



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

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

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

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

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WFOE PFMs: 2018 Review and 2019 Outlook

By Sandra Lu | Eric Zou | Yan Tao

In 2018, 6 wholly foreign owned enterprises established by global asset managers (i.e., Azimut, Bridgewater, Winton, APS, Eastspring and Mirae Asset) registered as private securities investment fund managers ("**WFOE PFMs**") with the Asset Management Association of China ("**AMAC**"). Since AMAC started to accept WFOE PFM registration on 30 June 2016, 16 WFOE PFMs have completed the registration, and many other WFOEs are considering to apply for registration or undergoing the registration process. Furthermore, the WFOE PFMs filed 20 new private funds with AMAC in 2018, including equity funds, fixed-income funds, hybrid funds and other product varieties.

The regulatory environment and rules in relation to private funds in China have evolved considerably in 2018. While the opening-up of China's finance industry has been providing many development opportunities to WFOE PFMs, WFOE PFMs are still facing some difficulties. This article sets out the regulatory changes related to WFOE PFMs in 2018 and provides an outlook on the relevant regulations which may be promulgated in 2019.

For more Llinks publications,
please contact:

Roy Guo: + 86 21 3135 8756
Publication@llinkslaw.com

Llinks Law Offices
www.llinkslaw.com

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Main Text

I. 2018 Review

1. Guiding Opinion on Asset Management

On 27 April 2018, the People's Bank of China ("**PBOC**"), the China Banking and Insurance Regulatory Commission ("**CBIRC**"), the China Securities Regulatory Commission ("**CSRC**") and the State Administration of Foreign Exchange ("**SAFE**") jointly promulgated the *Guiding Opinions on Regulating Financial Institutions' Asset Management Business* ("**Guiding Opinion on Asset Management**"). According to Article 2, the Guiding Opinion on Asset Management shall apply to matters related to private funds unless otherwise governed by specific laws and administrative regulations.

Currently, the only applicable law in relation to private funds is the *Securities Investment Fund Law of the RPC* ("**Fund Law**") and there is no applicable specific administrative regulation.¹ Given that the Fund Law only sets out the basic principles and the most fundamental and generic rules in relation to the regulations on private funds, on a literal interpretation, the entire Guiding Opinion on Asset Management shall generally apply to private funds, and the scope of regulation covers matters such as standards of qualified investors and classification of funds, etc.² It remains to be seen to what extent and in which aspect the Guiding Opinion on Asset Management will apply to private funds.

As CSRC and AMAC have not yet issued any implementing rules in relation to the application of the Guiding Opinion on Asset Management by private fund managers, in practice, the private fund industry has not yet taken on to adopt the Guiding Opinion on Asset Management except where AMAC gives window guidance for specific matters.

2. Policies on Fundraising Channels

Fundraising channels is one of the major concerns of the WFOE PFMs. In 2017, we have analyzed the feasibility of certain WFOE PFM fundraising channels in our publication *Capital-Raising Channels for WFOE PFMs*.³ In 2018, after the promulgation of the Guiding Opinion on Asset Management and relevant rules, there have been changes to the regulations concerning specific fundraising channels.

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(1) Private Asset Management Products offered by Securities and Futures Operators

To further implement the Guiding Opinion on Asset Management, CSRC issued and implemented the *Administrative Measures for Private Asset Management Business of Securities and Futures Operators* and the *Administrative Regulations on the Operation of Private Asset Management Schemes Offered by Securities and Futures Operators* (hereinafter collectively referred to as “**CSRC Asset Management Rules**”).⁴

Regulations in the past allowed private asset management products offered by subsidiaries of public fund managers (“**FMCs**”) to invest in the private funds issued by WFOE PFMs. The CSRC Asset Management Rules, in addition to confirming this position by allowing the same, also allows private asset management products of FMCs to make such investments. Therefore, the private asset management products offered by both FMCs and their subsidiaries may invest in the private funds managed by any WFOE PFM, provided that the regulations in relation to connected transactions shall be abided by if they are affiliates of that WFOE PFM.

