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The Impact of AMAC Registration and Filing Measures on PFM

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To further optimize the registration and filing of private fund managers, Asset Management Association of China ("**AMAC**") released the *Measures for Registration and Filing of Private Investment Funds* (私募投资基金登记备案办法, "**Registration and Filing Measures**") and the implementation guidelines on 24 February 2023.

The Registration and Filing Measures and the implementation guidelines, in general, echo the *Measures for Registration and Filing of Private Investment Funds (Consultation Paper)* (私募投资基金登记备案办法(征求意见稿)) and the implementation guidelines ("**Consultation Paper**") released by AMAC on 30 December 2022 with refinements in several aspects after fully taking into account the industry voice.

In the below text, we highlight the key aspects of the Registration and Filing Measures and the implementation guidelines from the perspective of registration of private securities fund managers ("**PFM**"), and also summarize the main changes and enhancements brought by the Registration and Filing Measures and the implementation guidelines as compared to the Consultation Paper.

I. Transition Period Arrangement

In order to ensure the smooth application of the Registration and Filing Measures and the implementation guidelines to institutions in the application process, AMAC has set up the transition period, that is, the Registration and Filing Measures and the implementation guidelines will come into effect from 1 May 2023. If a PFM registration application is submitted before that date, AMAC will process the application in accordance with the existing rules. However, please note that if the PFM registration submitted before 1 May 2023 is not completed by that date, AMAC will process the application in accordance with the Registration and Filing Measures and the implementation guidelines.

In addition, the requirement of "compliance on a continuous basis" is emphasized multiple times in the Registration and Filing Measures. For instance, a PFM shall continue to comply with conditions for PFM registration stipulated in Article 8 of the Registration and Filing Measures. Therefore, after the release of the Consultation Paper, registered PFMs are commonly concerned about how to apply the requirements of the new rules. AMAC has made clarification in the *Announcement on the Release of the Measures for Registration and Filing of Private Investment Funds* (关于发布<私募投资基金登记备案办法>的公告), that is, if registered PFMs apply for change to senior management personnel ("**SMP**") or business premise, capital increase or decrease, and other changes in the registration and filing information (with the exception of change in actual control) after the implementation of the Registration and Filing Measures, the relevant changed matters shall comply with the provisions of the Registration and Filing Measures and the implementation guidelines; if change in actual control occurs, the changed PFM shall comply with the registration requirements in the Registration and Filing Measures and the implementation guidelines in all aspects.

II. Clarification on the Application of Q&A (10) by Foreign-owned PFMs

On 30 June 2016, the *Q&A for Matters Relating to Registration and Filing of Private Funds (10)* (私募基金登记备案相关问题解答(十), "**Q&A (10)**") was released, allowing eligible wholly foreign-owned enterprises and joint ventures to apply for registration as PFMs, and providing eligibility requirements for their offshore shareholders and offshore actual controllers. At present, there is no publicly-released statutory provision on the standard for joint ventures to apply the Q&A (10). In practice, the standard is 25%. The 25% standard is formally included in the Registration and Filing Measures, which expressly stipulates that a PFM engaging in domestic private securities fund business with the foreign shareholding reaching 25% or above must meet the registration requirements for PFMs under the Registration and Filing Measures and continuously comply with the following requirements (i.e. the requirements in the Q&A (10)):

1. The PFM is a company established in Mainland China;

2. The PFM's offshore shareholder(s) should be financial institution duly approved or licensed by the financial regulator in the country or region where the shareholder(s) domiciles, and the securities regulatory authority of the country or region where the shareholder(s) domiciles shall have entered into the Memorandum of Understanding for Securities Regulatory Cooperation with China Securities Regulatory Commission ("**CSRC**") or other institutions recognized by CSRC;

3. Neither the PFM nor its offshore shareholder(s) has been imposed with any material punishment by any regulatory authority or judicial authority in the preceding 3 years;

4. Any use of the capital funds and the RMB funds settled from the capital funds of the PFM shall be in accordance with the relevant requirements of the State Administration of Foreign Exchange;

5. The PFM shall make investment decisions independently for the securities and futures investment within Mainland China, and shall not place trading orders through foreign institution(s) or foreign-based systems, except as otherwise stipulated by CSRC; and

6. Other requirements stipulated by laws, administrative regulations, CSRC and AMAC.

As the Q&A (10) and the Registration and Filing Measures both provide that the controlling shareholder of a foreign-owned PFM should be a financial institution regulated by the offshore financial regulator which has entered into the Memorandum of Understanding for Securities Regulatory Cooperation with CSRC, the controlling shareholder and the actual controller of a foreign-owned PFM are usually the same entity in accordance with the penetration rule of the actual controller.

