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China to Allow Foreign Asset Managers to Operate Local Funds

By Henry Wang

Recently, the Asset Management Association of China (“**AMAC**”) issued a Q&A on Private Securities Fund Registration (No.10) (“**Q&A No.10**”), under which foreign asset managers are allowed to form a wholly foreign-owned enterprise (“**WFOE**”) or Sino-foreign equity joint venture to provide investment management services to qualified domestic investors, including investments in securities that are traded on secondary market. Q&A No.10 marks an important step for China, opening a significant segment of the asset management market to foreign asset managers, an area that was previously off-limits to foreign asset managers.

Q&A No.10 sets out the eligibility requirements for these new measures, the key requirements of which are listed below:

1. Qualification requirement: the applicant must be registered with the AMAC as a “Private Fund Manager”, which includes complying with the following requirements:
 - a. the applicant must be incorporated in China;
 - b. the foreign shareholder of the WFOE and the foreign de facto controller (where applicable) are both financial institutions that must be approved or licensed by the financial regulator(s) in their home country or region;
 - c. the securities supervisory body in its home country or region has entered into a securities supervision cooperation memorandum with the China Securities Regulatory Commission (“**CSRC**”) or other organizations recognized by the CSRC; and
 - d. the foreign shareholder and its foreign de facto controller (where applicable) have not been subject to any material punishment by their respective supervisory or judicial authorities in the past three years.
2. Fund-raising: the fund-raising of the onshore private fund shall be conducted only in China and on a nonpublic basis.
3. Fund-raising targets shall not exceed 200 “Qualified Investors”, which include:
 - a. a qualified institutional investor – an institution with net assets of not less than RMB 10 million; or
 - b. a qualified individual investor – an individual with financial assets of not less than RMB 3 million, or an individual with an average annual income of not less than RMB 500,000 in the three most recent years.
4. Other operational requirements:
 - a. the type of assets that are subject to the investment management services is limited only to securities that can be purchased or sold in China, including stocks of public companies, bonds, funds, and other securities and derivatives thereof recognized by the CSRC;

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- b. unless otherwise permitted by the CSRC, the fund manager must ensure investment decisions are made independently and must not place or route any orders through an offshore entity or system;
 - c. cross-border capital flow and repatriation must be compliant with the relevant regulations of the State Administration of Foreign Exchange.
5. General registration process:
- a. WFOE formation: obtain preapproval of the name of the WFOE from AIC; then obtain approval from the local Ministry of Commerce; and proceed to registration with AIC. For a Shanghai-based WFOE, approval from the Shanghai Finance Office is needed before filing the name-preapproval application.
 - b. AMAC registration: the WFOE is required to submit an application which contains the requisite information and documents via the AMAC website, including the basic registration information, a commitment letter and a legal opinion on whether the WFOE has satisfied all of the AMAC registration requirements issued by a competent PRC law firm. Upon submission of the application, AMAC will, under the guidance of the CSRC, review the application and complete the registration procedure within 20 working days. Any successful application of the WFOE registration will be publicly published online by AMAC.
 - c. fund products record-filing: the WFOE is required to make a timely record-filing of its fund products with AMAC after closing of the fund and shall from time to time comply with the reporting obligations under the relevant rules.

Other formation-related requirements

1. Name: certain characters in Chinese such as fund management, investment management, and asset management shall be included in the name of the WFOE.
2. Business scope: the permitted scope of business includes investment fund, fund management, investment management and asset management.
3. Capital: there are no specific requirements on minimum registered capital, but there is a need to ensure that the actual paid-up capital is sufficient to cover all operating costs and expenses.
4. Location: there are no specific requirements regarding the location of the office premises and the floor area, but they should be suitable for the envisaged business. A first-tier city such as Beijing or Shanghai would be the preferred location.

As background, foreign asset managers have been allowed to access China's asset management business and invest in its financial markets since 2002 through the following entities:

1. JV: prior to the Q&A No.10, foreign asset managers were allowed to retain up to 49 percent of the JV shares to offer mutual fund products to domestic institutional and retail investors. It is worth noting that even after the issuance of the Q&A No.10, a retail fund manager still requires a full license from the CSRC to raise money from, and offer mutual fund products to, retail investors in the PRC, and foreign shareholdings in such retail fund management companies are still capped at 49 percent.

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2. QFII (Qualified Foreign Institutional Investor): invest in China with funds raised overseas.
3. QDLP (Qualified Domestic Limited Partner): invest overseas with funds raised in China.

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