The Guiding Opinion on Asset Management requires that “financial institutions shall control the concentration of the assets invested by their asset management products”. Consistent with the aforesaid, the CSRC Asset Management Rules further provide that, under usual circumstances, the collective asset management products (i.e., products with two or more investors) of securities and futures operators (including FMCs, securities companies, futures companies and their subsidiaries carrying out private asset management business) shall satisfy the requirements below:

- (a) A collective asset management product shall not invest more than 25% of its net assets in a single property (e.g., any specific securities or investment portfolio);
- (b) The amount invested in a property by all the collective asset management products offered by the same securities and futures operator shall not exceed 25% of the property.

In the past, in order to avoid staff, time and operation costs incurred by raising funds directly from individual investors, securities and futures operators used to issue

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private asset management products as wrapper funds ("**Wrapper Funds**"), which both individual and institutional investors ("**Ultimate Investors**") bought units/shares from, and such Wrapper Funds would then invest in the private funds managed by WFOE PFMs. During the course of soliciting investors, the securities and futures operators would conduct qualified investor verification, suitability assessment and other due diligence work in relation to anti-money laundering, anti-terrorist financing and CRS, etc. The implementation of the CSRC Asset Management Rules will lead to difficulties in product design and investment of the Wrapper Funds.

(2) Wealth Management Products

To bring the Guiding Opinion on Asset Management into play, CBIRC promulgated and implemented the *Administrative Measures for the Supervision and Administration of Wealth Management Business of Commercial Banks* ("**New Wealth Management Measures**") and the *Measures on Administration of Wealth Management Subsidiary of Commercial Banks* ("**Measures on Wealth Management Subsidiary**") on 26 September 2018 and 2 December 2018 respectively. Commercial banks that have no wealth management subsidiaries ("**Wealth Management Subsidiaries**") can directly launch wealth management products ("**WMPs**"), and the anticipated Wealth Management Subsidiaries,⁵ as a new type of financial institution, can launch WMPs as well. Both commercial banks and Wealth Management Subsidiaries can launch and manage retail WMPs and privately-raised WMPs. However, the ways that WFOE PFMs may cooperate with commercial banks and Wealth Management Subsidiaries are subject to different regulatory requirements.⁶

In the past, WMPs could invest in fixed-income funds issued by WFOE PFMs; where the WMPs are only offered to institutional clients, high net worth clients and private banking clients, such products could invest in equity funds issued by WFOE PFMs as well. However, after the New Wealth Management Measures came into force, all WMPs offered by commercial banks are no longer allowed to invest in private funds.

According to the Measures on Wealth Management Subsidiary, retail WMPs offered by Wealth Management Subsidiaries are not allowed to invest in private funds, but privately-raised WMPs may invest in private funds provided that the private funds

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are managed by private fund managers which satisfy the following requirements:

- (a) Registered with AMAC as a private securities investment fund manager for at least 1 year;
- (b) No previous record of serious violation of laws and regulations; and
- (c) Being a member of AMAC.

(3) Charitable Organizations

In October 2018, the Ministry of Civil Affairs promulgated the *Interim Measures for the Administration of the Charitable Organizations' Investment Activities for Value Preservation and Appreciation*, which allowed charitable organizations to entrust their assets to institutions regulated by the financial regulator for investment. The Ministry of Civil Affairs confirms in relevant Q&A, that private fund managers fall within the scope of "institutions regulated by the financial regulator". Accordingly, WFOE PFMs can be entrusted by charitable organizations to manage their assets.

3. Policies on Investment Advisory Services

(1) Securities and Futures Operators

Compared to the *Interim Administrative Provisions on the Operation of the Private Asset Management Business of Securities and Futures Operators* ("**Interim Provisions**"), the CSRC Asset Management Rules allows more types of asset management institutions to provide investment advisory services to private asset management products offered by securities and futures operators (including FMCs, securities companies, futures companies and their subsidiaries carrying out private asset management business). However, the necessary requirements to be satisfied by a private fund manager in order to provide investment advisory services remain as those set out in the Interim Provisions.

