



Llinks Asset Management Bulletin
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上海
上海市银城中路 68 号
时代金融中心 19 和 16 楼
邮编：200120
电话：+86 21 3135 8666
传真：+86 21 3135 8600

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

北京
北京市建国门北大街 8 号
华润大厦 4 楼
邮编：100005
电话：+86 10 8519 2266
传真：+86 10 8519 2929

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

香港
香港中环花园道 3 号
中国工商银行大厦 15 楼
电话：+852 2969 5300
传真：+852 2997 3385

Hong Kong
15F, ICBC Tower
3 Garden Road, Central
Hong Kong
Tel: +852 2969 5300
Fax: +852 2997 3385

www.llinkslaw.com

master@llinkslaw.com

Capital-Raising Channels for WFOE PFMs

By Sandra Lu and Eric Zou

Since 30 June 2016, when Asset Management Association of China (“AMAC”) released the *FAQs regarding Registration and Record-Filing of Private Funds (No. 10)* (“FAQ No. 10”), which allows wholly foreign-owned enterprises (“WFOEs”) to apply for registration to become private securities fund managers, several WFOEs have consecutively completed the registration process, and many other WFOEs are undergoing the application process or preparing for application to become WFOE private securities investment fund managers (“WFOE PFMs”). Over a period of time, we have noticed in the course of providing legal services to our WFOE PFM clients, that the issue of what the available channels for capital-raising are has become one of the key concerns of WFOE PFMs. This article explores the feasibility of using certain channels to raise funds by WFOE PFMs.

Before going into a more elaborated discussion, we have summarized the conclusion we arrived at (or the conclusion we tend to reach) in the passage below for your convenience. Please refer to the analysis below the table for further details.

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如果您需要本出版物的中文本，
请与下列人员联系：

郭建良: (86 21) 3135 8756
Publication@llinkslaw.com

If you would like other Llinks
publications, please contact:

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

Llinks Law Offices
www.llinkslaw.com

Capital-Raising Channels for WFOE PFMs

Type of Investors	#	Sources of Capital	Eligible Purchasers of Private Funds Managed by WFOE PFMs?
WFOE PFMs	1.	Proprietary capital of WFOE PFMs (acquired from the settlement of registered capital)	No
	2.	Proprietary capital of WFOE PFMs (income acquired from business operation)	Yes
QFII/RQFIIs	3.	Proprietary capital of QFII/RQFIIs	No
	4.	Fund asset managed by QFII/RQFIIs in the capacity of fund managers	No
Commercial Banks	5.	Proprietary capital of commercial banks	No
	6.	Wealth management products offered by commercial banks to high net worth private banking clients and institutional clients	Yes
	7.	Wealth management products offered by commercial banks to general individual investors (only limited to investment to (i) fixed-income private securities investment funds, and (ii) private securities investment funds which only invest by subscribing new stocks)	Yes
Retail Fund Management Companies and Their Subsidiaries	8.	Proprietary capital of retail fund management companies	Yes
	9.	Retail funds managed by retail fund management companies	No
	10.	Mandate products offered by retail fund management companies (including “one-to-one” and “one-to-many” products)	No
	11.	Proprietary capital of the subsidiaries of retail fund management companies	Yes
	12.	Mandate products offered by subsidiaries of retail fund management companies (including “one-to-one” and “one-to-many” products)	Yes
	13.	ABS products offered by subsidiaries of retail fund management companies	No
Securities Companies and Their Subsidiaries	14.	Proprietary capital of securities companies qualified for carrying out proprietary account transactions	Yes
	15.	Proprietary capital of securities companies not qualified for carrying out proprietary account transactions	No
	16.	Collective asset management schemes offered by securities companies or their asset management subsidiaries	Yes
	17.	Targeted client asset management schemes offered by securities companies or their asset management subsidiaries	Yes
	18.	ABS products offered by securities companies or their	No

