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# Newsletter

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## Legal Updates

1. From QDII to QDLP – Constantly Exploring the Liberalization of China's Capital Markets
2. Analysis of the Pingtan, Fujian QFLP Pilot Scheme



## Legal Updates

### 1. From QDII to QDLP – Constantly Exploring the Liberalization of China's Capital Markets (Authors: Yin GE)

The recently concluded Boao Forum for Asia Annual Conference 2018 conveyed an important signal to expand the opening up of financial markets in China. As part of the implementing efforts, the State Administration of Foreign Exchange ("**SAFE**") has released two news alerts in recent days proposing to promote QDII reforms and to consider increasing QDLP/QDIE quotas in due course.

#### From QDII to QDLP

The Qualified Domestic Institutional Investors ("**QDII**") program has been the major channel for domestic financial institutions to invest overseas since its launch in 2006. Under China's separate-commission approach to supervising its financial system, the QDII program is not subject to a single uniform set of regulations. Instead, the three former regulatory commissions for banking, securities and insurance each issued respective rules and applied them to financial institutions under their own supervision. As a result, different types of financial institutions are subject to different QDII rules (including commercial banks and trust companies, securities firms and fund management companies, insurance companies), and the scope of and restrictions on overseas investments vary from type to type. In general, except for insurance QDIIs, which have a relatively wider investment scope and are eligible to invest in assets such as qualified offshore equity funds and real estate, the QDII program mainly permits investments in offshore securities, which are subject to strict restrictions. For instance, the QDII rules for banking, securities brokers and mutual funds explicitly prohibit investment in offshore hedge funds.

Another feature of the QDII program is that SAFE oversees the approval of investment quotas for institutions of all types and uniformly controls the quotas in accordance with the country's balance of payments position. The data published on SAFE's official website as of March shows that SAFE has not issued new QDII quotas since December 2015.

Given that the QDII program only applies to specific financial institutions and sets strict limitations on investment scope, etc., some well-developed regions such as Shanghai have begun to explore new ways to allow for overseas investment on a pilot basis. The Qualified Domestic Limited Partners ("**QDLP**") regime was first implemented in Shanghai as a pilot program. The Shanghai Municipal Financial Service Office ("**SFO**") led the foreign exchange administration, industry and commerce administration and other relevant authorities to form a "joint meeting" to take charge of the implementation and supervision of the pilot program.

Same as with the QDII program, SAFE oversees the quotas for the QDLP pilots and may loosen or tighten the quotas in due course. The approval of QDLP quota has also been suspended since the second half of 2015.

The major differences between the QDII and QDLP programs can be seen from the general comparison between the two programs in the chart below:

<b>Main Features</b>	<b>QDII</b>	<b>QDLP</b>
<b>Applicable Institutions</b>	Domestic financial institutions	Offshore asset management institutions
<b>Scope of Overseas Investment</b>	Mainly overseas secondary markets; required to meet the limitations imposed in QDII rules	Various types of offshore funds; no clear limitations on other investments
<b>Regulatory Authorities</b>	Financial regulators and SAFE	SFO taking the lead
<b>Approval Requirements</b>	Application with financial regulator for license and then separately with SAFE for quota	Application made with SFO who will coordinate with SAFE on quota approval matters
<b>Domestic Structure</b>	Offshore asset management institutions selling their products to QDIIs are not required to establish any onshore presence	Participating offshore asset management institutions are required to establish onshore entities

Due to its clear positioning, the QDLP program has effectively broken through some of the limitations of the QDII program. The domestic investors of the QDLP pilot funds can be qualified institutional or individual investors. The pilot funds may invest in various types of offshore funds, including secondary market funds, PE funds, real estate or infrastructure funds, etc. More importantly, unlike the QDII program which only provides distribution channels for purchasing the products of offshore asset managers, the QDLP program allows and attracts a number of world-class asset managers to establish subsidiaries in Shanghai. Although there are few to date, the participants have been very high-profile and diversified, ranging from the initial hedge fund managers (Citadel, Man, Oaktree, etc.) to subsequently, large-scale asset management institutions (such as BlackRock). Meanwhile, the QDLP rules require that funds established within China must entrust both a safekeeping bank and a fund administrator, which will also promote the development of the fund services industry in China. According to statistics from the Shanghai Lujiazui Financial City Development Bureau, more than half of the overseas institutions ranked among the global top 50 largest asset managers have established asset management subsidiaries in Shanghai, for which the QDLP program deserves much of the credit by serving as the first footprint for many offshore asset management institutions.

### **Replication and Expansion of the QDLP Model**

SAFE's press release on the QDLP program also mentions the Qualified Domestic Investment Enterprises ("QDIE") program in Shenzhen. While following the model of Shanghai's QDLP pilot, Shenzhen's QDIE program has some new features, and the qualifications and entry requirements to participate also differ from those in Shanghai. The current status of QDIE shows that few offshore asset management institutions have directly established subsidiaries in Shenzhen but rather co-operated with local QDIE quota holders, thus QDIE appears closer to the QDII program in this respect.

It remains to be seen whether similar pilot programs will be expanded to Beijing or other areas. In addition, SAFE's statement that "the QDLP and QDIE pilot programs could be more suitable for overseas investments targeting high-tech enterprises, especially those in their start-up period" may also foretell further expansion of these pilot programs by indicating that they might be used for investing in offshore projects rather than merely in offshore funds.

The major differences between Shanghai QDLP program and Shenzhen QDIE program can be seen from the general comparison between the two programs as in the chart below:

Main Features	QDLP	QDIE
<b>Major Participants</b>	Offshore asset management institutions	Mainly domestic entities
<b>Requirements for Fund Managers</b>	Registered capital of no less than USD 2 million	Registered capital of no less than USD 2 million for foreign-invested subsidiaries; registered capital of no less than RMB 10 million for Chinese-funded entities
<b>Minimum Size of Fund</b>	RMB 30 million for contractual funds; RMB 100 million for partnership funds	RMB 30 million
<b>Domestic Structure</b>	Setting up a foreign-invested enterprise ("FIE") to serve as the QDLP fund manager, or adopting a holding structure under which a subsidiary of the FIE serves as the QDLP fund manager	No holding structure provided
<b>Fund Investors</b>	Qualified institutional and individual investors	Qualified institutional and individual investors
<b>Scope of Investment</b>	Offshore markets	Offshore markets

Whether it is the issuance of new QDII quotas or further increasing the total quotas for QDLP or QDIE, both reflect China's continued efforts to further fulfill its two-way market opening commitments. Faced with emerging opportunities in China, overseas institutions need to be observant and have a longer-term perspective in order to structure their business in China more effectively and enjoy first-mover advantages on the market.