A WFOE PFM satisfying the following requirements (hereinafter referred to as the "**1+3+3 Requirements**") may act as an investment advisor of the private asset management products offered by securities and futures operators:

- (a) Registered with AMAC as a private securities investment fund manager for at

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- least 1 year;
- (b) No previous record of serious violation of the laws and regulations;
- (c) Being a member of AMAC; and
- (d) Having at least 3 investment management personnel that should have:
 - (i) a track record of practice in relation to securities and futures investment management for more than 3 consecutive years; and
 - (ii) no bad track record.

(2) Wealth Management Products

According to the New Wealth Management Measures and the Measures on Wealth Management Subsidiary, private fund managers are not allowed to provide investment advisory services to WMPs of commercial banks. Nevertheless, private fund managers satisfying the “1+3+3 Requirements” may provide investment advisory services to both retail WMPs and privately-raised WMPs offered by Wealth Management Subsidiaries.

(3) Modules of AMBERS

Pursuant to the Interim Provisions, the CSRC Asset Management Rules and other relevant provisions, a private fund manager satisfying the “1+3+3 Requirements” may provide investment advisory services to private asset management products offered by securities and futures operators and private funds issued by other private fund managers.

To implement the aforesaid provisions, AMAC launched a new operation module at AMBERS. From 23 March 2018 onwards, private fund managers have been able to fill in the information for the application to conduct investment advisory business through the new operation module. If an applicant satisfies the relevant requirements, AMAC will approve its application in 20 working days after receiving all the application information and documents.

(4) Recognizing Practitioners’ Overseas Investment Track Record

Currently, the investment track records of many portfolio managers and other investment management personnel of WFOE PFMs are built overseas. Therefore,

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the issue of what “track record of practice in relation to securities and futures investment management for more than 3 consecutive years” means is crucial to WFOE PFMs.

Regarding a WFOE PFM’s eligibility to apply to become an investment advisor, AMAC has confirmed in 2018 that overseas investment track record shall be recognized in fulfilling the “1+3+3 Requirements”.

4. Changes in Registration and Record-filing Regulations

(1) Change of the Rule to Identify the Actual Controller of a WFOE PFM

In June 2018, AMAC released the updated *Filing and Submission Guidance on Registration and Filing for WFOE PFM and Sino-foreign Joint Venture PFMs*. The rule to identify the actual controller of private fund managers as set out in the previous version of the guidance released in January 2017 is changed pursuant to these new guidance.

According to the previous version, one should “trace to the ultimate natural person or a foreign institution regulated by an overseas financial regulator” to identify the actual controller of a private fund manager. In practice, following the aforesaid rule, the actual controller of certain WFOE PFMs was identified as a natural person. However, since the *AMAC FAQ Regarding the Registration and Record-filing of Private Funds* (No. 10) (“**AMAC FAQ No. 10**”) requires the actual controller of a WFOE PFM to be a foreign financial institution, such WFOE PFMs are not qualified to register with AMAC under AMAC FAQ No. 10.

The new guidance changed the rule to identify the actual controller. Specifically, one should now “trace to a foreign institution regulated by an overseas financial regulator to identify the actual controller”. Since the immediate shareholder of a WFOE PFM should be a foreign institution regulated by overseas financial regulators, such shareholder can now be identified as the actual controller. The new guidance has, therefore, cleared obstacles for certain well-known global asset managers ultimately controlled by natural persons to set up their WFOE PFMs within the PRC.

(2) Promulgation of the *Notice on Record-filing for Private Funds*

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On 12 January 2018, AMAC issued the *Notice on Record-filing for Private Funds*, in which certain regulations in relation to record-filing for private funds are set out. In practice, private fund managers have to pay special attention to "Special Risk Disclosure" in its risk disclosure letter. They should focus on disclosing matters involving special risks, such as those related to the liquidity of the private fund, connected transactions, single investment objective, product structure and underlying investment objective, etc. Each of the 13 items listed under "Declaration of Investors" in the risk disclosure letter should be signed by all investors to confirm their understanding in relation to it.

(3) Mandatory Custody Arrangement for Contractual Funds

In July 2018, Ms. Zhong Rongsa, the Vice President of AMAC, emphasized at the launching ceremony of the China Merchants Bank's custody big data platform, that contractual funds should be placed in separate custody by fund custodians. In subsequent cases of record-filing of private funds, AMAC has also given the same window guidance.