Capital-Raising Channels for WFOE PFMs

		asset management subsidiaries	
	19.	Retail funds offered by securities companies or their asset management subsidiaries holding the retail fund business license	No
	20.	Proprietary capital of alternative investment subsidiaries of securities companies	No
	21.	Private funds offered by private fund subsidiaries of securities companies	In principle, No
Insurance Companies and Insurance Asset Management Companies	22.	Insurance capital of insurance companies	No
	23.	Collective asset management products offered by insurance asset management companies	No
	24.	Targeted client asset management products offered by insurance asset management companies (involving insurance capital)	No
	25.	Targeted client asset management products offered by insurance asset management companies (not involving insurance capital)	Yes
	26.	Retail funds offered by insurance asset management companies holding the retail fund business license	No
Trust Companies	27.	Proprietary capital of trust companies	Yes
	28.	Trust products offered by trust companies (collective investment)	Yes
	29.	Trust products offered by trust companies (single investor)	Yes
Futures Companies and Their Asset Management Subsidiaries	30.	Proprietary capital of futures companies	Yes
	31.	Asset management products offered by futures companies or their asset management subsidiaries ("one-to-one" products)	Yes
	32.	Asset management products offered by futures companies or their asset management subsidiaries ("one-to-many" products)	Yes
Pension Funds and Social Welfare Funds	33.	National social security fund	No
	34.	Basic pension funds	No
	35.	Enterprise annuities	No
	36.	Charity funds and other social welfare funds	Probably
Private Fund Managers	37.	Proprietary capital of other private fund managers registered with AMAC	Yes
	38.	Private funds offered by other private securities investment fund managers registered with AMAC	Yes

Below is the main content of this article:

Capital-Raising Channels for WFOE PFMs

1. Proprietary Capital of WFOE PFMs

When issuing private funds, foreign asset managers usually invest with their own capital first; similar arrangements are also common where domestic asset managers are issuing private funds or other asset management products. Nevertheless, WFOE PFMs face certain regulatory obstacles in adopting the same approach.

According to *FAQ No. 10*, “any use of capital funds and RMB funds settled from the capital funds of the private securities fund management institution shall be in accordance with the relevant requirements of the State Administration of Foreign Exchange”. Pursuant to the *Notice on Reforming and Standardizing the Administrative Policies on Capital Account Settlement by the State Administration of Foreign Exchange* and other such provisions, foreign exchange under foreign exchange capital accounts and the RMB capital settled from such foreign exchange, shall, unless otherwise stipulated, not be used directly or indirectly for securities investments or wealth management product investments except for investments in capital guaranteed products of banks. Therefore, regarding WFOE PFMs:

- (a) If a WFOE PFM invests in private securities investment funds which it plans to offer with capital acquired from settlement of its registered capital, such arrangement amounts to indirect securities investment, which is not in compliance with the abovementioned provisions of the State Administration of Foreign Exchange (“SAFE”).
- (b) If a WFOE PFM invests in private securities investment funds which it plans to offer with proceeds acquired lawfully from its business operation (such as management fees), it is not violating the abovementioned provisions of SAFE.

Apart from investing with their own capital in private securities investment funds which they plan to offer, many WFOE PFMs also consider relying on other affiliated WFOEs within the PRC to conduct investment in the funds they plan to offer. However, under such circumstances, such other affiliated WFOEs should also comply with the aforementioned provisions of SAFE, namely, they may only invest with proceeds acquired lawfully from their business operation and that investments with capital acquired from settlement of their registered capital are not allowed.

2. QFII/RQFIIs

Pursuant to the relevant provisions for implementation on the *Administrative Measures for Domestic Securities Investment by Qualified Foreign Institutional Investors* and the *Pilot Measures for Domestic Securities Investment by Renminbi Qualified Foreign Institutional Investors* (“**QFII/RQFII Provisions for Implementation**”) both issued by the China Securities Regulatory Commission (“CSRC”), and came into effect on 27 July 2012 and 1 March 2013 respectively, QFII/RQFIIs may invest in securities investment funds.