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## 2. Analysis of the Pingtan, Fujian QFLP Pilot Scheme (Authors: James Yong WANG, Li YANG, Ziyang LI)

On March 27, 2018, the Office of the Administrative Committee of the Pingtan Comprehensive Experimental Zone in Fujian Province (“**Administrative Committee**”) circulated the *Implementing Measures for the Launch of Pilot Reforms for Foreign-invested Equity Investment Enterprises (For Trial Implementation)* (“**Pingtan QFLP Measures**”) to each district project construction headquarters, units under direct local municipal governments and township governments, announcing the launch of the Qualified Foreign Limited Partnership (QFLP) pilot scheme in the Pingtan Comprehensive Experimental Zone.<sup>1</sup> Compared with QFLP pilot schemes that have previously been launched in Shanghai, Beijing, Shenzhen, Qingdao, Chongqing and Guizhou, the Pingtan QFLP Measures present certain similarities in terms of design, but also introduce certain differences and innovations. In this article, we will briefly summarize the key points of the Pingtan QFLP Measures.

### Key points of the Pingtan QFLP Measures

#### a. Pilot Enterprises

The Pingtan QFLP Measures define “pilot enterprises” as foreign-invested equity investment enterprises and foreign-invested equity investment management enterprises. Specifically, foreign-invested equity investment enterprises refer to enterprises that are identified by the Leading Group for Foreign-invested Equity Investment Enterprise Pilot Reform (“**Leading Group**”), and which are legally established by offshore enterprises or individuals to raise funds from both domestic and foreign investors through non-public means and whose principal business is to invest in the equities of non-publicly traded companies. Foreign-invested equity investment management enterprises refer to enterprises that are identified by the Leading Group and which are legally established by offshore enterprises or individuals and whose principal business is to initiate the establishment of equity investment enterprises, or to be entrusted to manage equity investments. Based on these definitions, the Pingtan QFLP Measures will apply to both foreign-invested equity investment enterprises and foreign-invested equity investment management enterprises established in the Pingtan Comprehensive Experimental Zone.

The scope of business permitted to be conducted by these two types of pilot enterprises is as

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<sup>1</sup> [Implementing Measures for the Launch of Pilot Reforms for Foreign-invested Equity Investment Enterprises (For Trial Implementation)] (Office of Admin. Comm. of the Pingtan Comprehensive Experimental Development Zone, Lan Zong Guan Ban [2018] No. 50; promulgated and effective Mar. 27, 2018).

follows:

<b>Foreign-invested equity investment enterprises</b>	<b>Foreign-invested equity investment management enterprises</b>
<ol style="list-style-type: none"><li>1) Investment in non-publicly traded corporate equities and related consulting services in accordance with law;</li><li>2) Use of fund assets to invest in unlisted companies or equity investment companies within the scope permitted by laws and regulations;</li><li>3) Investment in primary industries, secondary industries, and tertiary industries (except as otherwise provided by laws and regulations);</li><li>4) Investment consulting;</li><li>5) Other related business activities that have been permitted by the approval or registration authority.</li></ol>	<ol style="list-style-type: none"><li>1) Management of entrusted equity investments and provision of related consulting services;</li><li>2) Management of entrusted equity investment funds and provision of related consulting services;</li><li>3) Investment management and asset management (except as otherwise provided by laws and regulations);</li><li>4) Project investment (except as otherwise provided by laws and regulations);</li><li>5) Investment management consulting (except as otherwise provided by laws and regulations);</li><li>6) Other related business activities that have been permitted by the approval or registration authority.</li></ol>

It should be noted that, according to the Pingtan QFLP Measures, not all pilot enterprises will be allowed to engage in all of the above business activities. Pilot enterprises should select the applicable business activities from the above scope at the time of registration, and those activities will be subject to the specific rules determined by the district market supervision bureau.

#### **b. Entry Conditions**

Compared with the QFLP pilot policies in other regions, one of the distinguishing characteristics of the Pingtan QFLP Measures is the different entry conditions for Hong Kong, Macao and Taiwan investors and for other offshore investors. The different requirements for these two different groups of investors are as follows:

Conditions	Hong Kong, Macao and Taiwan Investors	Non-Hong Kong, Macao and Taiwan Investors
<p>Offshore investor conditions (If there are more than two offshore investors, at least one of the larger shareholding offshore investors should meet the corresponding conditions)</p>	<p>Satisfy one of the following conditions:</p> <ol style="list-style-type: none"> <li>1) In the previous fiscal year prior to its application, hold proprietary assets of not less than USD 6 million or its equivalent or manage assets of not less than USD 12 million or its equivalent; or</li> <li>2) Hold an asset management license issued by the financial supervision and administration authority of the region where it is located.</li> </ol>	<p>Satisfy one of the following conditions:</p> <ol style="list-style-type: none"> <li>1) In the previous fiscal year prior to its application, hold proprietary assets of not less than USD 100 million or its equivalent, or manage assets of not less than USD 200 million or its equivalent; or</li> <li>2) Hold an asset management license issued by an offshore financial supervision and administration authority.</li> </ol>
	<p>Fulfill all of the following conditions:</p> <ol style="list-style-type: none"> <li>1) Have sound governance structures and sound internal controls, and not have been punished by the judicial agency or relevant regulatory agencies of the country or region where it is located in the past two years.</li> <li>2) Offshore investors or their related entities have relevant investment experience;</li> <li>3) Mainly include overseas sovereign funds, pension funds, endowment funds, charitable funds, funds of funds, insurance companies, banks, securities companies, other offshore institutional investors recognized by the Leading Group, etc.</li> <li>4) Other conditions required by the Leading Group.</li> </ol>	
<p>Equity investment enterprise capital contribution conditions</p>	<p>Subscribed capital contributions are to be no less than USD 6 million or its equivalent, and the form of contribution is limited to currency; other than general partners, each limited partner is to make capital contributions of no less than USD 1 million or its equivalent.</p>	<p>Subscribed capital contributions are to be no less than USD 15 million or its equivalent, and the form of contribution is limited to currency; other than general partners, each limited partner is to make capital contributions no less than USD 1 million or its equivalent.</p>
<p>Equity investment management enterprise capital contribution conditions</p>	<p>The registered capital (subscribed capital contributions) shall be no less than USD 2 million or its equivalent, and contributions are limited to currency.</p>	
<p>Conditions for equity investment management enterprise senior officers</p>	<p>Foreign-invested equity investment management enterprises should have at least two senior officers who meet all the following conditions (those who serve as deputy general managers and above positions or equivalent positions):</p> <ol style="list-style-type: none"> <li>1) Have more than five years' experience engaging in equity investment or equity investment management;</li> <li>2) Have served for more than two years as a senior management officer;</li> <li>3) Have experience engaging in domestic equity investment or working for domestic financial institutions;</li> <li>4) Have no record of regulatory violations in the past five years or are subject to any pending economic dispute lawsuits and have maintained a good personal credit status.</li> </ol>	

