The Asset Management Review

Eleventh Edition

Editor
Paul Dickson

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PREFACE

Last year we reflected on how 2020 might primarily be remembered as the year of the novel covid-19 pandemic. A few events of global significance punctured covid-19's monopoly of economic news: the Democrats winning the White House; an 11th-hour 'deal' being reached between the European Union and the United Kingdom a mere week before the end of the transition period; and a wrong turn in the Suez canal. However, a year on and the pandemic continues to dominate the global geopolitical landscape and remains a source of significant uncertainty. While it is clear that 2021 was also overshadowed by the pandemic, successful vaccination campaigns appear to be providing fragile grounds for economic optimism in the near future. Yet unprecedented levels of government spending combined with labour shortages and supply chain disruption mean any recovery will have to grapple with rising inflationary pressures. In the asset management world, it is clear that the sector has faced one of its greatest and most sustained tests in recent history. The need for the industry to remain adaptable and resilient has perhaps never been greater.

Leaving all of this aside, though, the importance of the asset management industry continues to grow. Nowhere is this truer than in the context of pensions, as the global population becomes larger, older and richer, and government initiatives to encourage independent pension provision continue. Both industry bodies and legislators are also increasingly interested in pursuing environmental, social and governance (ESG) goals through private sector finance. This should not be a surprise: lack of shareholder engagement has been identified as one of the key issues that contributed to the governance shortcomings during the financial crisis. Given the importance of the asset management industry in investing vast amounts on behalf of clients, the sector is the natural focus of regulatory and governmental initiatives to promote effective stewardship and take the lead in instilling a corporate cultural focus on sustainability and ESG initiatives.

The activities of the financial services industry remain squarely in the public and regulatory eye, and the consequences of this focus are manifest in ongoing regulatory attention around the globe. Regulators are continuing to seek to address perceived systemic risks and preserve market stability through regulation. Operational resilience – a concept focused on ensuring asset managers' holistic preparedness against any risk event, particularly significant operational risks – continues to be a significant focus point for global regulators.

It is not only regulators who continue to place additional demands on the financial services industry: the need to rebuild trust has led investors to call for greater transparency around investments and risk management from those managing their funds. Senior managers at investment firms are, through changes to regulatory requirements and expectations as to firm culture, increasingly being seen as individually accountable within their spheres of responsibility. Industry bodies have also noted further moves away from active management into passive strategies, illustrating the ongoing pressure on management costs. This may, in itself, be storing up issues for years to come.

The rise of fintech and other technological developments, including cryptocurrencies, data analytics and automated (or 'robo') advice services, is also starting to have an impact on the sector, with asset managers looking to invest in new technologies, seeking strategies to minimise disruption by new entrants, or both. While regulators are open to the development of fintech in the asset management sector, they also want to ensure that consumers do not suffer harm as a consequence of innovations. Regulators across various jurisdictions launched the Global Financial Innovation Network, which aims to facilitate collaboration and communication between regulators regarding financial innovation and to create a cross-border sandbox in which firms can test their new technologies. This continues to be a period of change and uncertainty for the asset management industry, as funds and managers act to comply with regulatory developments and investor requirements, and adapt to the changing geopolitical landscape and respond to the ongoing uncertainties brought about by the global pandemic. Although the challenges of regulatory scrutiny and difficult market conditions remain, a return of risk appetite has also evidenced itself, and the global value of assets under management continues to increase year-on-year. The industry is not in the clear, but, prone as it is to innovation and ingenuity, it seems well placed to navigate this challenging and rapidly shifting environment.

The publication of the 11th edition of *The Asset Management Review* is a significant achievement, which would not have been possible without the involvement of the many lawyers and law firms who have contributed their time, knowledge and experience to the book. I would also like to thank the team at Law Business Research for all their efforts in bringing this edition into being.

The world of asset management is increasingly complex, but it is hoped that this edition of *The Asset Management Review* will be a useful and practical companion as we face the challenges and opportunities of the coming year.