Although the *PRC Funds Law*, which was amended and put into effect since 1 June 2013, has already included private securities investment funds within the scope of securities investment funds, the issuance and enforcement of the *QFII/RQFII Provisions for Implementation* came earlier than 1 June 2013. Hence, strictly speaking, considering the legislative background, the reference to “securities investment funds” in the *QFII/RQFII Provisions for Implementation* should be limited to retail funds. According to

Capital-Raising Channels for WFOE PFMs

our understanding, since 2015, CSRC has given conditional permissions to QFIIs/RQFIIs to invest in segregated account asset management schemes offered by retail fund management companies and collective asset management schemes offered by securities companies; apart from the aforementioned, there is currently no other reference to expanding the investment scope of QFII/RQFIIs. Therefore, currently, QFII/RQFIIs are not allowed to invest in private securities investment funds offered by WFOE PFMs.

3. Commercial Banks

(1) Proprietary Capital

Pursuant to the *Law of the PRC on Commercial Banks*, “unless otherwise stipulated by other national provisions, commercial banks shall not carry out trust investments and securities operation businesses within the PRC, and they shall not invest in real properties not for the purpose of self-use or invest in financial institutions and enterprises which are not banks.”

To extend the regulatory spirit of the *Notice of the People's Bank of China on Prohibiting the Illegal Flow of Bank Capital into the Stock Market*¹, currently, the proprietary capital of commercial banks cannot be directly or indirectly invested in stocks. Hence, the proprietary capital of commercial banks cannot be indirectly invested in stocks through investments in private securities investment funds.

For other types of private securities investment funds, according to the *Notice on Commencement of Specific Governance Work regarding “Acquisition of Benefits by Circumventing Regulations, through Idle Operation of Funds or through Connected Transactions” within the Banking Industry* issued in 2017, it is prohibited to list unlicensed financial institutions as cooperating trading parties when doing the inter-financial institutions business. It is currently unclear whether private fund managers registered with AMAC fall within the scope of licensed financial institutions, but in practice, they are often treated as unlicensed financial institutions.

All things considered, to our understanding, proprietary capital of banks is currently not allowed to invest in private securities investment funds offered by WFOE PFMs.

(2) Bank Wealth Management Products offered by Commercial Banks

According to the *Notice of the China Banking Regulatory Commission on Issues Regarding Further Regulation of Investment Management in Personal Wealth Management Business of Commercial Banks* released in 2009, (a) wealth management products shall not invest in stocks publicly traded in the domestic secondary market or securities investment funds related to such stocks; (b) national laws, regulations and regulatory provisions shall be complied with when subscribing to new stocks with the funds of wealth management products; (c) for high net worth clients with related investment experience and higher risk-tolerant capacity, commercial banks may satisfy such clients' investment needs through private banking services regardless of the aforementioned restrictions. Therefore, wealth management products offered by commercial banks to individual clients (except for private banking clients) shall not invest in stocks or related stock funds except where the case involves subscription of new stocks.

Capital-Raising Channels for WFOE PFMs

The *Guiding Opinion of the China Banking Regulatory Commission on Risk Prevention and Control by Commercial Banks* released in 2017 reiterated that “investments in stocks in the domestic secondary market and equity assets such as equity stake of non-listed enterprises can only be made through wealth management products which are offered to high net worth private banking clients and institutional clients.” For this reason, if a WFOE PFM offers stock funds, such funds may attract investments by wealth management products offered only to high net worth private banking clients and institutional clients.

Regarding bond funds that do not involve any investments in equity assets such as stocks, the above restriction does not apply.

It is worth noting that, in the past, bank wealth management products offered to general individual investors could invest in superior units/shares of structured securities investment trust schemes, asset management products and private funds, and such structured securities investment trust schemes, asset management products and private funds would, in turn, invest in stocks. Through such structured arrangement, even though the wealth management products eventually invested in stocks, as they held superior units/shares, thus enjoyed fixed income with no risks (except for some extreme circumstances), and the risks would be borne by inferior units/shares holders, such kind of investments (i.e., investment in superior units/shares) was essentially deemed similar to investing in fixed-income products. Commercial banks, thus, realized indirect investments in stocks through wealth management products by this arrangement. Nevertheless, following CSRC’s requirement in 2016, that investors of private securities investment funds should “share both the benefits and the risks”, and the direction of the China Banking Regulatory Commission (“CBRC”) in 2017 to strengthen “transparent and look-through administration” of wealth management business, the aforementioned plan to circumvent regulations by way of investing to private funds is no longer feasible.