As mentioned above, the Pingtan QFLP Measures provide relatively more relaxed conditions for investors from Hong Kong, Macao and Taiwan in terms of the amount of proprietary assets and the scale of assets under management and the amount of subscribed capital contributions for foreign-invested equity investment enterprises, which reflects the local government's intent to attract Hong Kong, Macao and Taiwan equity investment fund management institutions by drawing on the region's advantageous geographical location.

We also note the Pingtan QFLP Measures provide that both "foreign-invested equity investment enterprises" and "foreign-invested equity investment management enterprises" are to be established by "offshore enterprises or individuals in accordance with law" in the definitions of these two different types of enterprises, and further set forth that individual investors are required to provide "personal asset certificates and income statements." However, Article 3 of the Pingtan QFLP Measures stipulates that the "offshore investors referenced in these Measures shall be offshore companies, enterprises or economic organizations." Thus, it remains to be clarified whether offshore individuals are permitted to participate in the establishment of pilot enterprises.

### c. Competent Authorities

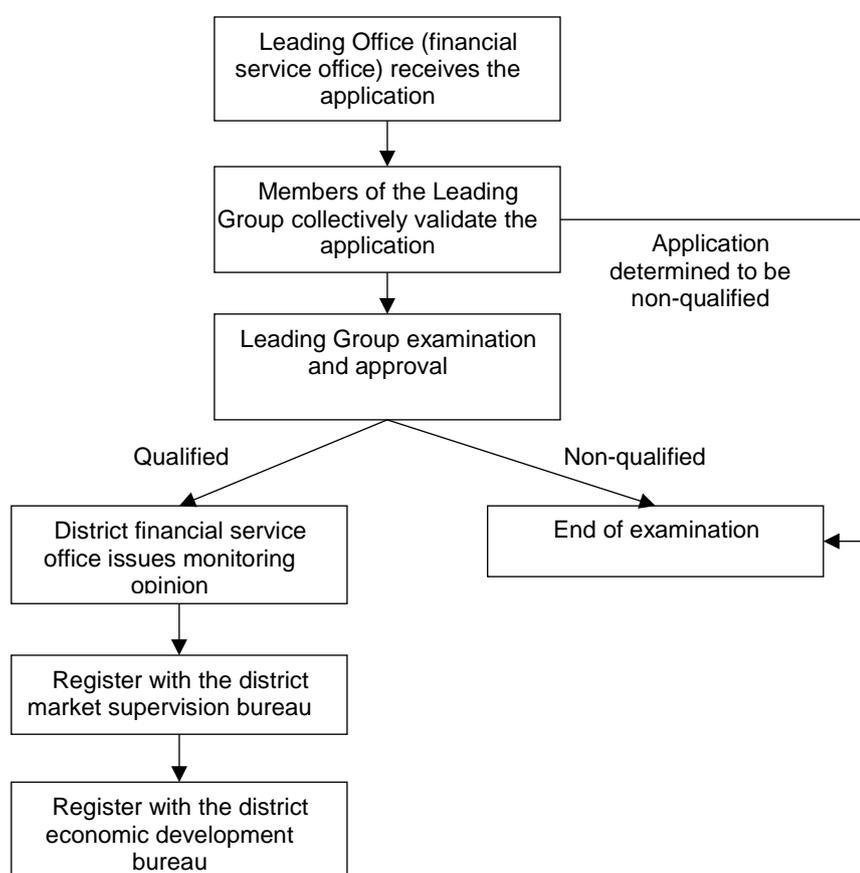
According to the Pingtan QFLP Measures, the Administrative Committee will establish the Leading Group and the district leader will serve as its chairperson. The Leading Group will consist of members that include the district financial service office, the People's Bank of China, Pingtan Comprehensive Experimental Zone Sub-branch, the district economic development bureau (commerce office and development and reform office), district market supervision bureau and district administrative examination and approval bureau, etc. The Leading Group will, under the guidance of relevant national departments, organize and coordinate various policies and measures promulgated by such departments, promote the implementation of the QFLP pilot scheme and coordinate to resolve relevant issues arising from the pilot scheme. The Leading Group will locate its office within the district financial service office. The responsibilities of the members of the Leading Group are as follows:

<b>QFLP Pilot Program Leading Group</b>		
<b>District leader (Chairperson)</b>	<b>Members</b>	<b>Primary responsibilities</b>
	District financial service office	Routine work includes: <ol style="list-style-type: none"> <li>1) Responsibility for accepting, examining and approving pilot enterprise applications;</li> <li>2) Responsibility for managing record filings of approved pilot enterprises;</li> <li>3) Responsibility for formulating and implementing supporting policies related to pilot enterprises;</li> <li>4) Other daily work to be performed by the Leading Group.</li> </ol>

	People's Bank of China, Pingtan Comprehensive Experimental Zone Sub-branch	Foreign exchange administration.
	District economic development bureau	Incorporation filing.
	District market supervision bureau	Incorporation registration.
	District administrative examination and approval bureau	Administrative examination and approval.