Paul Dickson
Slaughter and May
London
August 2022

Chapter 3

CHINA

Huaying (Daisy) Qi, Lin Zhou and Li Yang[1]

I OVERVIEW OF RECENT ACTIVITY

The year 2021 proved to be an important milestone for China's asset management industry in achieving its phased transformation and high-quality development. The year concluded with the official end of the 3.5-year transition period for the Guiding Opinions on Regulating the Asset Management Business of Financial Institutions (New AMR), which have led China's asset management industry to a new paradigm. The New AMR exerts unified functional supervision over China's asset management industry in an effort to achieve de-nesting and de-leveraging, break rigid redemptions, and implement net worth management in order to optimise the structure and value orientation of China's asset management products, further reduce cross-market financial risks, and create a healthier and more vigorous asset management market in China.

By the end of 2021, the aggregate assets under management (AUM) of China's asset management industry reached a record high of 133.7 trillion yuan, representing 11 per cent growth, despite the impact of the global pandemic.[2] Concurrently, the proportion of net value products, active management products and private hybrid products relatively increased, reflecting the optimisation and diversification of investment in asset management products.

II GENERAL INTRODUCTION TO THE REGULATORY FRAMEWORK

The primary regulators for asset management business in China include the Financial Stability and Development Committee, the People's Bank of China (PBC), the China Banking and Insurance Regulatory Commission (CBIRC) and the China Securities Regulatory Commission (CSRC). There is no unified regulatory authority in China for the asset management industry. Regulators for cross-border asset management businesses also include the Ministry of Commerce and the State Administration of Foreign Exchange (SAFE). It is notable that some self-regulatory organisations also issue self-regulatory rules that apply to their respective industries, including the Securities Association of China, the Asset Management Association of China (AMAC), the China Trustee Association, the China Banking Association, the China Futures Association and the Insurance Asset Management

1 Huaying (Daisy) Qi, Lin Zhou and Li Yang are partners at Han Kun Law Offices. The authors acknowledge the assistance of John D Fitzpatrick, Yiwen Mao, Mingyu Xia and Zhangquan Chen from Han Kun Law Offices.

2 Data and information are from the 2021 China Asset Management Series Report by BCG & Everbright Bank (EBC).

Association of China (IAMAC), among others. In fact, asset management institutions more often rely on self-regulatory rules for their routine operations rather than departmental rules and normative documents promulgated by regulators.

III COMMON ASSET MANAGEMENT STRUCTURES

i Types of issuers of asset management products

To issue asset management products, asset management institutions in China are required to apply for licences with their respective regulators or industry self-regulatory organisations. Licensed institutions may issue and operate asset management products within the scopes of their licences. Asset management products may be categorised by both their competent regulators and different types of issuers.

Issuer	Asset management product	Legal structure	Open-ended or closed-ended
Securities companies and their subsidiaries	• Collective asset management plan • Directional asset management plan • Special asset management plan • Special asset-backed plan	Contractual arrangement	Open-ended or closed-ended
Fund management companies and their subsidiaries	• Public fund • Specific asset management plan	• Securities investment fund • Contractual arrangement	Open-ended or closed-ended
Futures companies and their subsidiaries	• Collective asset management plan • Single asset management plan	Contractual arrangement	Open-ended or closed-ended
Trust companies	• Single fund trust • Collective fund trust	Trust	Open-ended or closed-ended
Insurance asset management companies	• Equity investment plan • Debt investment plan • Hybrid insurance asset management product	Contractual arrangement	Equity investment plan should be closed-ended
• Wealth management departments of commercial banks • Wealth management subsidiaries of commercial banks	• Public wealth management product • Private wealth management product	Contractual arrangement	Open-ended or closed-ended
Private fund managers	• Private securities investment fund • Private equity investment fund • Asset allocation fund, etc.	• Corporation, partnership • Contractual arrangement	Closed-ended

ii Types of investors – public and private asset management products

Asset management products can be classified as either publicly offered or privately offered, depending on the offering targets. Publicly offered products are offered to unspecified members of the public, with the criteria for determining a public offering outlined in the Securities Law of the People's Republic of China (2019 Revision) (Presidential Order No. 37). By contrast, privately offered products are offered in a non-public manner to qualified investors, which are defined in relevant departmental rules and normative documents promulgated by regulators.

iii Types of underlying investments

Asset management products can also be classified by the nature of the underlying investments, which include fixed-income products, equity products, commodity or financial derivative products, and hybrid products.