In addition, please note that if the foreign shareholding in a PFM reaches 25% or above due to change of shareholder, change of capital contribution proportion or change of the nationality of any natural person shareholder, it shall also meet relevant registration requirements applicable to foreign-owned PFMs and undergo the procedures for change of registration.

III. Basic Requirements for Business Operation

The Registration and Filing Measures and the *Guidelines for Registration of Private Fund Managers No.1 – Basic Requirements for Business Operation* (私募基金管理人登记指引第 1 号—基本经营要求, "**Guidelines No.1**"), in general, reflect AMAC's current requirements on the PFM's company name, business scope, paid-in capital, financial conditions, business premises, staffing, internal control policies, etc. In this regard, the Registration and Filing Measures and the Guideline No. 1 basically retain the provisions of the Consultation Paper with refinement and clarification on certain provisions. Below we list out the enhancements on certain aspects in brief:

	Enhanced Criteria	Detailed Requirements
1	Time Interval between Registration with Administration for Market Regulation and Registration with AMAC	The PFM registration application shall be submitted within 12 months since registration with the companies registry
2	Minimum Paid-in Capital	The capital injection to a PFM must be made in cash, and the paid-in capital shall not be less than RMB10 million or the equivalent in foreign currency
3	Segregation and Stability of Business Premises	• Sharing space and other places with weak stability cannot be used as business premises • It is not allowable for a PFM to use the same business premises with its shareholder(s), actual controller and related parties • For leased business premises, the remaining lease term shall be no less than 12 months from the date when the application is lodged
4	Internal Control Policies	On the basis of the requisite policies for PFM registration at present, additional polices are required, including, without limitation, the business segregation policy, the policy on ensuring safety of capital and the emergency response plan

(Table 1)

IV. Requirements for Shareholder and Actual Controller

The Registration and Filing Measures and the *Guidelines for Registration of Private Fund Managers No.2 – Shareholder, Partner, Actual Controller* (私募基金管理人登记指引第 2 号—股东、合伙人、实际控制人, "**Guidelines No.2**") reiterate the current requirements on authentic capital contribution, clear shareholding structure, not engaging in business having conflict with private fund business by relevant entities, and enhance the requirements for shareholder and actual controller from several perspectives. At the same time, AMAC has proactively responded to market participants' feedbacks, and optimized the criteria for identification of the actual controller, stability of actual control relationship and relevant experience requirements for natural persons being actual controller on the basis of the Consultation Paper.

1. Professional Experience and Competence

Consistent with the Consultation Paper, the Registration and Filing Measures emphasizes that the controlling shareholder and the actual controller of a PFM shall have relevant experience in operating, managing related industries or engaging in asset management, investment business. If the actual controller is a natural person, Article 9 of the Guideline No. 2 sets out in detail the specific circumstances for determination of "relevant experience", and the relevant experience shall not be less than 5 years.

	Employer	Position (having any one type of the following will suffice)
1	Commercial banks, securities companies, fund management companies, futures companies, trust companies, insurance companies and relevant asset management subsidiaries and other financial institutions ("**Financial Institution**")	• Engaging in securities asset management, securities and futures investment with proprietary funds and other relevant business • Serving as department heads or above • Having management experience at equivalent positions
2	Enterprises controlled by governments at or above the prefectural and municipal level and their authorized institutions, or listed companies	• Engaging in works in relation to securities and futures investment management • Serving as SMP • Having management experience at equivalent positions
3	PFMs	• Engaging in securities and futures investment • Serving as SMP Such PFMs for which he/she worked shall operate normally, legally and stably , and have no record of major violation of laws and regulations during his/her tenure
4	Asset managers regulated by offshore financial regulators	Engaging in securities asset management and other relevant business in such asset manager which shall have good international reputation and business performance
5	Governmental authorities or public institutions	Engaging in economic management and other relevant works, and having corresponding management experience

6	Law firms or accounting firms filed with CSRC	Engaging in legal or auditing works relating to securities, funds and futures, and serving as partners or above for no less than 5 years
7	Other relevant work experience recognized by the regulators	