This requirement has a greater impact towards the QDLP fund management businesses, usually operated by subsidiaries under the WFOE PFMs. For instance, according to the regulations enforced in Shanghai city in relation to QDLP business, a QDLP fund manager may engage a safekeeping bank to keep the fund assets, but there is no mandatory requirement to engage a custodian. A custodian has more duties under PRC laws, compared with a safekeeping bank.

However, after the abovementioned requirement came into existence, a QDLP fund must have a fund custodian.

(4) Change of Affiliates' Information be upgraded as a "Material Change in Circumstances to the Fund Manager"

In August 2018, AMAC updated the system of AMBERS, so that "Updates in relation to Affiliates" are no longer "general changes in circumstances to the fund manager", but "material changes in circumstances to the fund manager".

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According to the *Measures for Registration of Private Investment Fund Managers and Record-filing of Private Investment Fund (Trial)*, where there is a material change in circumstances to the fund manager, the private fund manager should report to AMAC in 10 working days. Given the aforesaid, in principle, where there is a change in affiliates, a private fund manager should record the change in AMBERS under "material change in circumstances to the fund manager". Moreover, although the update in AMBERS by the private fund manager only constitutes a step to record-file the matter, such update should be subject to the review and approval by AMAC in practice.

It should be noted that, although a change in affiliates' information is deemed a material change, according to the policies introduced by AMAC, it is not necessary to provide a legal opinion in relation to the change unless AMAC considers otherwise from a prudent regulatory point of view.

(5) Update of the *Notice on Registration of Private Fund Managers*

In December 2018, AMAC released the updated *Notice on Registration of Private Fund Managers* ("**Notice on Registration**"). The Notice on Registration further restricts senior management personnel ("**SMP**") of private fund managers from dual-hatting in other firms (e.g., members of the SMP other than a legal representative are generally not allowed to dual-hat; there shall be no more than half of all members of the SMP having dual-hatting arrangement), prohibits general staff (those who are not SMP) from dual-hatting, and limits homogeneous competition between affiliated fund managers.

For WFOE PFMs, certain provisions are relatively difficult to implement in practice or otherwise require careful planning for implementation. For example, many foreign institutions have set up or are planning to set up different types of institutions to carry out asset management business in China, including but without limitation to WFOE PFMs, QDLP fund managers, FMCs and securities companies etc. The Notice on Registration provides, that where an institution applies for registration but a private fund manager under the same actual controller of this institution has completed its registration ahead of time, the largest shareholder and the actual controller of the applying institution should jointly undertake in writing to hold the equity stake of the applying institution or retain actual control over the applying

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institution for no less than 3 years after the completion of the registration. With regard to the aforesaid, a foreign-invested company intending to set up an asset management business should thoroughly evaluate its overall development plan within the PRC before applying for registration.

In practice, global asset managers may further consult with AMAC as to how to implement the Notice on Registration, so as not to affect their business plan in the PRC while at the same time stick to the regulatory purpose of AMAC.

(6) Promulgation of the *Naming Guidelines for Private Funds*

In November 2018, AMAC issued the *Naming Guidelines for Private Funds* ("**Naming Guidelines**") to regulate matters related to naming private funds.

The Naming Guidelines prohibits a private fund's name from expressly or impliedly indicating that investment activities of the fund will not incur any loss or guaranteeing minimum profits. The name of a fund shall not contain "safe", "secure", "risk-avoiding" and other words which may mislead or confuse the investors. The name also must not, in violation of the regulations, include expressions like "high return", "risk-proof" and other expressions that do not correspond with the risk and return profile of a private fund. "Stock investment", "hybrid investment", "fixed-income investment", "futures investment" or other words that show the specific investment scope of a private securities investment fund may be used; while if a specific investment scope is not to be reflected in a private fund's name, the name should carry the phrase "securities investment".