Asset management institutions are required to disclose to investors the types of asset management products based on these classification standards when the products are issued and are required to make investments in accordance with the designated targets and strategies.

IV MAIN SOURCES OF INVESTMENT

Looking back at 2021, the bank wealth management industry continued to maintain overall growth while undergoing a transition, the trust industry experienced a steady rebound, and the public funds, private funds and insurance asset management sectors overall also witnessed a trend of growth.

Recent industry growth highlights include the following:

a Bank wealth management industry: in 2021, 47,600 bank wealth management products were issued, which raised a total amount of 122.19 trillion yuan. The industry growth rate has experienced slowdowns since 2017, owing to stricter supervision and tightening liquidity. However, it is observed that stable growth has been achieved with the implementation of new sets of asset management regulations such as the New AMR. By the end of 2021, there were 36,300 existing products in the bank wealth management industry, down slightly from the same period in the previous year, and the remaining balance was 29 trillion yuan, which represented a growth of 12.14 per cent compared with 2020. A healthy trend of sustainable development has gradually unfolded. Notably, the scale of principal-guaranteed bank wealth management products once reached nearly 4 trillion yuan before the New AMR was implemented, but they were entirely cleared by 2021, in line with an expected market crackdown on rigid redemptions.[3]

b Trust industry: 2021 was the first year since 2018 in which the trust industry recovered from the downturn. By the end of the fourth quarter of 2021, the balance of the scale of trust assets reached 20.55 trillion yuan, representing an increase of 0.29 per cent, or 60 billion yuan, from the end of the fourth quarter of 2020, and an increase of 0.52 per cent, or 110 billion yuan, from 20.44 trillion yuan by the end of the third quarter of 2021. During the three years since the trust industry reached its peak asset scale of 26.25 trillion yuan in 2017, it had been experiencing negative growth and had gradually fallen back. This downward trend levelled off with obvious signs of stabilising shown in the first three quarters of 2021, and it began to rebound in the fourth quarter. Although this growth was not significant, it nonetheless indicates the stable recovery of development in the trust industry in 2021.[4]

c Products under CSRC and AMAC supervision: except for the asset management plans sponsored by the securities companies, both the number and the AUM of all other kinds of products fall under this category, such as public funds, fund company asset

3 Data and information come from the China Banking Wealth Management Market Report (2021) by the Banking Wealth Management and Registration Centre.

4 For data and information from the assessment and analysis of China's trust industry development for 2021 by the China Trustee Association, please see http://www.xtxh.net/xtxh/statistics/47592.htm.

management plans, pension funds,[5] fund subsidiary asset management plans, futures company asset management plans, private funds and special asset-backed plans, continued to increase. By the end of 2021, the total scale of the asset management business of fund management companies and their subsidiaries, securities companies, futures companies and private fund managers reached 67.87 trillion yuan.[6] Specifically, there were 9,288 publicly offered funds and the total AUM reached approximately 25.56 trillion yuan; 17,872 private asset management plans were sponsored or managed by securities companies and their subsidiaries, with the AUM reaching approximately 8.24 trillion yuan[7]; 24,610 private fund managers were registered with AMAC, whereas in 2020 it was 24,561; and the number of private funds was 124,098 and the total AUM reached 20.27 trillion yuan, compared with 96,818 and 16.96 trillion yuan, respectively, in 2020.[8]

d Insurance asset management industry: by the end of 2021, the AUM of the 32 insurance asset management companies that fully participated in IAMAC grew steadily, reaching 19.89 trillion yuan, with a growth of 11.52 per cent compared with the end of 2020.[9]