4. Retail Fund Management Companies and Their Mandate Subsidiaries

(1) Proprietary Capital of Retail Fund Management Companies and Their Mandate Subsidiaries

According to the *Interim Provisions on the Administration of Fund Management Companies in Using Their Own Capital*, the proprietary capital of the fund management companies can be used for financial asset investments and equity investments related to the operation of asset management business, provided that the proportion of high-liquidity assets, such as cash, bank deposits, treasury bonds and funds, is no less than 50%. Therefore, retail fund management companies may invest in financial products such as private funds with their own capital.

Pursuant to the *Provisions on the Administration of Subsidiaries of Fund Management Companies*, the use of proprietary capital by the subsidiaries of retail fund management companies shall be governed by the relevant provisions on the administration of fund management companies in using their own capital. Therefore, there are no restrictions as to the use of proprietary capital by the subsidiaries of retail fund management companies to invest in private securities investment funds.

Capital-Raising Channels for WFOE PFMs

If a retail fund management company or its subsidiary plans to invest in a private fund offered by a WFOE PFM with its own capital, and that the company is an affiliate of the WFOE PFM (e.g., a foreign institution holds equity of a certain domestic retail fund management company, and such foreign institution has established a WFOE PFM within the territory of the PRC, then the domestic retail fund management company will become an affiliate of the WFOE PFM), the company should pay attention to the relevant provisions on affiliated transactions. Taking retail fund management companies as example, pursuant to the *Administrative Measures for Securities Investment Fund Management Companies*, in considering an important affiliated transaction, the Board of Directors of a fund management company should pass a resolution with no less than 2/3 majority votes casted by independent directors; according to the *Guidelines for the Governance of Securities Investment Fund Management Companies (Trial)*, when the Board of Directors are voting for matters related to affiliated transactions, directors involving conflict of interests should not be present.

(2) Retail Funds Offered by Retail Fund Management Companies

Pursuant to the *PRC Funds Law*, fund assets of a retail fund shall be used to invest in stocks and treasury bonds listed for trades and other securities and derivatives thereof as stipulated by CSRC. Although according to the *Administrative Measures for Operation of Retail Funds* issued by CSRC in 2014, fund management companies are allowed to offer FOF products, other funds which a retail fund may invest in are limited to retail funds only, and do not include private funds.

As with retail funds offered by retail fund management companies, retail funds offered by insurance asset management companies and securities companies (or their securities asset management subsidiaries) which obtained approval from CSRC to commence retail fund management business are also not allowed to invest in private funds.

Concluding the above, retail funds offered within the territory of the PRC are all not allowed to invest in private funds offered by WFOE PFMs.

(3) Mandate Products Offered by Retail Fund Management Companies and Their Mandate Subsidiaries

Apart from issuing retail funds, retail fund management companies may also offer segregated account asset management schemes (“**mandate products**”) through fundraising in a non-public manner. Furthermore, retail fund management companies may also establish subsidiaries which run segregated account asset management business (“**mandate subsidiaries**”). Mandate products are distinguished into “one-to-one” and “one-to-many” products according to the number of investors.

Pursuant to the *Pilot Measures on Segregated Account Asset Management Business of Fund Management Companies* (“**Pilot Measures**”) and relevant regulatory guidance, mandate products of retail fund management companies are currently not allowed to invest in private funds, while mandate products managed by mandate subsidiaries may make such investments.

Capital-Raising Channels for WFOE PFMs

If a mandate subsidiary plans to invest in a private fund offered by a WFOE PFM through a mandate product under its management, and the subsidiary is an affiliate of the WFOE PFM, the subsidiary should pay attention to the relevant provisions on affiliated transactions. Pursuant to the *Pilot Measures*, asset managers should take the initiative to prevent possible conflict of interests, explain situations where conflict of interests or potential conflict of interests arises from asset management contracts and trading behaviors in affiliated transactions, and report accordingly to CSRC. Although affiliated transactions do not necessarily cause conflict of interests, for the sake of avoiding disputes, it is recommended that mandate subsidiaries should give explanation to investors in accordance with the *Pilot Measures* before investing in private funds offered by WFOE PFMs, seek the consent of the investors, and report to CSRC accordingly.