5. Funds of WFOE PFMs to Open Accounts in CIBM

Pursuant to the *Notice on Matters Concerning the Entry of Private Investment Funds into the Interbank Market by the PBOC*, a private fund manager intending to open an account in the interbank market ("**CIBM**") should be "one of the firms with the most AUM within the industry" and should "have been recognized by the relevant regulatory authority or the self-disciplinary body of the industry delegated by the regulatory authority". Given that the size of the assets managed by a WFOE PFM at its early stage of business is limited, it has been difficult for a private fund managed by a WFOE PFM to open an account and trade in CIBM.

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AMAC has embarked on many key projects in relation to the opening-up of the market in 2018, and resolving the account-opening issues encountered by foreign-invested institutions in CIBM was one of them. To our understanding, there has been substantial progress in resolving the issue – according to market news, in calculating the size of assets to satisfy the requirement of “one of the firms with the most AUM within the industry”, the assets managed by the WFOE PFM as well as those managed by its shareholders or its affiliated parties for investment in the PRC securities market in the form of QFII, RQFII, stock connect, bond connect and other investments are all taken into account. Where the total amount reaches RMB 2 billion, the WFOE PFM will be qualified. With an endorsement letter issued by AMAC, qualified WFOE PFMs may open accounts in CIBM for the private fund managed.

Having regard to this approach, the bond funds under the management of WFOE PFMs are no longer restricted to invest only in the bonds traded on the stock exchanges.

6. Increased AML/KYC Responsibilities

PBOC issued the *Notice on More Effective Identification of Beneficial Owners*, which requires institutions carrying anti-money laundering (“**AML**”) obligations to identify the beneficial owners of a client (non-natural person) at all levels with reference to its legal status and the actual circumstances. The notice also specifies the rules to identify the different types of beneficial owners of a client:

(1) Company

The following rules of identification should be applied according to their order (i.e. if no natural person can be identified using the first rule, the next rule applies, and so on):

- (a) A natural person who directly or indirectly owns more than 25% of the equity or voting rights of the company;
- (b) A natural person who controls the company by managing affairs related to human resources and financial operations, etc. (for instance, a natural person directly or indirectly decides on the appointment of most of the directors on the Board);

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(c) Senior management of the company.

(2) Fund

The following rules of identification should be applied according to their order:

- (a) A natural person who owns more than 25% of fund units;
- (b) Portfolio manager(s) or natural person(s) who directly manages the fund.

Where the fundraising process has not been completed and it is temporarily unable to ascertain the number of distributed fund units, the portfolio manager(s) or natural person(s) who directly manages the relevant fund should be treated as the beneficial owner(s) first. After the fundraising process, the beneficial owner(s) should be promptly re-identified according to the above rules.

(3) Trust

The settlor, trustee and beneficiaries are all beneficial owners for the purpose of the rules for identification. Further, where the settlor, trustee, and the beneficiary are non-natural persons, the identification needs to proceed into each level and the natural person having ultimate control and benefits in the trust arrangement should be identified as the beneficial owner.

When the trust is being set up or during the lifetime of the trust, if the beneficiary is a non-specific natural person among a class of persons satisfying certain requirements, identification of the beneficial owner can be done after the beneficiary is determined.

(4) Different types of asset management schemes and financial products

Refer to the rules for identification of beneficial owners in relation to "Fund" under item (2).

Although the *Anti-money Laundering Law of the PRC* and the AML regulations of PBOC and CSRC have not listed private fund managers as institutions carrying AML obligations, the *Administrative Measures for Private Investment Fund Raising*, the

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Guidelines on Administration and Implementation of the Investor Suitability Assessment for Fundraising Institutions (Trial) and other regulations require private fund managers to carry out AML obligations. Therefore, in practice, due to lack of applicable AML regulations, many private fund managers with high compliance and risk control standards also refer to the above provisions to identify the relevant beneficial owners.

7. Anti-corruption Regulations

CSRC released the *Anti-corruption Provisions for Securities and Futures Operators and their Practitioners* ("**Anti-corruption Provisions**") in June 2018. The scope of the provisions covers without limitation the transfer of improper benefits (including gifts, cash and dinners, etc.) from securities and futures operators and their practitioners to government officials, clients, potential clients or other interested parties, and other behaviors that directly or indirectly transfer improper benefits or acquire improper benefits.