#### d. Examination and Approval Process

According to the Pingtan QFLP Measures, the examination and approval process for applying to establish a pilot enterprise is as follows:<sup>2</sup>



Article 20 of the Pingtan QFLP Measures specifies the application materials required in order to apply to establish a pilot enterprise. However, according to the last paragraph of the article, the Leading Group may request the applicant to provide additional materials as it deems

<sup>2</sup> Provisions on Administration of the Registration of Foreign-invested Partnership Enterprises (Revised in 2014) (St. Admin. for Indus. and Commerce, Decree No. 63; promulgated Feb. 20, 2014, effective Mar. 1, 2014) 2014 ST. COUNCIL GAZ. 14. Article 5 provides that “the authorities for industry and commerce ... shall be responsible for the registration administration of foreign-invested partnership enterprises with investment as their principal business.” However, according to our consultation with the Market Supervision Bureau of Pingtan Comprehensive Experimental Zone, the bureau is currently responsible for collecting and reviewing the applications of foreign investors for the establishment of foreign-invested equity investment and management enterprises.

necessary according to the specific conditions of the applicant. Other than that, we also note that although Article 20 does not clearly provide that the applicant needs to submit any materials related to proposed portfolio investments at the time of applying for the establishment of a pilot enterprise, Article 26 specifies the application materials required to be submitted for handling registration amendments by a pilot enterprise sets forth that if the pilot enterprise “intends to change a proposed portfolio investment, background information of the new portfolio investment should be provided.” Based on this, we speculate that the Leading Group is likely to require the applicant to provide a brief description of proposed portfolio investments, which is also a principle adhered to by departments in other cities that have implemented QFLP pilot schemes.

#### **e. Operating Requirements**

The Pingtan QFLP Measures provide a series of specific compliance requirements related to the operation of the pilot enterprises after they have been established. The key points are briefly summarized as follows:

##### **i. Custodian**

According to the Pingtan QFLP Measures, pilot enterprises are to entrust a custodian bank approved by the state financial regulatory authority, which is a commercial bank that has the capacity and qualifications to act as a fund custodian. The custodian bank will verify the authenticity and compliance of the use of funds within the pilot enterprise’s custodian account, and will supervise the pilot enterprise to use the funds in the custodian account within its business scope and in accordance with laws and regulations.

##### **ii. Registration and filing**

According to the Pingtan QFLP Measures, pilot enterprises are to complete the corresponding fund manager registration and fund filing procedures according to the requirements of the applicable laws and regulations, and the deadlines for completing these registrations/filings are clearly stipulated. Specifically, all foreign-invested equity investment management enterprises should register with the Asset Management Association of China (“**AMAC**”) and establish their first foreign-invested equity investment enterprise or private equity and venture capital fund within twelve months after obtaining approval to engage in foreign-invested equity investment management business activities. Foreign-invested equity investment enterprises or domestic private equity and venture capital funds that are so established should complete a filing with AMAC within six months following establishment. Failure to timely complete the fund manager registration and fund filing may cause the Leading Group to revoke the pilot scheme qualifications of the pilot enterprise and to issue a public announcement regarding the revocation.

##### **iii. Amendment examination and approval**

According to the Pingtan QFLP Measures, a pilot enterprise should obtain approval from

the district financial service office if it intends to change registration items before the enterprise may undertake the relevant AIC registration amendment procedures, such as the company's name, scope of business, shareholders or partners, subscribed or paid-in capital contributions, time limit for payment of contributions or senior management officers. Therefore, if the fund intends to admit new limited partners or any existing limited partner intends to increase its capital contribution after the fund is established, the fund should first submit the relevant application materials to the district financial service office, together with a certificate proving the new limited partner meets the admission conditions in the event that any new limited partner is admitted.

iv. Major event reporting

According to the Pingtan QFLP Measures, the equity investment enterprise should be subject to provisions of the Pingtan District *Implementing Measures for Information Submission by Equity Investment Enterprises (For Trial Implementation)*,<sup>3</sup> which provide that newly registered or newly relocated equity investment enterprises in Pingtan district are required to submit enterprise information materials to the district financial services office within one month after completing AIC registration and bank account opening, submit an annual business report to the district financial service office after the end of each fiscal year, and submit a report on major events occurring with investments in the previous quarter within ten business days after the end of each quarter.

v. Exit examination and approval

According to the Pingtan QFLP Measures, pilot enterprises may distribute profits or liquidate in accordance with the enterprise's articles of association or partnership agreement. Pilot enterprises need to submit the investors' tax payment certificates or tax filing forms to the custodian bank if they intend to remit profits, dividends or bonuses offshore, and may remit such amounts after the custodian bank approves the application.

**f. Foreign exchange**

Based on our understanding, a significant obstacle facing QFLP pilot schemes in other cities is the issue of investing with foreign exchange capital. The attractiveness of the QFLP pilot schemes to foreign investors would be greatly reduced if they are unable to provide convenience with respect to investment approvals and foreign exchange settlement. The Pingtan QFLP Measures do not contain specific provisions with respect to foreign exchange registration, foreign exchange settlement quotas or foreign exchange settlement methods for pilot enterprises. In this regard, we understand such issues will be handled in accordance the relevant national foreign exchange supervision regulations (including the option to select

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<sup>3</sup> [Implementing Measures or Information Submission by Equity Investment Enterprises (For Trial Implementation)] (Office of Admin. Comm. of the Pingtan Comprehensive Experimental Development Zone, Lan Zong Guan Ban [2017] No. 79; promulgated and effective Apr. 25, 2017).

voluntary settlement of foreign exchange capital for foreign-invested enterprises (“**FIEs**”) in accordance with the *Circular of the State Administration of Foreign Exchange on the Policies for Reforming and Standardizing Management of Foreign Exchange Settlement under the Capital Account* (“**Circular No. 16**”).<sup>4</sup>