(Table 2)

2. Rules on How to Identify Actual Controller

According to the Registration and Filing Measures and the Guideline No. 2, the actual controller refers to the natural person, legal person or unincorporated organization that can actually control the operation of a PFM through investment relations, agreements or other arrangements. The actual controller shall be traced to a natural person, a state-owned enterprise, a listed company, a financial institution approved by an onshore financial regulator, a public institution such as a university or research institute, a social organization with the status of a legal person, an institution regulated by an offshore financial regulator, etc. The afore-mentioned definition provides "financial institution approved by an onshore financial regulator" for the first time. For a PFM controlled by an onshore financial institution, it deserves attention whether such onshore financial institution could be disclosed as the actual controller without tracing up to the ultimate natural person, listed company or state-owned enterprise.

In addition, for different types of PFMs, the Registration and Filing Measures and the Guideline No. 2 respectively provide specific criteria for identifying the actual controller.

General Principles	Company-type PFMs	The actual controller shall be identified in the following rules: (1) holding more than 50% equity interests; (2) being able to actually exercise more than half of shareholders' voting rights through an acting-in-concert agreement; (3) being able to decide the election of more than half of the board members or the election of the executive director by exercising the voting rights
	Partnership-type PFMs	Executive partner, or the entity or natural person ultimately controlling the partnership enterprise
Special Rules	PFMs controlled by the government or its authorized institutions	Enterprise entities directly controlled by the Ministry of Finance, local Finance Bureau or State-owned Assets Supervision and Administration Commission of the State Council, local governments, and local state-owned assets supervision and administration commissions, etc. Where

		the aforesaid enterprise is unable to perform the duties of the actual controller due to overabundant layers or complicated shareholding structure, an entity that can actually and effectively perform the duties of the actual controller shall be traced to.
	Foreign-owned PFMs	The institution regulated by the offshore financial regulator which has entered into the memorandum of cooperation with CSRC
	Foreign-owned private equity fund managers	The institution regulated by the offshore financial regulator which has entered into the memorandum of cooperation with CSRC, the offshore listed company or natural person

(Table 3)

AMAC imposes a hard requirement that the actual controller of a PFM must be determined if possible. A PFM shall not be deemed to have no actual controller without reasonable grounds. Even if the capital contribution of the company is dispersed and it is not workable to determine the actual controller, the shareholder with largest capital contribution ratio, or one or more shareholders jointly designated by all shareholders need to assume the responsibilities ascribed to the actual controller. Where there is any joint control arrangement, the parties jointly exerting controlling powers will be identified as joint actual controllers of the PFM.

3. Stability of Actual Control Relationship

For the purpose of avoiding adverse impact on smooth operation of a PFM due to instability of its controlling structure, the Consultation Paper requires that, within 3 years from the AMAC registration date of a PFM, the controlling shareholder shall not transfer its equity interests in the PFM and the actual controller shall not transfer its controlling power over the PFM unless otherwise specified. The Registration and Filing Measures expressly lists out several circumstances that are excluded from the above provision.

(1) The equity or property share is transferred in administrative means or changed in accordance with regulations;
(2) The equity or property share is transferred between different entities controlled by the same actual controller;
(3) The private fund manager implements an employee stock ownership plan without changing the status of its actual controller;
(4) The equity or property share is obtained due to inheritance or other statutory reasons;
(5) Other circumstances required by laws, administrative regulations, CSRC and AMAC.

In order to further improve the shareholding stability of PFMs, the Registration and Filing Measures requires that in the event of change in actual control of the PFM, the monthly average AUM of such

PFM in the 12 months preceding the captioned change must be no less than RMB30 million. Furthermore, in the event of change in actual control of the PFM, a legal opinion shall be submitted on whether the changed PFM is in full compliance with the requirements for PFM registration, and AMAC shall review the application as if the changed PFM were a new entity for registration. To clarify, the transfer circumstances in the above (1) and (2) are not considered as change in actual control.

In addition, in order to ensure the duties performance by the actual controller, the Registration and Filing Measures expressly requires that the natural person being actual controller shall serve as the director, supervisor or SMP of the PFM, unless otherwise specified. It is worth noting that directors and supervisors are newly added as compared with the Consultation Paper, increasing the flexibility of post-holding of actual controller who is a natural person.

