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# The Impact of AMAC Registration and Filing Measures on Private Funds

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On 24 February 2023, Asset Management Association of China ("**AMAC**") officially released the *Measures for Registration and Filing of Private Investment Funds* (私募投资基金登记备案办法, the "**Registration and Filing Measures**") and the implementation guidelines, which will take effect on 1 May 2023. Compared with the consultation paper issued on 30 December 2022 (the "**Consultation Paper**"), AMAC considered and adopted most of feedbacks from the industry and incorporated such suggestions in this final version of *Registration and Filing Measures*. This new rule consolidates the requirements of private fund manager registration and private fund filing that were scattered throughout the existing rules and introduces new changes. We hereby summarize below the key changes that may apply to the private securities fund managers ("**PFM**") and the private securities funds.

## I. Adding Requisite Elements in Fund Documents

Articles 28 and 29 of the *Registration and Filing Measures* emphasize and reiterate the must-have elements in the prospectus (marketing materials), risk disclosure statements and fund contracts in the existing rules. For the must-have elements in risk disclosure statements and fund contracts, the following changes are noteworthy.

### 1. Fund Contract

Article 29 of the *Registration and Filing Measures* refines the existing requirements that a fund contract shall stipulate the mechanism for handling related-party transactions and the exit plan in case of the PFMs' failure to perform duties.

Specifically, Article 38 of the *Registration and Filing Measures* stipulates that the clause of related-party transactions in a fund contract shall contain the mechanism for identification of related-party transactions, transaction decision-making, and determination of consideration for related-party transactions, and information disclosure and recusal policy.

In addition, a fund contract shall contain the must-have elements relating to the arrangement when a private fund is unable to exit normally due to the situations such as the PFM's loss of contact, deregistration from AMAC or encountering material risks, and therefore the PFMs are unable to perform duties or are negligent in performing duties. Article 58 of the *Registration and Filing Measures* introduces the market-oriented exit plan for handling such cases, that is, the PFM, the custodian, the unitholders' meeting or a certain percentage of investors may, by establishing a special institution or engaging an accounting firm, law firm or other intermediaries in accordance with the fund contract, properly dispose of fund assets, protect the legitimate rights and interests of investors and exercise the relevant authorities. If such mechanism is adopted, relevant information shall be submitted to AMAC in a timely manner.

### 2. Risk Disclosure Statement

In addition to the risks requiring special disclosures in the existing rules, Article 28 of the *Registration and Filing Measures* further adds the following circumstances that require special risk disclosure to investors:

(1) the fund assets are invested overseas;
(2) the private fund is a structured fund or has other complex structure, or involves unprecedented major events (重大无先例事项);
(3) the controlling shareholder, actual controller, or general partner of the PFM is changed, but the formalities for such change have not been completed with AMAC; or
(4) other major investment risks or risks of conflict of interests.

With respect to Item (1) above, the *Key Points for Filing of Private Securities Investment Funds* (私募证券投资基金备案关注要点) issued by AMAC in June 2022 only requires that a risk disclosure shall be made in the part of special risk disclosure if "the fund is mainly invested overseas", while the *Registration and Filing Measures* provide that special risk disclosure shall be made for any overseas investment, regardless of the proportion of such overseas investment.

Compared with the *Consultation Paper*, Article 28 of the *Registration and Filing Measures* further refines the risk disclosure requirements for private funds investing in a single underlying asset and not making portfolio investments, i.e. the PFM shall disclose in writing the basic information of the underlying asset, the investment structure, the potential loss due to not making portfolio investments, the dispute resolution mechanism, etc., and the investor shall sign to confirm.

## II. Specifying the Initial Offering AUM

In comparison with the *Consultation Paper*, Article 33 of the *Registration and Filing Measures* adjusts the initial offering AUM of the private funds as follows:

| **Type of the Fund** | **Consultation Paper** | **Registration and Filing Measures** |
|---|---|---|
| Private securities investment fund | RMB 10 million | RMB 10 million |
| PE fund | RMB 20 million<br>** For VC funds, the initial offering AUM shall be no less than RMB 10 million* | RMB 10 million<br>** For VC funds, the initial capital contribution shall be no less than RMB 5 million when the fund is filed, however, the fund contract shall provide that the above requirement of initial* |

| | | |
|---|---|---|
| | | *offering AUM shall be met within six months after the filing.* |
| The funds investing in a single underlying asset | N/A | RMB 20 million |

In conclusion, after the official implementation of the *Registration and Filing Measures*, in order to successfully file with AMAC, the initial offering AUM of private securities investment funds shall be no less than RMB 10 million. The *Registration and Filing Measures* further provide that the initial offering AUM of a fund investing in a single underlying asset shall be no less than RMB 20 million. For example, if a feeder fund invests in a single master fund, the feeder fund shall meet such requirement. For QDLP funds with a feeder-master structure (investing a single offshore master fund), theoretically, unless otherwise provided by the regulator or AMAC, the initial offering AUM of such QDLP funds shall be no less than RMB 20 million.