(4) ABS Products Offered by Mandate Subsidiaries

Pursuant to the *Provisions for Administration of Asset Securitization Business of Securities Companies and Subsidiaries of Fund Management Companies*, mandate subsidiaries may offer asset-backed specialized schemes (“**ABS Products**”). The underlying assets of ABS Products can be property rights such as enterprise receivables, lease claims, credit assets and beneficial interests in trusts, immovable properties or beneficial interests of immovable properties such as basic facilities and commercial properties, and other properties or property rights as recognized by CSRC. With regard to the aforementioned, ABS Products shall not invest in private securities investment funds.

5. Securities Companies and Their Subsidiaries

(1) Proprietary Capital of Securities Companies

Pursuant to the *Provisions on the Investment Scope for Proprietary Trading of Securities Companies and Related Matters* as amended in 2012 by CSRC (“**Provisions on Proprietary Trading**”), securities companies qualified for proprietary account transaction can invest in “securities offered with the approval of or record-filing with the financial regulatory authorities of the state or an institution authorized by them, which are traded over the counters of domestic financial institutions” found on the *List of Investment Varieties for Proprietary Trading of Securities Companies*. As private securities investment funds have to file with AMAC after their issuance, and can be traded over counters of financial institutions with the fund distribution license, in practice, it is generally considered that securities companies qualified for proprietary trading can invest in private securities investment funds.

Pursuant to the *Provisions on Proprietary Trading*, securities companies without the qualification for proprietary account transactions may only invest with its own capital in treasury bonds offered lawfully to the public, investment grade corporate bonds, money market funds, central bank bills and other such securities recognized by CSRC as low risk and of high liquidity. To our understanding, under the Chinese laws and provisions, money market funds especially refer to money market funds managed by retail fund managers. Apart from that, according to the *Reply to Questions Regarding Investment Varieties Invested by Securities Companies Without Proprietary Trading Qualification Using Their Own Capital* issued by CSRC back in 2011 to

Capital-Raising Channels for WFOE PFMs

Minmetals Securities Co., bond funds currently do not fall under “securities recognized by CSRC as low risk and of high liquidity”. Therefore, securities companies without the qualification for proprietary account transactions are currently not allowed to invest in private securities investment funds.

In addition, it should be noted that securities asset management subsidiaries established by securities companies belong to securities companies under the *PRC Securities Law*, thus, the aforementioned regulations should also govern the investment scope of their proprietary capital.

(2) Investment of Securities Companies Using Proprietary Capital Conducted through Alternative Investment Subsidiaries

Pursuant to regulations such as the *Provisions on Proprietary Trading*, securities companies using proprietary capital to make investments in financial products and other products, which are not on the *List of Investment Varieties for Proprietary Trading of Securities Companies*, should invest through their alternative investment subsidiaries. In other words, if securities companies invest with proprietary capital in financial products found on the *List of Investment Varieties for Proprietary Trading of Securities Companies*, such investments may be carried out through their own proprietary trading department. Yet, if the securities companies invest in financial products, equity and other such varieties, which are not on the *List of Investment Varieties for Proprietary Trading of Securities Companies*, such investments shall be carried out through establishing alternative investment subsidiaries.

With reference to the *Reply to Questions Regarding Provisions on Investment Scope for Proprietary Trading* issued by CSRC to First Capital Securities Co., apart from financial varieties not on the *List of Investment Varieties for Proprietary Trading of Securities Companies*, alternative investment subsidiaries can also carry out other types of alternative investments or invest in securities varieties on the *List of Investment Varieties for Proprietary Trading of Securities Companies* pursuant to the needs and in accordance with the laws; nevertheless, for the sake of maintaining a clear boundary between the business scopes of the parent company and the subsidiary and avoiding competition between the two in the same sector, it is not recommended by CSRC that the parent company and the subsidiary should conduct the same type of business. Further, according to the *Rules on Administration of Alternative Investment Subsidiaries of Securities Companies* issued by the Securities Association of China (“SAC”), securities companies should draw clear boundaries between the business scopes of themselves, their alternative investment subsidiaries and other subsidiaries in order to avoid conflict of interests and transfer of benefits. Considering the aforementioned requirement on avoiding competition within the same sector and the purpose of establishing alternative investment subsidiaries, in general, alternative investment subsidiaries cannot invest in private securities investment funds.