V KEY TRENDS

i Expansion of mutual financial opening up

In July 2021, the Executive Meeting of the State Council pointed out that the market access threshold for foreign-invested financial institutions such as banks and insurance companies will be refined, rules concerning cross-border transactions between parent and subsidiary firms of financial institutions will be improved, and channels and methods for foreign capital to participate in the domestic financial market will be optimised. This move has sent a strong signal to the market to deepen financial opening up to prompt those internationally well-known asset management institutions to accelerate the pace of entering China's asset management market. By the end of 2021, four international asset management giants – Amundi, Schroders, BlackRock and Goldman Sachs – set up Sino-foreign joint venture asset management companies in China. On the other hand, the reform of cross-border investment by private equity and securities funds has accelerated. Multiple cities have intensively launched or updated their local policies on qualified foreign limited partner (QFLP) and qualified domestic limited partner (QDLP) pilot programmes, which primarily aim to reduce examination thresholds and stimulate investment and financing vitality so as to support a group of high-quality international investment institutions in participating in domestic and overseas investments.

5 According to the Data Report on Asset Management Business (Q4 2021), the pension funds here include social security funds, basic pension funds, corporate pension funds and occupational pension funds managed by fund management companies, excluding offshore pension funds.

6 According to the Data Report on Asset Management Business (Q4 2021), the duplicated portion of private equity fund adviser management products and private equity management plans are excluded here.

7 According to the Data Report on Asset Management Business (Q4 2021), the size of the business does not include pension funds managed by securities companies.

8 Data and information come from the Data Report on Asset Management Business (Q4 2021) by the AMAC.

9 Data and information come from the Research Report on China Insurance Asset Management Industry 2021-2022 by IAMAC in May 2022.

ii Rapid development of different asset management services

Rapid development of public funds

The New AMR requires licensed financial institutions to engage in active management rather than merely acting as channels for investment, which has resulted in a significant increase in the scale and proportion of public funds under active management. By the end of November 2021, the AUM of public funds reached 25.32 trillion yuan, representing an increase of 27 per cent from the end of 2020, and 1,898 public funds were newly established in 2021, far more than 1,366 in 2020, which reached a record high.[10] With the growth in the scale of public funds, innovations in fund products have also continued to appear. In June, the first batch of nine real estate investment trusts (REITs) were listed on the Shanghai and Shenzhen stock exchanges; in August, multiple fund management companies submitted applications for their fund of funds and listed open-end fund products, which would further enrich their fund of funds product lines; and in September, the pilot schemes for pension wealth management products and Cross-border Wealth Management Connect were officially launched, which promoted the diversification of the public fund market.

The year 2021 was also groundbreaking for foreign-funded public funds, during which BlackRock, Fidelity and Neuberger Berman were approved to establish their wholly foreign-owned fund management companies in China, and VanEck, Alliance Bernstein and Schroders were also under application for public fund licences.[11] Foreign-funded public funds are expected to officially compete with domestic public funds through their unique investment strategies that combine global vision and local practice.

Stable advance of insurance asset management

Allocation and scale of insurance fund investment witnessed continuous progress. As of November 2021, the proportion of active insurance fund investment increased continuously, while the scale of bank deposits dropped to its lowest point, 11.16 per cent, in the past decade. The aggregate proportion of bonds and other debt investments remained at around 70 per cent, which generally tended to be steady.[12] Insurance fund investments have also expanded to new investment fields such as pension wealth management products and REITs.

In terms of regulatory rules, the CBIRC amended the Provisions on Administration of Insurance Asset Management Companies, adding chapters on corporate governance and risk management and optimising requirements for shareholding structures.

10 Data and information come from the Review and Prospect of Asset Management Industry in 2021 by China Life Insurance (Group) Company, 22 February 2022.