## III. Ongoing Reporting Obligations of the Private Fund

### 1. Change in Filing Items

In accordance with Article 55 of the *Registration and Filing Measures*, if there is a change in the filing items of the private funds listed in this Article, the PFM shall file such change with AMAC within the prescribed filing time. Compared with the *Consultation Paper*, the *Registration and Filing Measures* extend the filing time from five (5) business days to ten (10) business days.

### 2. Reporting of Major Events

Article 62 of the *Registration and Filing Measures* provides the major events of private funds which shall be reported to AMAC. We note that the events to be reported under this Article partially overlap with the major events to be reported under Article (26) of the *Instructions for Private Investment Fund Filing (2019 Edition)* (私募投资基金备案须知(2019 年版), the "**Filing Instructions**"), but the reporting timelines required in these two provisions on the same item conflict with each other. The reporting timelines provided in the *Filing Instructions* are five (5) business days while the reporting timelines provided in the *Registration and Filing Measures* are ten (10) business days. We hold the view that the ten-business-day requirement shall prevail under the principle of "new laws prevail over old laws".

Furthermore, Article 62 of the *Registration and Filing Measures* clarifies the trigger condition for reporting large redemption event at the rule level. A PFM shall report a large redemption event, as a major event, to AMAC only if the private fund is unable to meet such large redemption requirements.

### 3. Reporting of Fund Liquidation

According to the existing rules, PFMs shall report the liquidation of private funds to AMAC within five (5) business days. The Article 57 of the *Registration and Filing Measures* further refines the reporting procedure and extends the reporting timeline for the liquidation of private funds. This Article provides that "the information such as the liquidation report shall be reported to AMAC within ten (10) business days after the completion of the liquidation of the private fund. If the liquidation is unable to complete within a certain period, information such as the commitment letter of liquidation and the announcement of liquidation shall be also reported to AMAC at the beginning of the liquidation." For example, for private securities funds with highly liquid underlying assets, liquidation can be completed in a short period of time and the PFM needs only file the liquidation event of such funds with AMAC within ten (10) business days after liquidation is completed. For the private funds that hold illiquid assets such as suspended stocks and may involve secondary liquidation, the PFM shall report the liquidation event of such funds to AMAC within ten (10) business days both from the beginning of liquidation and the completion of liquidation.

### 4. Annual Financial Report of Private Funds

According to the existing rules, only the annual financial report of PE funds shall be audited by an accounting firm. The *Registration and Filing Measures* further require that a fund shall have its annual financial report audited by an accounting firm that is registered with the China Securities Regulatory Commission ("**CSRC**") if the fund's AUM and the number of investors exceed a certain amount. In August 2022, AMAC sent a non-public notice to certain PFMs with large AUM and required them to submit a monthly report that includes details of their private fund operations. Both cases indicate that PFMs with higher AUM and a larger number of investors may be subject to higher standards of information disclosure and regulatory reporting in the future.

## IV. Clarification on the Standards and Measures of Prudent Treatment on Fund Filing

Article 44 of the *Registration and Filing Measures* sets forth for the first time the standards for prudent treatment on fund filing and relevant measures that may be adopted by AMAC during its review process. Where PFMs may have greater risk, private funds involved in unprecedented major events (重大无先例事项), or adopted complex structures, or invested in special types of investment instrument and other circumstances, AMAC may, as the case may be, take the following measures against the PFMs when filing the private funds: increasing requirements on investors, raising the requirement on fund AUM, requiring the fund to be under custody, requiring the custodian to issue due diligence reports or assist with inquiries, requiring to strengthen the information disclosure, requiring to make special risk disclosures, quota management, restricting related-party transactions, requiring PFMs to issue internal compliance opinions, submitting legal opinion or financial reports, etc. In addition, AMAC may also take the aforesaid prudent treatment measures against the new fund filing submitted by a PFM whose capital, personnel staffing, investment management capability, risk control level, internal control policies, business premises and facilities are not compatible with the business scope or the AUM of the PFM.

Meanwhile, the *Registration and Filing Measures* delete the specific situations listed in the *Consultation Paper* which were subject to prudent treatment such as the private funds whose investors are mainly natural persons and invest in a single underlying asset, the fund assets are mainly invested overseas, or the AUM of the PFM at the end of each quarter over the past two years is less than RMB 5 million.