(3) Asset Management Products Offered by Securities Companies or Their Asset Management Subsidiaries

Securities companies and securities asset management subsidiaries with securities asset management business qualification granted by CSRC may offer three types of asset management

Capital-Raising Channels for WFOE PFMs

products: collective asset management schemes (targeting more than two investors), targeted client asset management schemes (targeting one single investor) and ABS Products.

Pursuant to the *Detailed Rules for Implementation of the Collective Asset Management Business of Securities Companies*, the investment scope of a collective asset management scheme offered by a securities company or a securities asset management subsidiary shall cover but without limitation to securities investment funds, wealth management products by commercial banks, collective trust schemes and other such financial products approved by or record-filed for issuance with the financial regulatory authorities. Therefore, collective asset management schemes offered by securities companies or their asset management subsidiaries may invest in private securities investment funds.

In accordance with the *Detailed Rules for Implementation of the Targeted Client Asset Management Business of Securities Companies*, the investment scope of a targeted client asset management scheme offered by a securities company or a securities asset management subsidiary shall be agreed upon between the securities company and the investor under a contract(s), and there are no special restrictions regarding the scope. For this reason, targeted client asset management schemes can invest in private funds.

As with mandate subsidiaries of retail fund management companies, ABS Products offered by securities companies or their securities asset management subsidiaries cannot invest in private securities investment funds as well.

(4) Private Securities Investment Funds

After SAC issued the *Rules on Administration of Private Investment Fund Subsidiaries of Securities Companies* (“**Rules for Private Fund Subsidiaries**”) on 30 December 2016, the direct investment subsidiaries of securities companies which conducted business of private equity investments became private fund management subsidiaries (“**PFM subsidiary**”) which may carry out private equity fund investments and/or private securities fund investments. However, in view of the requirements set out by the *Rules for Private Fund Subsidiaries*, that securities companies should draw clear boundaries between the business scopes of themselves, their PFM subsidiaries and other subsidiaries in order to avoid conflict of interests and competition within the same sector, and the fact that a majority of securities companies or their asset management subsidiaries are licensed for securities asset management and may offer or manage asset management products which invest in securities, in practice, PFM subsidiaries usually focus on private equity fund management business.

In conclusion, currently, it is unusual that private fund subsidiaries will invest in private securities investment funds, but it really depends on the internal policies of different securities companies on avoiding competition within the same sector.

6. Insurance Companies and Insurance Asset Management Companies

Capital-Raising Channels for WFOE PFMs

(1) Insurance Capital

Pursuant to regulations such as the *Interim Measures on Administration of Utilizing Insurance Capital* (“*Measures on Utilizing Insurance Capital*”), insurance capital means capital funds, provident funds, undistributed profits, various insurance reserves and other types of capital of insurance group (holding) companies and insurance companies calculated in RMB or any foreign currency.

According to the *Measures on Utilizing Insurance Capital*, the investment scope of insurance capital includes securities investment funds; where insurance capital is invested in securities investment funds, the fund manager should establish an effective firewall mechanism between the securities investment funds business and the mandate business. Further, the *Rules for the Preparation of Solvency Reports of Insurance Companies – Questions and Answers No. 22: Securities Investment Funds and Asset Management Products* only focuses on retail funds in its description of securities investment funds which insurance capital can invest in. Therefore, the investment scope of insurance capital currently does not cover private securities investment funds.