The *Circular of the State Administration of Foreign Exchange Concerning Reform of the Administrative Approaches to Settlement of Foreign Exchange Capital of Foreign-invested Enterprises* (“**Circular No. 19**”)<sup>5</sup> provides national treatment for FIE voluntary settlement of foreign exchange capital. Prior to Circular No. 19, the *Circular of the State Administration of Foreign Exchange on Relevant Issues Concerning Pilot Reform in Some Regions of the Administrative Approaches to Settlement of Foreign Exchange Capital of Foreign-invested Enterprises*<sup>6</sup> had already included Pingtan Comprehensive Experimental Zone in a list of 16 pilot areas for implementing the FIE voluntary settlement of foreign exchange capital, and stipulated that the proportion of foreign exchange capital subject to voluntary foreign exchange settlement was provisionally set at 100%. Circular No. 19 further stipulates that FIEs may either choose to settle their foreign exchange capital according to the payment-based settlement system, or to carry out voluntary settlement of foreign exchange capital based upon actual business needs. However, under Circular No. 19, the RMB funds obtained from foreign exchange settlement are subject to certain restrictions, including: (1) the RMB funds may not be used directly or indirectly for payments beyond the FIE’s business scope or for payments prohibited by national laws and regulations; (2) the RMB funds may not be used directly or indirectly for securities investments, unless otherwise provided by laws and regulations; (3) the RMB funds may not be used directly or indirectly for the granting of RMB entrusted loans (unless permitted by the FIE’s business scope), repayments of inter-enterprise borrowings (including third-party advances) or repayments of RMB bank loans already refinanced to a third party; and (4) the RMB funds may not be used for the payment of expenses related to the purchase of real estate not for self-use, except for foreign-invested real estate enterprises.<sup>7</sup> With respect to foreign investment, Circular No. 19 further sets forth that “except for transfers in the original currency owing to equity investments, it is acceptable for FIEs with investment as their main business (including foreign-funded investment companies, foreign-funded venture capital

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<sup>4</sup> [Circular of the State Administration of Foreign Exchange on the Policies for Reforming and Standardizing Management of Foreign Exchange Settlement under the Capital Account] (St. Admin. of For. Exch., Hui Fa [2016] No. 16; promulgated and effective Jun. 9, 2016) [hereinafter “Circular No. 16”].

<sup>5</sup> [Circular of the State Administration of Foreign Exchange Concerning Reform of the Administrative Approaches to Settlement of Foreign Exchange Capital of Foreign-invested Enterprises] (St. Admin. of For. Exch., Hui Fa [2015] No. 19; promulgated Mar. 30, 2015, effective Jun. 1, 2015, superseded in part by Circular No. 16 on Jun. 9, 2016) [hereinafter “Circular No. 19”].

<sup>6</sup> [Circular of the State Administration of Foreign Exchange on Relevant Issues Concerning Pilot Reform in Some Regions of the Administrative Approaches to Settlement of Foreign Exchange Capital of Foreign-invested Enterprises] (St. Admin. of For. Exch., Hui Fa [2014] No. 36, promulgated Jul. 4, 2014, effective Aug. 8, 2014, annulled by Circular No. 19 on Jun. 1, 2015).

<sup>7</sup> Circular No. 19, Art. III.

enterprises, and foreign-funded equity investment enterprises) to directly settle the foreign exchange capital into RMB or transfer the RMB funds in the account for foreign exchange settlement and pending payment to the account of the invested enterprise according to the actual scale of investment, provided that the domestic investment project is authentic and compliant with the regulations.”<sup>8</sup>

After the promulgation of Circular No. 19, in practice some cities still require FIEs to clearly describe their portfolio investments if they intend to settle foreign exchange, even those FIEs whose principal business activity is investment, by referring to the provision of Circular No. 19 that permits FIEs “to directly settle the foreign exchange capital into RMB or transfer the RMB funds in the account for foreign exchange settlement and pending payment to the account of the invested enterprise according to the actual scale of investment, provided that the domestic investment project is authentic and compliant with the regulations.” Clearly, according to regulations in these cities, investment project authenticity and compliance are preconditions for FIEs whose principal business activity is investment, both for foreign exchange settlement and for post-settlement foreign exchange payments.

Circular No. 16, which was promulgated more than one year following Circular No. 19, further distinguishes requirements for foreign exchange settlement and post-settlement foreign exchange payments. According to Article 5 of Circular No. 16, domestic enterprises need not provide the banks with certifying documents with respect to the use of funds if they directly transfer foreign exchange-settled RMB funds to an account for foreign exchange settlement and pending payment. However, when a domestic enterprise applies to make a payment with capital account receipts, it is required to provide the bank with certifying documents that substantiate the use of funds (e.g., directly making outward payments with RMB funds upon settlement rather than transferring the funds to a settlement and pending payment account, making outward payments in RMB from a settlement and pending payment account, or directly making outward payments with a foreign exchange account under the capital account). In summary, the submission of certifying documents to prove the authenticity of an investment project is no longer a precondition for FIEs to conduct foreign exchange settlement, but is rather only a precondition for FIEs to make outward foreign exchange payments post-settlement. According to our consultation with the People's Bank of China, Pingtan Comprehensive Experimental Zone Sub-branch, which is responsible for administering foreign exchange issues related to pilot enterprises, pilot enterprises may choose to apply for voluntary settlement of foreign exchange capital so as to avoid providing investment project materials at the time of foreign exchange settlement.

### **Comparison of QFLP pilot policies implemented in various areas**

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<sup>8</sup> Circular. No. 19, Art. IV, para. 1.