## V. Uniformly Regulating the Rejection and Suspension of Fund Filing

### 1. Rejection of Fund Filing

In terms of circumstances under which the fund filing will be rejected, the *Registration and Filing Measures* remain largely the same as the *Consultation Pape*r. Article 41 of the *Registration and Filing Measures* uniformly provides the circumstances under which the fund filing will be rejected, by consolidating the situations that the fund's investment violates the prohibitive provisions and the activities inconsistent with the essence of "funds" as provided in the *Certain Provisions on Strengthening the Regulation of Private Investment Funds* (关于加强私募投资基金监管的若干规定) and the *Filing Instructions*. Item (9) of Paragraph 1 of Article 41 establishes a catch-all provision, recognizing the circumstances as provided in other prevailing rules under which the fund filing will be rejected, for example, it is provided in the *Administrative Measures on Fundraising Activities of Private Investment Funds* (私募投资基金募集行为管理办法) that if a PFM engages an entity without the fund distribution license to distribute the fund, or the fundraising institution(s) fails to set or perform the cooling-off period or revisit for confirmation, etc., AMAC may, as the case may be, reject the filing of the private fund.

### 2. Suspension of Fund Filing

Echo to the *Filing Instructions* and the prevailing rules, the *Registration and Filing Measures* provide that the fund filing will be suspended if there are major problems with the credit standing of the PFMs and their controlling shareholders, actual controllers, general partners or major investors (collectively, the "**Relevant Party**"), or if there are major risks of the operation of the PFMs. For example:(1) the Relevant Party is investigated due to suspected violation of laws or regulations; or is involved in significant litigation, arbitration, or other legal risks which may affect its normal operation, significant internal disputes, or significant negative public opinions, as provided in Article 24 of the *Registration and Filing Measures*; (2) the PFM is listed as a serious defaulters or being included in the list of defaulters subject to enforcement; (3) the PFM and its controlling shareholders, actual controllers, general partners and related private fund managers have significant operational risks or other risks that may endanger the market order or harm the interests of investors; (4) the PFM fails to make reasonable explanations to AMAC and investors after being complained for multiple times for being suspected of violating laws and regulations or infringing upon the legitimate rights and interests of investors; (5) the PFM takes methods such as refusing or obstructing regulators from exercising inspection and investigation powers, refusing to cooperate with administrative supervision or self-discipline management, and the circumstances are serious; (6) CSRC and its local branches require AMAC to suspend filing.

The *Registration and Filing Measures* further provide that the fund filing may also be suspended if the PFMs are under the following circumstances: (1) failing to file information with AMAC as required, or the filed information contains false records, misleading statements or material omissions; (2) failing to file the change with AMAC in a timely manner in the event of the filing items of private funds change, or there are serious circumstances such as failing to make corrections in time; or (3) failing to perform or fully perform relevant commitments at the time of registration and filing. Thus, if the PFMs fail to perform the ongoing reporting obligations, the fund filing may be suspended, despite that there is no major compliance risk or major operation problems.

## VI. Other Noteworthy Items

### 1. The Ultimate Beneficiary Owners of Investors Should Be Reported to AMAC

Article 39 of the *Registration and Filing Measures* set forth for the first time that PFMs should report the ultimate beneficiary owners ("**UBO**") of investors to AMAC when filing funds. It is still uncertain whether the standards for UBO identification and reporting will be subject to the anti-money laundering rules formulated by the People's Bank of China. As the AMAC system for filing funds (i.e. AMBERS) will be upgraded to align with the *Registration and Filing Measures,* the reminders shown in the AMBERS then might give us a clearer guideline on such standards in the future. In addition, it remains to be seen how PFMs and distributors will cooperate in reporting UBO information under the distribution model.

### 2. Introduction of Unprecedented Major Events (重大无先例事项)

The *Registration and Filing Measures* for the first time introduce the concept of unprecedented major events (重大无先例事项). For private funds conducting innovative business without precedent, such as investing in innovative investment instruments or adopting innovative investment structure, AMAC may, on a case-by-case basis, adopt prudent treatment measures on such private funds and require such funds to make enhanced risk disclosure to investors.

### 3. The Application of the Registration and Filing Measures

According to the *Announcement on the Issuance of the Registration and Filing Measures* (关于发布<私募投资基金登记备案办法>的公告), *the Registration and Filing Measures* will take effect on 1 May 2023. For PFM registration, private funds filing, and information change filing submitted prior to 1 May 2023, the existing rules will apply; For PFM registration, private funds filing, and information change filing submitted after 1 May 2023, the *Registration and Filing Measures* will apply; For PFM registration, private funds filing, and information change filing which have been submitted prior to 1 May 2023 but remain unfinished after 1 May 2023, the *Registration and Filing Measures* will apply.

In short, there is a grandfather policy when implementing the *Registration and Filing Measures*. The existing private funds that have been filed with AMAC prior to 1 May 2023 will not be required to comply with the new rules. For private funds that have not completed filing with AMAC after 1 May 2023, these funds should comply with the *Registration and Filing Measures*. Kindly note that if any changes are made to existing private funds, the *Registration and Filing Measures* will apply to such changes.

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