(2) Insurance Asset Management Products

For insurance asset management products offered by insurance asset management companies and some pension insurance companies, pursuant to the *Notice by China Insurance Regulatory Commission Regarding the Strengthening of Supervision and Regulation on Portfolio Insurance Asset Management Products*, if the products are collective products (targeting more than two investors) or if capital of the products involve insurance capital, the specific investment varieties that the products may invest in shall be decided by the relevant provisions on the utilization of insurance capital. According to the previous analysis, the investment scope of insurance capital does not include private securities investment funds, which means, if the insurance asset management products are collective products (with more than two investors) or the investors of the products include insurance companies, such insurance asset management products should not invest in private securities investment funds.

If it is a targeted client asset management product (targeting one single investor) and its sole investor is not an insurance company, the investment scope shall be agreed upon between the insurance asset management company and the investor under a contract(s), and there are no special restrictions regarding the scope. For this reason, such targeted client asset management products can invest in private funds.

7. Trust Companies

(1) Proprietary Capital of Trust Companies

According to the *Administrative Measures for Trust Companies*, the scope of proprietary trading business of a trust company is limited to equity investments in financial companies, investments in financial products and investments in fixed assets for self-use. Therefore, as a kind of financial product, private securities investment funds fall within the investment scope of proprietary capital of trust companies.

Capital-Raising Channels for WFOE PFMs

(2) Trust Schemes Offered by Trust Companies

The investment scope of trust schemes is very wide. According to the *Administrative Measures for Trust Companies*, in relation to the use and disposal of trust properties, arrangements including investment, sale, due from other trust companies, purchase and resale, leasing and loan may be adopted pursuant to the trust documents; thus, private funds fall within the investment scope of trust schemes (including collective investment trusts and trusts with signal investor).

8. Futures Companies and Their Asset Management Subsidiaries

(1) Proprietary Capital of Futures Companies

According to the *Administrative Measures for Futures Companies*, futures companies may utilize proprietary capital to invest in stocks, investment funds, bonds and other such financial assets pursuant to the relevant provisions. Hence, the proprietary capital of futures companies can be invested in such financial assets as private securities investment funds.

(2) Asset Management Products Offered by Futures Companies or Their Asset Management Subsidiaries

Pursuant to the *Administrative Measures for Futures Companies*, the *Administrative Rules for Asset Management Business of Futures Companies (Trial)* and other laws and regulations, futures companies and their subsidiaries specialized in conducting asset management business shall not concurrently operate asset management business, the investment scope of the asset management products offered by futures companies and their asset management subsidiaries (including “one-to-one” and “one-to-many” products) include securities investment funds, but there is no further clarification on whether securities investment funds include private securities investment funds. According to our understanding, there are already many existing futures asset management schemes in the market that do invest in private securities investment funds.

9. Pension Funds Such as Social Security Funds and Enterprise Annuities, and Social Welfare Funds Such as Charity Funds

Despite the fact that, pursuant to the *Interim Measures for Supervision and Administration of Private Securities Funds*, pension funds such as social security funds and enterprise annuities, and social welfare funds such as charity funds are certainly qualified investors of private funds, it does not necessarily mean that such funds must be capable of investing in private funds.

(1) National Social Security Fund

According to the *Interim Administrative Measures for Investment of National Social Security Fund* issued in 2001, the investment scope of national social security fund covers securities investment funds listed and traded in Stock Exchanges. Currently, only retail funds can apply to be listed and traded on the Stock Exchanges. Therefore, securities investment funds listed and traded on the Stock Exchanges cannot include private funds. On the other hand, the *Regulation on the*

Capital-Raising Channels for WFOE PFMs

National Social Security Fund issued by the State Council in 2016 only requires in principle that investments and operation of the national social security fund should be conducted regarding the principles of safety, profitability and long-term development, and that assets should be allocated rationally among assets approved by the State Council such as fixed-income assets, equity assets and unlisted equity assets and within the approved proportion and scale of such assets. Notwithstanding that, according to our understanding, the National Council for Social Security Fund is of the view that the national social security fund currently cannot invest in private securities investment funds.

(2) Basic Pension Funds

According to the *Administrative Measures for Investment of Basic Pension Funds* issued in 2015, the investment scope of basic pension funds covers securities investment funds listed and traded on the Stock Exchanges. However, currently, only retail funds can apply to be listed and traded on the Stock Exchanges. Unless a more flexible understanding is adopted, securities investment funds listed and traded on the Stock Exchanges do not include private funds.