**Comparison of QFLP pilot schemes implemented in Beijing, Shanghai, Shenzhen and Pingtan**

Related policy		Beijing	Shanghai	Shenzhen	Pingtan
<b>Competent authority</b>		Municipal Financial Service Leading Group.	A joint meeting for pilot reform work for foreign-invested equity investment enterprises; the Office of the Joint Meeting was established in Municipal Financial Service Office.	The municipal government established a leading group for the foreign-invested equity investment enterprises pilot scheme.	The Administrative Committee established the Leading Group for Foreign-invested Equity Investment Enterprise Pilot Reform; and the District Financial Service Office is in charge of the pilot scheme.
<b>Qualifications to become an eligible pilot equity investment management enterprise</b>	<b>Name and form of the enterprise</b>	The pilot enterprise may be organized either as a corporation or as a partnership (a foreign-invested equity investment fund management enterprise may be established as a wholly foreign-owned or a Sino-foreign joint venture), and its name may contain words such as “fund management”	The pilot enterprise may be organized as a corporation or as a limited partnership, and its name may contain words such as “fund management” if certain conditions are met.	The pilot enterprise may be organized as a corporation or as a limited partnership, and its name must include words such as “equity investment management” or “equity investment”.	The pilot enterprise may be organized as a corporation or as a partnership. The pilot enterprise name should contain words such as “equity investment” “fund management”, “equity investment management,” “investment management,” or “asset management”.
	<b>Registered capital</b>	Registered capital should be no less than USD 2 million.	Registered capital (or subscribed capital contributions) should be no less than USD 2 million, and capital contributions are limited to currency.	Registered capital (or subscribed capital contributions) is to be no less than USD 2 million or its equivalent and capital contributions are limited to currency.	Registered capital (or subscribed capital contributions) of an invested equity investment management enterprise should be no less than USD 2 million or its equivalent, and capital contributions are limited to currency.
	<b>Investor qualifications</b>	Unspecified	If the name of the pilot enterprise contains the words “equity investment fund management”, the enterprise should have at least one investor whose scope of business, or that of its affiliate, includes equity investment or equity investment management.	A foreign-invested equity investment management enterprise may be organized as a wholly foreign-owned enterprise or as a Sino-foreign joint venture. Offshore shareholders or partners should meet one of the following conditions: a. In the previous fiscal year prior to its application, possess proprietary assets (net assets) of not less than USD 100 million or its equivalent or manage assets of not less than	Hong Kong, Macao and Taiwan investors should meet at least one of the following conditions: a. In the previous fiscal year prior to its application, possess proprietary assets of not less than USD 6 million or its equivalent or manage assets of not less than USD 12 million or its equivalent; or b. Hold an asset management license issued by the financial supervision and administration

Related policy		Beijing	Shanghai	Shenzhen	Pingtan
				<p>USD 200 million or its equivalent; or</p> <p>b. Hold an asset management license issued by the Hong Kong Securities Regulatory Commission (or other offshore financial regulatory authorities). Domestic shareholders or partners should meet any one of the following conditions:</p> <p>a. Be a licensed financial institution approved by the state financial regulatory authority for commercial banking, securities, insurance, trust services, financial leasing, and public fund management, etc. or a first-tier subsidiary controlled by such licensee, in which the ownership of the licensee exceeds 50%.</p> <p>b. The large-scale enterprises introduced and supported by the municipal government, and have proprietary assets (net assets) of not less than RMB 500 million, or have assets under management of not less than RMB 1 billion; be profitable for the last three consecutive years, with a cumulative net profit of no less than RMB 60 million and cumulative tax payments of no less than RMB 18 million.</p> <p>A domestic private equity or venture capital fund management company needs to meet the following conditions to initiate the</p>	<p>department of the region where it is located.</p> <p>Non-Hong Kong, Macao and Taiwan investors should meet one of the following conditions:</p> <p>a. In the previous fiscal year prior to its application, possess proprietary assets of not less than USD 100 million or its equivalent or manage assets of not less than USD 200 million or its equivalent; or</p> <p>b. Hold an asset management license issued by an offshore financial supervision and administration department.</p> <p>All of the following conditions should be met by both Hong Kong, Macao and Taiwan Investors and Non-Hong Kong, Macao and Taiwan offshore investors:</p> <p>a. Have a sound governance structure and sound internal controls, and have not been punished by the judicial agency or related regulatory agencies of the country or region where it is located in the past two years.</p> <p>b. Offshore investors or their related entities have relevant investment experience;</p> <p>c. Mainly include overseas sovereign funds, pension funds, endowment funds, charitable funds, funds of funds, insurance companies, banks, securities companies, other offshore institutional investors recognized by the Leading Group, etc.</p>

Related policy		Beijing	Shanghai	Shenzhen	Pingtian
				<p>establishment of or be entrusted to manage a foreign-invested equity investment enterprise:</p> <ol style="list-style-type: none"> <li>Be a domestic enterprise incorporated in China in accordance with law;</li> <li>Be a domestic private equity or venture capital fund management company registered with AMAC for more than six months;</li> <li>Have proprietary assets (net assets) of not less than RMB 500 million or assets under management of not less than RMB 1 billion in the previous full fiscal year;</li> <li>Have a sound governance structure and sound internal controls, and have not been subject to any punishment imposed by the judicial authorities and relevant regulatory authorities in the past three years;</li> <li>The management company is registered in Shenzhen.</li> </ol>	d. Other conditions required by the Leading Group.
	<b>Senior officer qualifications</b>	<p>Foreign-invested fund management company should have at least two senior officers who meet all the following requirements:</p> <ol style="list-style-type: none"> <li>Have more than two years of equity investment fund operating and management experience or related business experience;</li> <li>Senior managers of fund management enterprises should have a good track</li> </ol>	<p>The pilot enterprise should have at least two senior officers who meet all the following requirements:</p> <ol style="list-style-type: none"> <li>Have more than five years of equity investment or equity investment management experience;</li> <li>Have more than two years' experience</li> </ol>	<p>The pilot enterprise should have at least two senior officers who meet all the following requirements:</p> <ol style="list-style-type: none"> <li>Have more than five years of equity investment or equity investment management experience;</li> <li>Have more than two years' experience serving as a senior management officer;</li> <li>Have experience participating in China-related equity</li> </ol>	<p>Foreign-invested Equity investment management enterprises should have at least two senior officers who meet all the following conditions (those who serve as deputy general managers and above or equivalent positions)</p> <ol style="list-style-type: none"> <li>Have more than five years' experience engaging in equity investment or equity investment management;</li> </ol>

