



HAN KUN LAW OFFICES

# Legal Commentary



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## Private Equity Law

### AMAC Opens Registration to Wholly/Majority Foreign Owned Private Securities Fund Managers

James WANG | Autumn WANG | Jiayi XU

While international private equity and venture capital firms have been managing and operating investment funds in China for many years, their hedge fund brethren have found it difficult if not impossible to participate in China's securities market due to tight regulatory restrictions. Some hedge fund managers tried to tap China's securities market indirectly by collaborating with Chinese asset managers as "investment or technology consultant", thus operating in a regulatory grey area. However, the regulatory landscape for foreign securities fund managers is about to change significantly with the recent new regulatory guidance from the Assets Management Association of China ("AMAC"), China's de facto regulator for the fund industry.

On June 30, 2016, AMAC issued and released the *Q&A Concerning Registration and Filing of Private Funds (X)* ("Q&A (X)"), which clearly allows wholly foreign-owned and Sino-foreign joint private securities fund managers that meet certain conditions to manage private funds in accordance with relevant rules. At the same time, Q&A (X) clearly specifies the necessary information that this kind of managers shall provide to AMAC for the purpose of private securities investment fund managers registration.

The release of Q&A (X) marks an important breakthrough on the supervision and regulation of foreign-owned private securities investment fund managers. According to the *Guidance Catalogue of Foreign Investment Industries*, the foreign shareholding of mutual fund managers shall not exceed 49%. Since hedge funds and mutual funds both invest in the secondary securities market, the view of many among the regulators was that the same foreign shareholding restriction should apply to private securities investment fund managers by reference. Thus, while quite a number of wholly foreign-owned or majority foreign-owned private securities fund managers had submitted applications for registration to AMAC, no

application was approved. The recently concluded 8th Round China-US Strategic & Economic Dialogue, however, brought forth a commitment to allow qualified wholly or majority foreign-owned securities investment fund managers to apply for registration with AMAC. In a parallel development, in accordance with “Supplement X to the Mainland and Hong Kong Closer Economic Partnership Arrangement” (“**CEPA**”), a Hong Kong-funded financial institution meeting certain conditions is allowed to establish a joint venture fund management company in Mainland China as the majority shareholder. On June 16, 2016, the China Securities Regulatory Commission approved the first majority foreign-owned mutual fund manager (HangSeng Qianhai Fund Management Co. Ltd.), in which Hang Seng Bank holds a 70% stake, the first breakthrough case on the 49% foreign ownership cap for mutual fund managers.

Q&A (X) clearly sets forth the conditions for foreign-invested private securities fund management institutions to be registered as private securities fund managers, including:

- (1) The company shall be incorporated within China;
- (2) The foreign shareholder shall be a financial institution approved or licensed in the country or region of its domicile, and the securities regulatory authority of the country or region of its domicile shall have signed a memorandum of understanding cooperation on securities regulation with the China Securities Regulatory Commission or its ratified organizations;
- (3) The institution and its foreign shareholder shall not have been subject to severe sanction by any regulatory authority or judicial organization;
- (4) For private securities fund managers that have de facto foreign controlling persons, the de facto foreign controlling persons shall also meet the conditions (2) and (3).

The implementation of Q&A (X) in practice remains to be seen.

## ● **Important Announcement**

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If you have any questions regarding this publication, please contact the authors James Wang ([james.wang@hankunlaw.com](mailto:james.wang@hankunlaw.com)), Autumn Wang ([autumn.wang@hankunlaw.com](mailto:autumn.wang@hankunlaw.com)) or another lawyer you know at Han Kun, or contact Han Kun Investment Funds and Asset Management Group ([hkfund.list@hankunlaw.com](mailto:hkfund.list@hankunlaw.com)).