(3) Enterprise Annuities

Pursuant to the *Administrative Measures for Enterprise Annuity Funds* released in 2011, the investment scope of enterprise annuities covers securities investment funds. However, having regard to the fact that private securities investment funds were only included under the regulation of the *PRC Funds Law* since its 2013 amendment came into force, and considering the inquiry results we obtained from the Ministry of Human Resources and Social Security, we are of the view that, currently, enterprise annuities cannot invest in private securities investment funds.

(4) Charity Funds and Other Social Welfare Funds

The *Regulation on the Administration of Foundations, Provisions on Regulating Behaviors of Foundations (Trial)* and other such provisions all merely require in principle that foundations shall realize value maintenance and increase in value in accordance with the principles of legality, safety and effectiveness. Therefore, private funds fall within the investment scope of foundations. In practice, out of concerns regarding the safety of properties, investments of foundations are usually relatively prudent, but some foundations do opt for high-risk investments.

10. Other Private Fund Managers Registered with AMAC

(1) Proprietary Capital of Private Fund Managers

No provision regarding the utilization of proprietary capital by private fund managers is found in the relevant laws and regulations. For this reason, private fund managers may in principle use their own capital to invest in private funds offered by other private fund managers.

(2) Private Funds Issued by Private Fund Managers

According to the relevant registration rules by AMAC, private securities investment funds offered

Capital-Raising Channels for WFOE PFMs

by private fund managers registered as “private securities investment fund managers” whose registered business type(s) includes “private securities investment FOF” can invest in the private securities investment funds offered by other private fund managers, including private securities investment funds offered by WFOE PFMs.

Capital-Raising Channels for WFOE PFMs

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 Llinks contact.

Author	
Sandra Lu Tel: (86 21) 3135 8776 sandra.lu@llinkslaw.com	
Shanghai	
Christophe Han Tel: (86 21) 3135 8778 christophe.han@llinkslaw.com	Charles Qin Tel: (86 21) 3135 8668 charles.qin@llinkslaw.com
David Yu Tel: (86 21) 3135 8686 david.yu@llinkslaw.com	Sandra Lu Tel: (86 21) 3135 8776 sandra.lu@llinkslaw.com
Nicholas Lou Tel: (86 21) 3135 8783 nicholas.lou@llinkslaw.com	Tommy Xia Tel: (86 21) 3135 8769 tomy.xia@llinkslaw.com
Raymond Li Tel: (86 21) 3135 8663 raymond.li@llinkslaw.com	Elva Yu Tel: (86 21) 3135 8793 elva.yu@llinkslaw.com
Desmond An Tel: (86 21) 3135 8725 desmond.an@llinkslaw.com	
Beijing	
Leo Wang Tel: (86 10) 8519 2266 leo.wang@llinkslaw.com	Monica Gao Tel: (86 10) 8519 1625 monica.gao@llinkslaw.com
Hong Kong (in Association with Vivien Teu & Co LLP)	
David Yu Tel: (86 21) 3135 8686 david.yu@llinkslaw.com	Sandra Lu Tel: (86 21) 3135 8776 sandra.lu@llinkslaw.com

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¹ According to the *Notice by the China Banking Regulatory Commission on the Formulation, Amendment, Abolishment, Invalidation of Some Regulations and Regulatory Documents* ([2007] No. 56, issued by CBRC), as the *Law of the People's Republic of China on Supervision and Administration of the Banking Industry* provides that CBRC shall perform duties of regulating the banking industry and exercise rights to regulate, the supervisory body of the banking industry has already changed. Pursuant to the principle of unifying the regulatory body, the rule-making body and the executing body of

Capital-Raising Channels for WFOE PFMs

regulations, CBRC discussed and decided in the 54th and 55th chaired meeting that, in the course of performing its regulatory duties and exercising its rights to regulate, CBRC will no longer apply the 101 supervisory and administrative rules and regulatory documents issued by the People's Bank of China, including the *Notice of the People's Bank of China on Prohibiting the Illegal Flow of Bank Capital into the Stock Market*.