Related policy		Beijing	Shanghai	Shenzhen	Pingtan
		<p>record in equity investment and equity investment management.</p> <p>The qualifications of senior officers should be certified by evidence produced by the Beijing equity investment fund industry self-regulatory organization.</p>	<p>serving as a senior management officer;</p> <p>c. Have experience participating in China-related equity investment or experience working for a domestic financial institution;</p> <p>d. Have no record of regulatory violations in the last five years and are not subject to any pending economic disputes, and have maintained a good personal credit status.</p>	<p>investment or experience working for a domestic financial institution;</p> <p>d. Have no record of regulatory violations in the last five years and are not subject to any pending economic disputes, and have maintained a good personal credit status.</p>	<p>b. Have served for more than two years as a senior management officer;</p> <p>c. Have experience engaging in domestic equity investment or working for domestic financial institutions;</p> <p>d. Have no record of regulatory violations in the last five years and are not involved in any pending economic dispute cases, and have maintained a good personal credit status.</p>
<b>Qualifications to become an eligible pilot equity investment enterprise</b>	<b>Organization form and name of the pilot enterprise</b>	Incorporated in the municipality in accordance with law, organized as a corporation or a partnership.	Incorporated in the municipality in accordance with law and be invested in by foreign enterprises or individuals, may be organized as a partnership or otherwise and the name may contain words such as "equity investment fund" after certain conditions are met.	May be organized as a corporation or as a partnership.	The foreign-invested equity investment pilot enterprise name should contain the words "equity investment", "equity investment fund" and "investment," and may be organized as a corporation or as a partnership.
	<b>Subscribed capital contributions</b>	Equity investment funds invested in by domestically-raised RMB capital and offshore-raising foreign capital, with proportion of foreign capital not exceeding 50% of the total subscribed capital contributions of the fund. In principle, the subscribed capital contributions of a single fund are not less than RMB 500 million (or its equivalent in foreign currency), of which the fund management enterprise	<p>a. Subscribed capital contributions should be no less than USD 15 million and capital contributions are limited to currency.</p> <p>b. Each partner is required to make capital contribution in its own name.</p>	Subscribed capital contributions for a foreign-invested equity investment enterprise should be no less than USD 15 million or its equivalent and capital contributions are limited to currency. Each partner of a foreign-invested equity investment enterprise which is organized as a partnership should make capital contribution in its own name.	The subscribed capital contribution of an equity investment enterprise invested by Hong Kong, Macao and Taiwan investors should be no less than USD 6 million or its equivalent and the subscribed capital contributions of an equity investment enterprise invested in by non-Hong Kong, Macao and Taiwan offshore investors should not be less than 15 million or its equivalent. Capital contributions are limited to currency.

Related policy		Beijing	Shanghai	Shenzhen	Pingtan
		should subscribe for a certain share.			
	<b>Investments by limited partners</b>	Unspecified	Except for general partners, the capital contributions of each limited partner should not be less than USD 1 million.	The amount of a single investment by each offshore institutional investor is to be no less than USD 1 million or its equivalent.	Except for general partners, the capital contributions of each limited partner should not be less than USD 1 million or its equivalent.
	<b>Investor qualifications</b>	<p>a. Have sound governance structures and sound internal controls, and have not been punished by the judicial agency or related regulatory agencies of the country or region where it is located in the past two years.</p> <p>b. Foreign investors or its affiliates have relevant investment experience;</p> <p>c. Other conditions required by the pilot scheme.</p>	<p>Investors mainly include overseas sovereign funds, pension funds, endowment funds, charitable funds, fund of fund, insurance companies, banks, securities companies and other overseas institutional investors recognized by the joint meeting, and should meet all the following conditions:</p> <p>a. In the previous fiscal year prior to its application, possess proprietary assets of not less than USD 500 million or manage assets of not less than USD 1 billion; or</p> <p>b. Have a sound governance structure and a sound internal controls, and have not been punished by the judicial agency or related regulatory agencies in the past two years.</p> <p>c. Foreign investors or its affiliates have more than five years' experience</p>	<p>a. Be an institution or individual with corresponding risk assessment capabilities and ability to bear risk;</p> <p>b. Domestic and offshore institutional investors should have sound governance structures and sound internal controls, and have not been punished by the judicial authority or related regulatory authorities of the country or region where it is located in the past three years.</p> <p>1) The offshore institutional investor should possess net proprietary assets not less than USD 5 million or its equivalent and the single investments that the investor makes should not be less than USD 1 million or its equivalent.</p> <p>2) The domestic institutional investor should possess self-owned assets not less than RMB 10 million and single investments that the investor makes should not be less than RMB 1 million.</p>	<p>Hong Kong, Macao and Taiwan Investors who apply for the establishment of management enterprises or investment enterprises should meet at least one of the following conditions:</p> <p>a. In the previous fiscal year prior to its application, possess proprietary assets of not less than USD 6 million or its equivalent or manage assets of not less than USD 12 million or its equivalent; or</p> <p>b. Hold an asset management license issued by the financial supervision and administration department of the region where it is located.</p> <p>Non-Hong Kong, Macao and Taiwan Investors should meet one of the following conditions:</p> <p>a. In the previous fiscal year prior to its application, possess proprietary assets of not less than USD 100 million or its equivalent or manage assets of not less than USD 200 million or its equivalent; or</p> <p>b. Hold an asset management license issued by the offshore financial supervision and administration department.</p> <p>All of the following conditions</p>

Related policy		Beijing	Shanghai	Shenzhen	Pingtan
			<p>engaging in relevant investment;</p> <p>d. Other conditions required by the joint meeting.</p>		<p>should be met by both the Hong Kong, Macao and Taiwan Investors and Non-Hong Kong, Macao and Taiwan offshore investors:</p> <p>a. Have sound governance structures and a sound internal controls, and have not been punished by the judicial agency or related regulatory agencies of the country or region where it is located in the past two years.</p> <p>b. Offshore investors or their related entities have relevant investment experience;</p> <p>c. Mainly include overseas sovereign funds, pension funds, endowment funds, charitable funds, funds of funds, insurance companies, banks, securities companies, other offshore institutional investors recognized by the Leading Group, etc.</p> <p>d. Other conditions required by the Leading Group.</p>
<b>Application procedures</b>		Equity investment funds legally established in Beijing may apply to the Municipal Bureau of Financial Service for participation in the pilot project through the fund management enterprise.	The foreign-invested equity investment management enterprise may apply to the Municipal Financial Service Office for participation in the pilot project through the foreign-invested equity investment enterprise or the executive partner proposing to establish the equity investment enterprise. The Municipal Financial Service Office will decide whether or not to accept the application within five business days from the date of receipt of all application documents.	The leading group office accepts applications on a year-round basis, and will organize the leading group members to review the applications on a regular basis. Approval determinations are made within 30 business days after the commencement of review procedures.	Applicants should submit an application to the office of the Leading Group (District Financial Service Office). Upon receipt of the application, the District Financial Service Office will organize the Leading Group members to review the application and submit the same to the Leading Group for examination and approval. Approval determinations are made within 30 business days after the commencement of review procedures.