V. Scope of Related Parties

Regarding the scope of related parties to be disclosed, the Registration and Filing Measures inherit the provisions of the Consultation Paper as a whole, i.e. in accordance with the principle of substance over form, the scope of related parties to be disclosed has been expanded and the disclosure standards for subsidiaries has been refined on the basis of the current disclosure standards.

No.	Scope of Related Parties to Be Disclosed
1	Branches of PFM
2	Financial institutions and listed companies in which the PFM holds more than 5% equity interests, and other enterprises in which the PFM holds **more than 30%** equity interests (under the prevailing rules, the other enterprises in which the PFM holds more than 20% equity interests are required to be disclosed) or in which the PFM serves as general partner (except for private funds filed with AMAC)
3	Financial institutions, private fund managers, **listed companies, companies quoted on the National Equities Exchange and Quotations**, investment enterprises, institutions engaging in business conflicting with private fund business, investment consulting enterprises and financial service enterprises, etc. directly controlled by the same controlling shareholder, actual controller
4	**Other legal persons or organizations that have a special relationship with the PFM, which may affect the interests of such PFM**
5	**The relevant parties that may have actual related-party relationship with the PFM due to staffing, shareholding, agreement or arrangement, business cooperation or otherwise shall be disclosed under the principle of substance over form**

(Table 4)

The provisions of related-party transactions in the Registration and Filing Measures are relatively general which do not provide a clear definition and scope of related-party transactions, pending further guidelines from AMAC.

VI. Eligibility and Stability Requirements on Legal Representative and SMP

The Registration and Filing Measures and the *Guidelines for Registration of Private Fund Managers No.3 – Legal Representative, Senior Management Personnel, Executive Partner or Its Appointed Representative* (私募基金管理人登记指引第 3 号—法定代表人、高级管理人员、执行事务合伙人或其委派代表, "**Guidelines No.3**") provide unified regulatory requirements for key personnel such as legal representative and SMP of PFM.

1. Scope of SMP

The Registration and Filing Measures defines the SMP of a PFM as general manager, deputy general manager, chief compliance and risk control officer ("**CCO**") and the SMP defined under the articles of association, as well as relevant personnel in a partnership who assume the aforesaid business management, risk control and compliance duties. Those who do not use the aforesaid job titles but actually perform the aforesaid duties are considered as SMP.

We note that the definition of SMP in the Consultation Paper includes chief investment officer ("**CIO**"), however, such role is not included in the definition of SMP under the Registration and Filing Measures. Such adjustment indicates that a PFM shall have an SMP to take charge of investment functions, but the PFM is not mandatorily required to have a dedicated CIO separate from the general manager and deputy general manager who can concurrently hold the post of CIO if they have the appropriate competence to be in charge of investment functions.

In addition, neither the Consultation Paper nor the Registration and Filing Measures includes legal representative in the definition of SMP. Such adjustment is reasonable. On the one hand, it is compatible with the definition of SMP under the PRC Company Law. On the other hand, the PRC Company Law requires that the legal representative of a company should be either the chairman of the board/the executive director (if there is no board of directors) or the general manager. If the chairman of the board/the executive director serves as the legal representative while he or she takes no business management role in the PFM, it is not appropriate to consider him/her as SMP. It is worth noting that, the Registration and Filing Measures and the Guidelines No.3 still set out eligibility requirements for the legal representative given his or her vital position to act on behalf of the company.

2. Eligibility Requirements for Legal Representative and SMP

On the basis of the Consultation Paper, the Registration and Filing Measures emphasizes again that the legal representative and SMP of PFM shall have business management capabilities and relevant work experience that are commensurate with their proposed positions, and provides specific criteria for different types of SMP for determining their relevant experience.

(1) The legal representative, principal responsible person of operation and management and the SMP in charge of investment management of a PFM must have at least 5 years of relevant work experience in securities, funds, futures investment management business. Article 4 of the Guideline No. 3 refines the criteria for determining relevant work experience which include:

	Employer	Position (having any one type of the following will suffice)
1	Financial Institutions	• Engaging in securities asset management, securities and futures investment with proprietary funds and other relevant business, and serving as portfolio managers or above • Serving as SMP • Having management experience at equivalent positions
2	Enterprises controlled by governments at or above the prefectural and municipal level and their authorized institutions, or listed companies	• Engaging in works in relation to securities and futures investment management and serving as personnel in charge of investment • Serving as SMP • Having management experience at equivalent positions
3	PFMs	• Engaging in securities and futures investment and serving as portfolio managers or above • Serving as SMP Such PFMs for which he/she worked shall operate normally, legally and stably, and have no record of major violation of laws and regulations during his/her tenure
4	Asset managers regulated by offshore financial regulators	Engaging in securities asset management and other relevant business in such asset manager which shall have good international reputation and business performance[1]
5	Governmental authorities or public institutions	Engaging in economic management and other relevant works, and having corresponding management experience
6	Financial Institutions	Serving as the other business department heads
7	Law firms or accounting firms filed with CSRC	Engaging in legal or auditing works relating to securities, funds and futures, and serving as partners or above for no less than 5 years
8	Other relevant work experience recognized by the regulators	

(Table 5)

[1] For foreign-owned PFMs, the appointment of suitable legal representative and SMP is often decided at the group level through global recruitment. If the candidate mainly worked for offshore asset managers in the past, attention should be paid to this requirement, that is, the offshore asset manager he/she has worked for should not only be licensed, but also have good international reputation and business performance.

We note that the Registration and Filing Measures and the Guideline No. 3 put forward the concept of “principal responsible person of operation and management” for the first time. In practice, the corporate governance structure of most PFMs is relatively simple, and we understand that the “principal responsible person of operation and management” shall normally refer to the general manager of the company.

Furthermore, for the SMP in charge of investment management, special attention shall be paid to the following requirements:

(a) The required work experience of the SMP in charge of investment management is limited to the relevant work experience listed in Items 1 to 4 of the Table 5 above.

(b) The SMP in charge of investment management must not only have at least 5 years of relevant work experience, but also provide specific supporting documents of track records, which must meet the following requirements:

i. Track records of securities, funds and futures products or track records of proprietary securities investment for which he/she serves as the portfolio manager or person responsible for investment decision-making in the financial institutions, or track records of private securities funds for which he/she serves as the portfolio manager of PFMs, or other track records that meet the requirements;

ii. Track records shall be for 2 or more consecutive years within the past 10 years;

iii. The AUM of a single product or a single account shall be no less than RMB20 million. Where more than one person jointly manages the product or account, materials shall be provided to specify the AUM of such product or account he/she was responsible for managing; where the relevant materials cannot be provided, the average AUM will be used for calculation.

(2) The CCO of PFM shall have at least 3 years of work experience in law, accounting, auditing, supervision or internal audit of investment related practice, or work experience in compliance, risk control, supervision or self-disciplinary management in the asset management industry. Article 6 of the Guideline No. 3 refines the criteria for determining relevant work experience for 3 years or above, which include:

	Employer	Position
1	Financial Institutions	Engaging in investment-related compliance management, risk control, supervision and internal audit, legal affairs and other relevant works
2	Private fund managers	Engaging in compliance management, risk control, supervision and internal audit, legal affairs and other

		relevant works. Such PFMs for which he/she worked shall operate normally, legally and stably, and have no record of major violation of laws and regulations during his/her tenure
3	Law firms or accounting firms	Engaging in legal or auditing works relating to securities, funds and futures
4	Listed companies	Engaging in investment-related legal affairs, financial management and other relevant works
5	Financial regulatory authorities and their local branches	Engaging in financial regulatory works
6	Self-disciplinary associations of asset management industry	Engaging in self-discipline management
7	Other relevant work experience recognized by the regulators	

(Table 6)

3. Dual-hatting Rules Applicable to Legal Representative and SMP

AMAC has put forward certain requirements governing dual-hatting of SMP in the self-disciplinary rules released in the past years. The Registration and Filing Measures and the Guidelines No.3, while retaining some principle requirements in the previous self-disciplinary rules, further refine the restrictions on dual-hatting arrangement for CCO and the exceptional circumstances for CCO's dual-hatting.

(1) Principle: the legal representative and SMP shall ensure that they have sufficient time and energy to perform their duties, their dual-hatting to other entities shall be reasonable, and they should not concurrently serve in non-related private fund managers or institutions engaging in business conflicting with private fund business. At the same time, it is no longer required that the SMP under dual-hatting arrangement shall be no more than 1/2 of the total number of SMP of the PFM.

(2) Special requirements for CCO's dual-hatting: CCO shall not be dual-hatted to any other profit-making institutions (however, for collectivized PFM[2], the exemptions given by AMAC (if any) shall prevail); CCO shall not engage in investment management business of the PFM, shall not concurrently hold positions that conflict with his/her compliance and risk control duties, and shall not serve as the general manager, executive director or chairman of the board.

