset manager or any of its affiliates has held minority or majority shareholding in an FMC or a fund custodian

(i) Statement about the corporate governance and internal control of the global asset manager

(j) Internal resolution of the global asset manager for approving the WFOE FMC setup

(6) Materials to introduce the preparation work for setting up the WFOE FMC (personnel, company name pre-approval, proposal on renting office premise, purchasing equipment and facilities)

(7) Articles of Association of the WFOE FMC (Draft)

(8) Organization chart and introduction of positions and functions of basic roles in the WFOE FMC

(9) Internal control policies of the WFOE FMC

(10) Application materials for personnel (directors, legal representative, general manager, chief compliance officer)

(11) As the case may be, the whole set of application documents for segregated account management business

4. Approval procedure of CSRC

The incorporation of a WFOE FMC has to be approved by CSRC, and the major approval procedures include:

(1) CSRC accepts the application by the WFOE FMC;

(2) CSRC approves the establishment of the WFOE FMC in 6 months (considering the fact that CSRC usually provides feedback on the applications, the approval period will perhaps last longer than 6 months;

(3) Within 30 days since the obtainment of approval from CSRC, the record-filing with MOFCOM and the registration with AMR (previously AIC) for FMC incorporation and business license should be completed;

(4) After the WFOE FMC obtains a business license, it shall prepare for and apply to CSRC for on-site inspection. On-site inspection mainly includes:

(a) Personnel onboarding
(b) Establishment of systems and procedures to operate the public fund management business
(c) Business premise
(d) IT system facilities
(e) Operation and maintenance of the server room

(5) After passing the on-site inspection by CSRC, the global asset manager will obtain the securities and futures business license from CSRC (it can only apply to launch public funds with such license, and it should launch its first public fund within 6 months from the obtainment of such license)

5. Conversion from WFOE PFM to WFOE FMC

As one of the 10th China-UK EFD policy outcomes on June 17, 2019, "China welcomes eligible foreign managers to convert their PFM WFOEs into an FMC, whilst allowing for continuity of business". There has been no clear guidance on how to conduct such conversion. Based on the existing market practice in China, at least the following factors and steps need to be considered in the process of the conversion:

(1) Change the WFOE PFM's name into **** Fund Management Company (****基金管理有限公司)

(2) Change the business scope of the WFOE PFM into "raise and manage the mutual funds, funds distribution, segregated account management and other business permitted by CSRC (公开募集证券投资基金管理、基金销售、特定客户资产管理和中国证监会许可的其他业务)"

(3) Change the employment contract of the employees who work for the WFOE PFM to fit the their new positions in the WFOE FMC

(4) Change the private funds products (a kind of product established according to AMAC rules) to the segregated account management product (a kind of product established according to the CSRC rules) through amending the legal documentations of the private funds under the management of the WFOE PFM. Private funds' investors consent on such changes shall be obtained.

Please contact Sandra Lu (Sandra.lu@llinkslaw.com) and Lily Luo (Lily.luo@llinkslaw.com) for more details.