Related policy	Beijing	Shanghai	Shenzhen	Pingtan
		<p>Within ten business days after the receipt of the application, the Municipal Financial Service Office will convene a meeting attended by the joint meeting and relevant units to review and confirm whether to approve the application.</p> <p>Pilot enterprises approved to participate in the pilot scheme must complete AIC registration procedures within six months from the date of approval. Otherwise, the enterprise will need to re-submit an application.</p>		
<b>Custodian banks</b>	<p>The pilot enterprise must entrust a domestic commercial bank that meets certain conditions to act as a custodian bank.</p>	<p>The foreign-invested equity investment enterprise should entrust a domestic qualified bank to act as a custodian bank.</p>	<p>A foreign-invested equity investment management enterprise should entrust a commercial bank institution that meets the following conditions to act as a primary custodian bank to take custody of its funds: approved by the state financial regulatory authority; above the branch level; have capacity and qualifications for taking custody of funds.</p> <p>The domestic RMB funds managed by foreign-invested equity investment enterprises or foreign-invested equity investment management enterprises should entrust a commercial banking institution that has the capacity and qualifications for taking custody of funds, and which is approved by the state financial regulatory authority and is above the branch level to act as a custodian bank to</p>	<p>The pilot enterprise should entrust a commercial bank with the capacity and qualifications to act as fund custodian which is approved by the state financial regulatory authority as a custodian bank.</p>

Related policy	Beijing	Shanghai	Shenzhen	Pingtan
			take custody of project funds.	
<b>Investment restrictions</b>	<p>Pilot enterprises shall not engage in the following business activities:</p> <ol style="list-style-type: none"> <li>Investment in areas where the foreign investments are prohibited by the state government;</li> <li>Transactions in stocks and corporate bonds in secondary markets (except for shares held by equity investment funds in the invested company after the invested company is listed);</li> <li>Transactions in futures and other financial derivatives;</li> <li>Direct or indirect investment in real estate not for self-use;</li> <li>Misappropriation of non-proprietary capital for investment;</li> <li>Provide loans or guarantees to others;</li> <li>Other matters prohibited by laws, regulations, or the organization documents of foreign-invested equity investment fund.</li> </ol> <p>The equity investment funds established or managed by the enterprises shall give their investment priorities to the seven strategic emerging industries</p>	<p>Foreign-invested investment enterprises shall not engage in the following businesses:</p> <ol style="list-style-type: none"> <li>Investment in areas where the foreign investments are prohibited by the state government;</li> <li>Transactions in stocks and corporate bonds in secondary markets (except for shares held by equity investment funds in the invested company after the invested company is listed)</li> <li>Transactions in futures and other financial derivatives;</li> <li>Direct or indirect investment in real estate not for self-use;</li> <li>Misappropriation of non-proprietary capital for investment;</li> <li>Provide loans or guarantees to others;</li> <li>Other matters prohibited by laws, regulations, or the organization documents of foreign-invested equity investment fund.</li> </ol>	<p>a. The foreign-invested equity investment enterprise should directly make industry investments under the guidance of the <i>Catalog for Guidance of Industries for Foreign Investment</i>.<sup>9</sup></p> <ol style="list-style-type: none"> <li>Foreign-invested equity investment management enterprises and foreign-invested equity investment enterprises must not engage in business activities prohibited by laws and regulations;</li> <li>Foreign-invested equity investment management enterprises are prohibited to organize as funds of funds.</li> <li>When the same person controls a general partner and a limited partner of a foreign-invested equity investment enterprise, the capital contribution of that person to the enterprise shall not exceed 50%.</li> <li>Foreign-invested equity investment management enterprises shall not directly participate in portfolio investment.</li> </ol>	<p>Foreign-invested equity investment enterprises and foreign-invested equity investment management enterprises shall not engage in business prohibited by laws and regulations.</p>

<sup>9</sup> [Catalog for the Guidance of Industries for Foreign Investment] [Nat'l Dev. Ref. Comm., Min. of Fin., Decree No. 4; promulgated Jun. 28, 2017, effective Jul. 28, 2017) 2017 ST. COUNCIL GAZ. 31, available at [www.gov.cn/gongbao/content/2017/content\\_5237697.htm](http://www.gov.cn/gongbao/content/2017/content_5237697.htm) (Chinese).

Related policy	Beijing	Shanghai	Shenzhen	Pingtan
	<p>preferentially developed in Beijing or to the equity investment funds with the seven strategic emerging industries as the key investment directions. The seven strategic emerging industries refer to energy conservation and environmental protection, new generation of information technology, biology, high-end equipment manufacturing, new energy, new materials and new energy vehicles, etc.</p>	<p>Where a foreign-invested enterprise intends to reinvest to establish an incorporated equity investment management enterprise or an incorporated equity investment enterprise in the municipality, it shall submit an application to the Municipal Commission of Commerce for approval in accordance with the <i>Interim Provisions on Domestic Investment by Foreign-invested Enterprises</i>.</p>		
<p><b>Filing/major events reporting system</b></p>	<p>The Municipal Bureau of Financial Service will be responsible for pilot enterprise filings. Pilot enterprises must submit a business report, capital custodian report issued by the custodian bank and the annual financial statement audited by the certified public accountant within 3 months after the end of each fiscal year, and report to the Municipal Bureau of Financial Service of any major events occurring during the last quarter's investment operations at the beginning of each quarter.</p>	<p>The Municipal Financial Service Office is responsible for pilot enterprise filings. Pilot enterprises report to the relevant departments of the district (county) where they are located any major events occurring during the last half year's investment operations on a semi-annual basis. The relevant department will report to the Municipal Financial Service Office within five business days from the receipt of the report.</p>	<p>The Municipal Office of Financial Service is responsible for pilot enterprise filings. Pilot enterprises will report to the Municipal Office of Financial Service any major events occurring during the last half year's investment operations processes on a semi-annual basis.</p>	<p>According to the Pingtan District <i>Implementing Measures for Information Submission by Equity Investment Enterprises (For Trial Implementation)</i>, newly registered or newly relocated equity investment enterprises in Pingtan district should submit enterprise information materials to the District Financial Service Office within one month after completing AIC registration and bank account opening, submit the annual business report to the District Financial Service Office after the end of each accounting year, and submit a report on major events occurring with the investment operations in the previous quarter within 10 business days after the end of each quarter.</p>



## Important Announcement

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