Securities and futures operators shall report matters related to its anti-corruption management in the first half of each year to the local branches of CSRC before 30 April of each year.

Private fund managers are required to follow the Anti-corruption Provisions by reference.

Further, AMAC has released a Consultation Paper for the rules on implementing the Anti-Corruption Provisions, in order to specify the self-disciplinary requirements in relation to anti-corruption management of FMCs, PFMs and related fund service providers. WFOE PFMs may pay attention to the upcoming legislative development.

8. CRS Reporting Obligations

The *Administrative Measures for Due Diligence on Tax-related Information of Non-resident Financial Accounts* ("**China CRS Rules**") came into force on 1 July 2017. To ensure that the reporting obligations on tax-related non-resident financial accounts are duly carried out by private fund managers, AMAC forwarded the *Regulations on Reporting Tax-related Information of Non-resident Financial Accounts* on 23 January 2018, and reminded the private fund managers to report the relevant information collected in the preceding year

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before 31 May of each year. If there is no relevant information to be reported (i.e. no non-resident accounts are identified), the private fund manager can invoke the simplified “no reporting obligation” procedure.

Apart from the aforesaid, according to the China CRS Rules, a private fund manager shall report, in writing, the matters related to its compliance with the China CRS Rules, any issues discovered, remedial actions taken and the effects of such actions in the preceding year to the regulatory authority and the State Taxation Administration before 30 June of each year.

9. Private Asset Allocation Fund Managers

In August 2018, AMAC released the *FAQ Regarding the Registration and Record-filing of Private Funds* (No. 15), which permitted the registration of private asset allocation fund managers, in order to meet the demand of institutions running investment business in cross-asset types, such as investment in both non-listed equity and securities. Private asset allocation fund managers intending to apply for registration have to satisfy AMAC’s specific requirements regarding “actual controller”, “stability of shareholding” and “SMP”, etc.

If a WFOE PFM which has completed its registration with AMAC intends to carry out private asset allocation fund management business, it may apply to change its status from private securities investment fund manager into private asset allocation fund manager or get its shareholders or actual controller to set up a new company and then register the new company with AMAC as a private asset allocation fund manager.

AMAC has set out specific regulatory requirements in relation to private asset allocation funds, including but without limitation to the following:

- (1) The initial funds raised shall be not less than RMB 50 million;
- (2) The term of the fund shall be no less than 2 years;
- (3) It shall be a closed-end fund; and
- (4) The fund should mainly invest under the FOF framework (i.e. at least 80% of the

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fund's assets shall be invested in private funds, public funds or other asset management products).

10. New English Qualification Exam for Practitioners

In order to satisfy the demands in industry development and talent acquisition and provide a greater variety of exam services, AMAC introduced the English exam paper (Subject One "*Fund-related Laws and Regulations, Professional Ethics and Code of Conduct*") for fund practitioners in April 2018, targeting:

- (1) Foreign SMP of foreign invested private fund managers which have applied for registration with AMAC

For this purpose, SMP refers to the legal representative, chairman of the Board, general manager, deputy general manager and other senior management personnel, and investment management personnel responsible for investment, research and trading (including portfolio managers). However, it should be noted that the compliance/risk control officer must take the Chinese paper of the qualification exam.

The foreign SMP must have obtained an overseas practitioner qualification for fund management or asset management or be qualified as a chartered financial analyst (CFA), and have more than 5 years of overseas asset management experience.

- (2) Senior management of financial institutions in Hong Kong and Macau

A senior management official of the above two categories can obtain a fund practitioner qualification pursuant to the relevant application procedures after passing the English exam paper.

11. Guidelines on Green Investment

To promote ESG investment, in November 2018, AMAC released the *Guidelines for Green Investment (Trial)*, which defines green investment and specifies the objectives, principles and basic methods of green investment. The guidelines aim at cultivating an investment direction favoring long-term values and regulating green investment through guiding

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fund managers involving green investment activities to operate in a marketized, regulated and professional manner.

