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Brief Analysis on the Measures for the Registration of Private Fund Managers and Filing of Private Funds (Trial) and Relevant Ancillary Rules

By Sandra Lu and Desmond An

Under the authorization of the *Securities Investment Fund Law of the People's Republic of China* (“**Fund Law**”) and the adjustment of division of administration on private equity funds, the Asset Management Association of China (“**AMAC**”) promulgated the *Measures for the Registration of Private Fund Managers and Filing of Private Funds (Trial)* (“**Measures**”) on 17 January 2014 and subsequently released a series of operational guidelines and rules, all of which officially lays down relevant rules and specification on the registration of private fund managers (“**Managers**”), filing of private funds (“**Funds**”) and ongoing reporting and update of relevant information.

Registration of the Managers

➢ Scope of the Managers

Based on the Fund Law and the Measures, AMAC has issued *Operation Manual on the Registration and Filing System of Private Funds* (“**Operation Manual**”), which further clarifies that the scope of the Managers includes the managers of private securities investment funds, private equity funds (“**PE**”) and venture capital funds (“**VC**”). The Managers cannot proceed with filing formalities of the Funds until the completion of registration as Managers with AMAC.

Specifically, management modes of Funds can be classified as self-management, trustee-management and advisor-management.

- Self-management mainly applies to the PE/VC in the form of corporation and internally setting up a management team rather than delegating the management function to a third party. Such self-management corporate Funds shall register themselves as the Managers with AMAC and also file themselves as Funds with AMAC.

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- Trustee-management refers to the cases that investors entrust their assets to private fund managers or general partners for management. The trustees shall complete registration with AMAC as Managers.

- Advisor-management refers to the cases that the institutions, through acting as investment advisors of relevant financial products or in other feasible ways, de facto manage the products with full discretion. Such institutions shall register themselves as the Managers with AMAC.

With respect to private securities investment funds, the prevailing mode in the market before the promulgation of the Measures is advisor-management, while after the promulgation of the Measures, both trustee-management and advisor-management can be adopted.

➢ Conditions on the Registration and Deregistration

In accordance with the Measures, the Managers shall meet the following conditions so as to complete the registration:

- having the membership of AMAC; and

- having qualified practitioners who have obtained private fund practice qualifications as prescribed in Article 16 of the Measures.

Pursuant to Article 10 of the Measures, AMAC will deregister a Manager if it is dissolved, struck-off or declared bankrupt.

Filing of Funds

Pursuant to the Measures, the Funds under the management of Managers in essence shall conduct filing formalities within 20 working days upon the completion of the initial offering. Upon the completion of filing formalities, Managers can open securities accounts with securities depositories on behalf of the Funds.

Relevant Procedures on Registration, Filing and Ongoing Update of Information

Currently, the registration and filing shall be conducted via online system. AMAC will not conduct prior substantive examination on the applications[1], instead, AMAC will complete the formalities of registration/filing and accordingly make public announcement within 20 working days of the receipt of registration/filing documents. However, the registration/filing will be postponed if the application materials fail to meet the relevant requirements.

It is also provided in the Measures that Managers and Funds are required to make ongoing reports and updates on the relevant information, i.e., monthly update for private securities investment funds, quarterly update for non-securities investment funds, and yearly for the Managers.

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The promulgation of the Measures and its ancillary rules brings various private funds into the self-discipline management system and enables the Managers to raise funds on their own rather than relying on the platforms of other financial institutions. It is of great significance for the regularization and development of China's private fund industry.

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1. It is provided in the Operation Manual that the applicants shall undertake in writing that all the materials submitted for registration, filing or ongoing update purpose are authentic, accurate and complete without any false record, misleading statement or major omission.