(3) Exceptions to dual-hatting arrangement (the following circumstances are not considered as dual-hatting): (a) holding a position in a non-profit institution such as college and university, academic institute, social organization or social service agency; (b) serving as a director or

[2] Collectivized PFMs refers to the circumstances where two or more PFMs have the same controlling shareholder/actual controller.

supervisor in other enterprises; (c) holding a position in private funds under the management of the PFM; (d) other circumstances recognized by AMAC.

4. Stability Requirements for Legal Representative and SMP

In order to ensure the stability of the legal representative and SMP of PFM and emphasize the alignment of the interests of SMP and PFM, the Consultation Paper has put forward stability requirements from various aspects. The Registration and Filing Measures, the Guideline No. 1 and the Guideline No. 3 basically retain the provisions of the Consultation Paper, and further adjust and enhance certain requirements after taking into account the industry needs.

(1) Mandatory ownership scheme for the legal representative and the SMP in charge of investment management

The legal representative and the SMP in charge of investment management shall both hold a certain percentage of the equity interests of the PFM, and their total capital contribution should be no less than 20% of the paid-in capital of the PFM or no less than 20% of the minimum paid-in capital (i.e. RMB2 million). Article 8 of the Registration and Filing Measures emphasizes that the shareholding here includes direct and indirect shareholding, while Article 6 of the Guideline No. 1 further specifies that the legal representative and the SMP in charge of investment management are required to hold equity interests in the PFM.

The following institutions are exempted from this requirement:

(a) Private fund managers controlled by the financial institutions;

(b) Private fund managers controlled by the government and its authorized institutions;

(c) Private fund managers controlled by the institutions regulated by offshore financial regulators (accordingly, PFMs, private equity fund managers and QDLP fund managers established by offshore licensed financial institutions are exempted from this requirement); and

(d) Other private fund managers that meet the requirements.

(2) Emphasis on no change of legal representative, principal responsible person of operation and management, SMP in charge of investment management and CCO before the completion of the filing of the first private fund.

(3) Initiative of the performance of duties for vacant SMP position

After the departure of an SMP, the PFM shall, in accordance with the articles of association, appoint the eligible personnel of the PFM to perform the duties in place of the leaving SMP, and shall appoint a new SMP who meets the requirements for the intended post within 6 months.

(4) Reiteration of prohibiting fake employment arrangements

If an SMP have worked for three or more non-related entities within 24 months or have provided the same supporting documents of track records for two or more registered PFMs within 24 months, his/her aforesaid experience and track records will not be recognized. Accordingly, if the group assigns the SMP to related parties within the group from time to time with reasonable grounds, it is acceptable.

5. Requirements for Staff

The requirements remain unchanged in the Registration and Filing Measures that a PFM should be staffed with no less than 5 full-time employees, however, the dual-hatting requirement for general staff is to restrict their dual-hatting in other profit-making institutions (consistent with the dual-hatting requirement for SMP), and the exceptions for dual-hatting arrangement listed in Item (3) of Paragraph 3 above also apply. If otherwise provided for collectivized PFMs, such provision shall prevail.

Besides, the Guidelines No.1 retains provisions in the Consultation Paper, defining the full-time employees and expanding the scope of full-time employees as appropriate. The full-time employees not only include regular employees who sign labor contracts with the PFM and get paid the social insurances, but also the employees who are foreigners signing labor contracts or service contracts with the PFM, retired persons who are re-hired, and SMP appointed by the state organs, public institutions, enterprises controlled by the government and its authorized institutions.

VII. Other Noteworthy Items

The above briefly introduces the requirements imposed by the Registration and Filing Measures and the implementation guidelines for the shareholders, actual controllers and SMP of PFMs, which are the main changes brought by this overhaul. In addition, the provisions of the Registration and Filing Measures and the implementation guidelines in the following aspects are also worthy of attention.

1. Differentiated Self-disciplinary Management for PFMs Constituting "Collectivization"

It constitutes the so-called "collectivization" situation if there are two or more PFMs within a group (i.e. two or more PFMs are controlled by the same controlling shareholder/actual controller). For the avoidance of the problem that multiple PFMs within the same group are prone to homogenization competition and irrational expansion, CSRC has put forward the regulatory requirements governing collectivized PFMs 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). The Registration and Filing Measures further clarifies the management requirements, including the rationality and necessity for setting up multiple PFMs, reasonable and effective internal control policies for segregation of business risk, avoidance of horizontal competition, management of related-party transactions and prevention of conflicts of interest, etc.