Private fund managers may, with reference to its own business, come up with its own suitable set of regulations governing green investment activities, based on the principles of “identifiability”, “calculability” and “comparability”, to achieve stable return from their investment portfolios and at the same time strengthen their investment ability in the direction of keeping environmental sustainability. A sophisticated private fund manager may adopt a systematic ESG investment method taking into account environmental and social factors and corporate governance. In other words, the *Guidelines for Green Investment (Trial)* have not yet provided any mandatory requirements enforceable against all private fund managers.

The *Guidelines for Green Investment (Trial)* also require fund managers providing asset management services to domestic or overseas pension funds, insurance funds, social welfare funds and other professional institutional investors to be role models of responsible investors and actively set up their own long-term mechanisms for regulating green investments or ESG investments.

Private fund managers shall conduct a self-evaluation on its green investment status on an annual basis and provide in writing the self-evaluation report of the previous year together with the *Self-evaluation Form on Green Investment of Fund Managers* to AMAC by the end of March every year.

12. MoU Between CSRC and the Regulatory Authority of the Cayman Islands

In December 2018, CSRC and the financial regulator of the Cayman Islands entered into the *Memorandum of Understanding Regarding Securities and Futures Regulatory Cooperation* (“**MoU**”). In respect of the asset management industry, the MoU has a significant impact in allowing financial institutions incorporated in the Cayman Islands to become shareholders of foreign-invested FMCs and shareholders and actual controllers of foreign-invested private fund managers. In addition, the MoU also clears the obstacles for QDII products of FMCs and securities companies to invest in public funds registered in the Cayman Islands and stock and other financial products listed on the securities market of the Cayman Islands.

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For example, according to AMAC FAQ No. 10, the shareholder and the actual controller of a WFOE PFM must be incorporated in a country or region where CSRC has entered into a MoU with its financial regulator. The signing of the MoU means that companies incorporated in the Cayman Islands may set up WFOE PFMs in the PRC as well.

13. New QDLP/QDIE Quotas

In April 2018, SAFE published a press release which expressed that it will drive forward the pilot scheme of QDLP and QDIE, and it has raised the quota of both Shanghai's QDLP and Shenzhen' QDIE pilot scheme to USD 5 billion respectively.

In 2018, many subsidiaries of WFOE PFMs have obtained the QDLP pilot scheme qualification and quota and completed their registration with AMAC.

II. 2019 Outlook**1. QFII/RQFII to invest in private funds**

With reference to the *Notice on Measures to Actively and Effectively Drive the High-Quality Growth of the Economy Utilizing Foreign Capital* (GUOFA [2018] No. 19 issued by the State Council), as one of the measures to steadily open up the financial industry, China will refine the provisions related to QFII and RQFII in order to attract more overseas long-term capital to invest in the local capital market. Subsequently, on 8 August 2018, CSRC explained in a relevant press release that it will amend the rules of QFII and RQFII to unify and loosen up the entry standard and expand the investment scope of QFII and RQFII. On 14 January 2019, SAFE published a press release, pursuant to which the QFII quota was increased from USD 150 billion to USD 300 billion.

Recently, there has been a huge demand within the industry to allow QFII/RQFIIs to invest in private securities investment funds, and foreign institutions which have already set up their WFOE PFMs in the PRC are especially eager about it. Once such opening-up policies are put into effect, foreign institutions will be able to manage their global assets through their WFOE PFMs more professionally. On the other hand, WFOE PFMs will have their skin in the game by providing seed money, which favors fundraising from local investors.

On 31 January 2019, CSRC released the Notice on Public Consultation for the Measures for

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the Administration of Domestic Securities and Futures Investment by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors (Consultation Paper) and the Supporting Rules. According to such consultation paper, QFII and RQFII will be allowed to invest in private securities investment fund. It is anticipated that the rules allowing QFII/RQFII to invest in private funds will be officially released and come into effect in 2019.

2. WFOE PFMs to provide investment advisory services to QFII/RQFII

In the *Reply to Proposal No. 2616 (Tax and Finance No. 240) of the First Session of the 13th National Committee of the Chinese People's Political Consultative Conference*, CSRC expressed that it shall continue to drive forward the orderly opening-up of the private fund industry, including opening doors to WFOE PFMs to become QFII investment advisors.

