

Relevant Issues Concerning the Registration of Foreign-Invested Private Fund Managers

By Sandra Lu and Desmond An

Over two months have passed since the *Measures for the Registration of Private Fund Managers and Filing of Private Funds (Trial)* (“**Measures**”) came into effect. As the deadline (30 April 2014) for the registration of Private Investment Fund Managers (“**Fund Managers**”) approaches, more than two thousand Fund Managers have submitted applications through the Registration and Filing System of the Asset Management Association of China (“**AMAC**”). According to the name and product lists released by AMAC on its website, as of 10 April 2014, two hundred and thirty (230) Fund Managers have completed registration with AMAC and have received their Private Investment Fund Manager Registration Certificate. Among the two hundred and thirty (230) Fund Managers, nine (9) are foreign-invested Fund Managers and four (4) are wholly invested by Hong Kong institutions. Additionally, three (3) Private Funds have been filed with AMAC, one of which is Chongyang a shares Alpha hedge fund, managed by Shanghai Chongyang Investment Management Co., Ltd. No Private Fund managed by foreign-invested Fund Managers has been filed with AMAC to date.

Foreign-Invested Fund Managers are welcomed to register with AMAC

The registration requirements for Fund Managers are to an extent quite simple; in accordance with the Measures, Fund Managers of all types shall register with AMAC. To register with AMAC, Fund Managers only need to meet the following requirements: be members of AMAC and have qualified practitioners who have obtained private fund practice qualifications as prescribed in Article 16 of the Measures. According to the FAQs released by AMAC on 17 January 2014, practitioners will be deemed to possess private fund practice qualifications if they passed the private fund qualification examination (under preparation) or have engaged in investment management and related

If you would like other Llinks publications, please contact:

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

Llinks Law Offices
www.llinkslaw.com

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businesses in the preceding three years. In particular, when determining if a practitioner has the aforesaid three-year investment management experience, AMAC usually relies on the Fund Managers' undertakings, instead of conducting a substantive review of such investment experience. Any eligible foreign-invested Fund Managers may register with AMAC.

There is more good news for Fund Managers—The China Futures Margin Monitoring Center revised *Operational Guidelines on Unified Account Opening of Special Entity Customers* (“**Guidelines**”) on 10 March 2014. Likewise, the China Securities Depository and Clearing Company Limited promulgated *Notice on Issues Related to Account Opening and Settlement of Private Investment Funds* (“**Notice**”) on 25 March 2014. Subject to the Guidelines and the Notice, registered Fund Managers can, individually rather than with the assistance of platforms provided by other financial institutions, open futures or securities accounts for Private Funds, as long as those Funds have been filed with AMAC. The Guidelines and the Notice are also applicable to foreign-invested Fund Managers. Theoretically, through registration and filing, foreign-invested Fund Managers (even those with foreign investment exceeding 50%) are allowed to issue Private Funds and open futures and securities accounts by themselves, for the purpose of raising and managing Private Funds.

AMAC takes a prudent attitude towards Private Securities Investment Fund Managers which are WFOEs

Although four (4) Wholly Foreign Owned Enterprises (“**WFOEs**”) foreign-invested Fund Managers have registered successfully, it is noted that all of them are PE/VC Fund Managers. As far as we know, AMAC still takes a prudent attitude towards WFOE Private Securities Investment Fund Managers. It is still not clear to date whether or not wholly foreign owned Private Securities Investment Fund Managers are eligible to register under the Measures.

Another situation in which AMAC will exercise caution is with the registration of brand new Fund Managers, who have no management experience or track records. According to the FAQs, AMAC will handle relevant applications prudently, through on-the-spot investigations, interviews with practitioners, and other methods, in order to ensure that such Fund Managers meet the aforementioned requirements.

Furthermore, according to the Measures, Fund Managers only need to report to AMAC within ten (10) days of any material changes of Fund Managers, instead of obtaining approval from AMAC. Therefore, a foreign investor may acquire from a domestic Fund Manager some shares which meet the current registration requirements and have been registered with AMAC. In effect, practice would serve the purpose of controlling such Fund Managers indirectly.

Ratio of foreign investment in Fund Managers applying for engaging in Publicly-Raised Fund Management Business shall not exceed 49%

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In accordance with the *Interim Provisions on the Management of Publicly-raised Securities Investment Funds by Asset Management Institutions* (“**Interim Provisions**”) promulgated by CSRC on 18 February 2013, which came into force on 1 June 2013, qualified asset management institutions that specialize in the management of non-publicly raised securities investment funds (i.e. Private Securities Investment Fund Managers)¹ are able to apply to the CSRC for a license to engage in the business of managing publicly-raised securities investment funds (“**Publicly-Raised Fund License**”). Therefore, some foreign-invested Fund Managers, who have over 50% or even 100% foreign investment, may intend to obtain a Publicly-Raised Fund License by registration with AMAC when they reach a certain management scale, rather than establishing a Joint Venture Fund Management Company.

In fact, the ratio of foreign investment may exceed 50% only for Private Fund Managers. Foreign-invested Fund Managers who intend to apply for a Publicly-Raised Fund License shall still be subject to the current effective laws and regulations. Due to the *Cross-Strait Service Trade Agreement* of June, 2013 and the *Supplement X to CEPA* of August 2013, financial institutions from Taiwan or Hong Kong can set up joint venture Fund Management Companies in the Mainland with a foreign shareholding ratio that exceeds 50%. However, joint ventures established by foreign institutions from other counties and regions must still comply with China's undertakings to the World Trade Organization, i.e. the proportion of foreign investment in the relevant joint venture Fund Management Companies shall be no more than 49%.

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Contact Details

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

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
Leo Wang Tel: (86 21) 3135 8716 Leo.Wang@llinkslaw.com	Nicholas Lou Tel: (86 21) 3135 8783 Nicholas.Lou@llinkslaw.com
Beijing	
James Weng Tel: (86 10) 8519 2266 James.Weng@llinkslaw.com	Wen Li Tel: (86 10) 8519 1626 Wen.Li@llinkslaw.com

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1 According to Interim Provisions, such qualified Private Securities Investment Fund Managers shall (1) have no less than RMB 10 million paid-up capital; (2) have an annual average size of securities asset management business of RMB 2 billion or above in the past three years; and (3) satisfy other relevant qualifications prescribed in the Interim Provisions