In addition, to reflect the classification management principle, the Registration and Filing Measures empowers AMAC to implement differentiated self-disciplinary management against each PFM within the same group depending on their own situations. For example, it leaves room for AMAC to give exemptions to collectivized PFMs on the compliance with the requirements listed in the Registration and Filing Measures, such as “the number of full-time employees shall not be less than 5”, “the CCO and the general staff shall not hold concurrent position in other profit-making institutions”. Under the aforesaid classification management principle in the Registration and Filing Measures, AMAC may subsequently proposes differentiated rules for the registration requirements of collectivized PFMs, which deserves continuous attention.

2. Rules on Suspending and Terminating the Handling of PFM Registration Applications

With the objective to effectively conduct self-disciplinary management and better manage the industry expectations, the Registration and Filing Measures specifies the circumstances under which AMAC will suspend or terminate the handling of PFM registration applications. In particular, the termination circumstances covered therein include the applicant’s failure to correct the registration materials within 6 months since AMAC returns back its application, or the applicant’s failure to make explanation, supplement or revision per AMAC’s requisitions. As such, the applicants should address AMAC’s comments and requisitions in a timely manner, so as to avoid the risk of its application being declined.

3. Information Reporting Requirements

(1) Information reporting requirements for ultimate beneficial owners at the registration stage

We note that the Registration and Filing Measures has strengthened the requirement of penetrating identification. For example, at the registration stage, PFMs are additionally required to report information on ultimate beneficial owners of the shareholders and actual controllers. At present, the relevant information is not required to be reported in the AMAC Asset Management Business Electronic Registration System. It remains to be seen whether the system will be revised and clarify the criteria for identifying ultimate beneficial owners in accordance with this new requirement.

(2) Information reporting requirements after registration with AMAC

Apart from the conditions for PFM registration, the Registration and Filing Measures and the implementation guidelines also refine the information reporting requirements after registration with AMAC, which are worthy of attention for registered PFMs.

(a) Requirements for changing registration information of PFMs

To change any registration information, a PFM must undergo the required procedures with AMAC in a timely manner. The Registration and Filing Measures distinguishes the change of basic registration information and the change of material registration information, imposing different requirements on each of them. Please refer to the table below for details:

	Type of Information	Timeline	Whether the legal opinion is required or not?
Change of Basic Registration Information	Name, business scope, capital, registered address, office address and other basic information	Within 10 working days	×
	Shareholder, related-party		
	Legal representative, SMP		
Change of Material Registration Information	Controlling shareholder	Within 30 working days	√
	Actual controller		

(Table 7)

It is worth noting that the Guideline No. 1 specifies how to calculate the timeline for filing the changes: (i) for changes requiring change of registration with the companies registry, the period shall be calculated from the date of change of registration with the companies registry; (ii) for changes that do not require change of registration with the companies registry, the period shall be calculated from the effective date of relevant agreements or resolutions; (iii) for other changes, the period shall be calculated from the date of the actual change.

(b) Annual reporting events

The Consultation Paper requires a PFM to submit its annual financial reports, annual business operation reports audited by a qualified accounting firm in each fiscal year. However, the specific content of annual business operation reports is not further clarified. The Registration and Filing Measures has removed this requirement and only requires the submission of relevant financial and business operational information and annual financial reports. For PFMs whose AUM exceeds certain amount and collectivized PFMs, the accounting firm issuing the audit report is required to complete the filing with CSRC. For a group with two or more PFMs, special attention should be paid to this requirement.

4. Matters to Be Paid Attention after Deregistration

In order to optimize the exit mechanism of PFMs, the Registration and Filing Measures lists out the circumstances under which a PFM shall be deregistered, and provides the matters that shall be paid attention to after the completion of deregistration, including without limitation: not to engage in private fund business and use the terms “fund”, “fund management” or similar terms (with the exception of handling matters related to the disposal of private funds); to register with the companies registry for change of name, change of business scope or deregistration from the companies registry in a timely manner after completion of disposal of fund assets.

If you would like to know more information about the subjects covered in this publication, please contact:

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