Being able to provide investment advisory services to QFII/RQFIIs (especially QFII/RQFIIs of within the corporate group) will have a significant impact towards the expansion of business of a WFOE PFM and will allow QFII/RQFIIs to enjoy better and more professional services that match their own investment style and risk control system.

According to the consultation paper released by CSRC on 31 January 2019, QFIIs and RQFIIs can appoint their associated domestic private securities investment fund manager as its investment adviser. It is anticipated that the rules allowing WFOE PFMs to provide investment advice to associated QFII/RQFIIs will be officially released and come into effect in 2019.

3. Update of the *Notice on Record-filing for Private Funds*

In the end of 2018 and the beginning of 2019, representatives of AMAC have disclosed in certain public events that AMAC will update the *Notice on Record-filing for Private Funds*.

As the legislative process of the *Interim Provisions for the Administration of Private Investment Funds*⁷ has not been progressing, and there still lacks the implementing rules applicable for enforcing the Guiding Opinion on Asset Management, to our understanding, the proposed updated *Notice on Record-filing for Private Funds* will focus on the regulations regarding areas such as product design and investment operation of private funds.

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Contact Details

If you would like to know more information about the subjects covered in this publication, please feel free to contact the following people or your usual Links contact.

Authors	
Sandra Lu Tel: +86 21 3135 8776 sandra.lu@linkslaw.com	Eric Zou Tel: +86 21 3135 8659 eric.zou@linkslaw.com
Shanghai	
Christophe Han Tel: +86 21 3135 8778 christophe.han@linkslaw.com	Charles Qin Tel: +86 21 3135 8668 charles.qin@linkslaw.com
David Yu Tel: +86 21 3135 8686 david.yu@linkslaw.com	Sandra Lu Tel: +86 21 3135 8776 sandra.lu@linkslaw.com
Nicholas Lou Tel: +86 21 3135 8783 nicholas.lou@linkslaw.com	Tommy Xia Tel: +86 21 3135 8769 tomy.xia@linkslaw.com
Raymond Li Tel: +86 21 3135 8663 raymond.li@linkslaw.com	Elva Yu Tel: +86 21 3135 8793 elva.yu@linkslaw.com
Desmond An Tel: +86 21 3135 8725 desmond.an@linkslaw.com	
Beijing	
Leo Wang Tel: +86 10 8519 2266 leo.wang@linkslaw.com	Monica Gao Tel: +86 10 8519 1625 monica.gao@linkslaw.com
Hong Kong (in Association with Dennis Fong & Co., Solicitors)	
David Yu Tel: +86 21 3135 8686 david.yu@linkslaw.com	Sandra Lu Tel: +86 21 3135 8776 sandra.lu@linkslaw.com
London	
Yuhua Yang Tel: +44 (0)20 3283 4337 yuhua.yang@linkslaw.com	

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¹ Currently, in the China's legislative regime, only the National People's Congress (and its standing committee) and the State Council have the power to make national laws and administrative regulations.

² For form information, please refer to *Llinks Insights on the New Asset Management Rules No. 2 Impact on WFOE PFMs* published by Llinks Law Offices (http://www.llinkslaw.com/uploadfile/publication/58_1526269122.pdf).

³ For more information, please refer to *Capital-Raising Channels for WFOE PFMs* published by Llinks Law Offices (http://www.llinkslaw.com/uploadfile/publication/57_1515137830.pdf).

⁴ For more information, please refer to Llinks Asset Management Bulletin (Chinese only) (http://www.llinkslaw.com/uploadfile/publication/29_1540352011.pdf).

⁵ According to the information released by CBIRC, so far, planning of the Wealth Management Subsidiaries of China Construction Bank, Bank of China, Agricultural Bank of China and Bank of Communications have been approved.

⁶ For more information, please refer to *New Rules on Wealth Management Subsidiary* published by Llinks Law Offices (http://www.llinkslaw.com/uploadfile/publication/99_1544428638.pdf).

⁷ The relevant consultation paper was published on 30 August 2017 to consult the public.