11 Information from 'Official Announcement! The Foreign Asset Management Giant Welcomes a New Master' by China Fund Newspaper, 20 April 2022.

12 Data and information come from the Review and Prospect of Asset Management Industry in 2021 by China Life Insurance (Group) Company, 22 February 2022.

Accelerated development of the private fund market

By the end of 2021, AUM of private securities funds reached 6.12 trillion yuan and the number of private securities funds reached 76,000, representing a sharp increase of more than 60 per cent compared with the end of 2020. The number of private fund institutions with AUM of over 10 billion yuan increased significantly to 105, which is 43 more than at the end of 2020.[13]

At the end of 2020, the CSRC promulgated the Several Provisions on Tightening the Regulation of Privately Offered Investment Funds, which strengthened the regulatory requirements for private fund managers and practitioners. Subsequently, the AMAC released several important circulars to set out more specific and explicit self-discipline rules for practitioner management, filing of private funds and disclosure of information, etc., so as to promote the healthy and stable operation of the private fund market.

iii New growth brought by the Beijing Stock Exchange

In September 2021, the Beijing Stock Exchange (BSE) was established, which is primarily intended to serve innovative small and medium-sized enterprises. The BSE has attracted multiple asset management institutions to conduct research on companies listed on the BSE and to make investment allocations. A number of public funds actively participated in the strategic investment of the BSE and announced that their products would invest in the stocks of companies listed on the BSE. In November 2021, eight public funds that mainly invest in companies listed on the BSE were registered and brought long-term incremental funding to the BSE. The BSE coordinates with the base tier and the innovation tier of the National Equities Exchange and Quotations, focusing on 'specialized, refined, peculiar and new' enterprises, and therefore provides high-quality investment portfolio and exit paths for private equity investment funds that successfully attract multiple well-known private equity institutions to 'dig for gold'.

Overall, the lower investment threshold of the BSE is expected to increase market vitality and bring more investors to participate in securities trading. The investment opportunities and potential value relating to those leading and headline companies in specific industries and segments should boost the investment appetites of asset management institutions. We expect that more policies will be released to support and encourage bank financial companies, trusts and other asset management institutions to launch products that will purchase BSE stocks.

iv Dual carbon strategy and environmental, social and governance

In February 2021, the State Council promulgated the Guiding Opinions of the State Council on Accelerating the Establishment and Improvement of a Green and Low-carbon Circular Development Economic System, intensifying the assessment of green finance performance of financial institutions and supporting financial institutions and relevant enterprises to carry out green financing in the international market. In July, China's national carbon emissions trading market officially opened. In November, the PBC announced the launch of carbon emission reduction support tools to promote the development of clean energy, energy-saving and environmental protection, carbon emission mitigation technology and other key areas. Under the Carbon Peak and Carbon Neutrality strategy, asset management institutions are

13 Data and information come from the Review and Prospect of Asset Management Industry in 2021 by China Life Insurance (Group) Company, 22 February 2022.

expected to respond to regulatory requirements to reasonably measure, monitor and manage the relevant risks and opportunities brought by climate change to institution investments and fully integrated environmental, social and governance (ESG) and green factors into the investment decision-making and risk control system.

VI SECTORAL REGULATION

i Insurance

Insurance companies and insurance asset management companies play different roles in various types of asset management products as follows:

Participant	Role	Asset management product	Regulations
Insurance company	Investor	Private fund	• Notice of the China Insurance Regulatory Commission on Issuing the Interim Measures for Equity Investment with Insurance Funds (CIRC [2010] No. 79)[14] • Notice of the China Insurance Regulatory Commission on Issues Relating to Investment in Equity and Real Estate by Insurance Funds (CIRC [2012] No. 59)* • Notice of the China Banking and Insurance Regulatory Commission on Matters Concerning Financial Equity Investment with Insurance Funds (CBIRC [2020] No. 54)
		Venture capital fund	Notice of the China Insurance Regulatory Commission on Matters Concerning the Investment of Insurance Funds in Venture Capital Funds (CIRC [2014] No. 101)* (Notice No. 101)
		Security	Notice of the China Insurance Regulatory Commission on Investment in Securities Trading by Insurance Institutions (CIRC [2011] No. 77)*
		Bank deposit	Notice of the China Insurance Regulatory Commission on Regulating the Bank Deposit Business for Insurance Funds (CIRC [2014] No. 18)*
		Bond	Notice of the General Office of the China Banking and Insurance Regulatory Commission on Issues Concerning Adjusting the Requirements for the Credit Rating of Investment of Insurance Funds in Bonds (CBIRC [2021] No. 118)
		Infrastructure fund	Notice of the General Office of the China Banking and Insurance Regulatory Commission on Issues Concerning the Investment of Insurance Funds in Publicly Offered Real Estate Investment Trusts (General Office of the CBIRC [2021] No. 120)
• Insurance company • Insurance asset management institution • Subsidiaries of insurance asset management institution	• Manager • Promoter • Investor	Insurance private fund	Notice of the China Insurance Regulatory Commission on Matters Concerning the Formation of Insurance Privately Offered Funds (CIRC [2015] No. 89)* (Notice No. 89)

14 This regulation was partially invalidated by the CBIRC Notice on Matters Concerning Financial Equity Investment with Insurance Funds on 12 November 2020.

Participant	Role	Asset management product	Regulations
Insurance asset management company	Manager	Debt investment plan	• Interim Measures on the Administration of Insurance Asset Management Products (Order of the CBIRC [2020] No. 5) • Notice of the General Office of the China Banking and Insurance Regulatory Commission on Issuing Three Documents Including the Detailed Rules for the Implementation of Portfolio Insurance Asset Management Products (General Office of the CBIRC [2020] No. 85)*
		Equity investment plan	
		Portfolio product	

* These rules were partially invalidated by Notice of the China Banking and Insurance Regulatory Commission on Revisions to Certain Regulatory Documents in the Area of the Use of Insurance Funds (CBIRC [2021] No. 47) promulgated by the CBIRC on 8 December 2021(Notice No. 47).

Notably, Notice No. 47 revised 14 existing regulatory documents in respect of the use of insurance funds. The revision can be summarised into three main aspects – namely eliminating external evaluation, eliminating discrimination and eliminating thresholds. This has loosened the investment restrictions set for insurance capital in several fields:

a Eliminating external evaluation: a credit rating is no longer a mandatory requirement for the relevant insurance institutions when issuing asset-backed plans and debt investment plans.

b Eliminating discrimination: Notice No. 47 has cancelled the requirement that the ‘non-insurance financial institutions and their subsidiaries’ shall not have actual control over the management and operation of the private funds invested by insurance funds, nor shall they hold general partnership interests in such private funds, which provides more options for the allocation of insurance funds.

c Eliminating thresholds: for venture capital funds, Notice No. 47 eliminated the restriction that ‘the size of a single fund shall not exceed 500 million yuan’ under Notice No. 101, which further expands the involvement of insurance funds in the investment of venture capital funds. In addition, Notice No. 47 formally invalidates the provisions that ‘the capital contribution or subscription amount of the promoter and its affiliated insurance organisations in the insurance fund shall not be less than 30 per cent of the proposed scale of the offering’ under Notice No. 89, further stimulating the vitality of insurance private funds by fully realising market-based fundraising.

ii Pensions

Primary laws and regulations

Significant primary laws and regulations are the following:

a Social Insurance Law of the People’s Republic of China (2018 Revision);

b Regulations on the National Social Security Fund (Order of the State Council No. 667);

c Interim Measures for Administration of National Social Security Fund Investment (Order of the Ministry of Finance and the Ministry of Labour and Social Security No. 12);

d Notice of the State Council on Issuing the Measures for the Administration of Investment in Basic Pension Insurance Funds (State Council [2015] No.48);

e Measures for Enterprise Annuities (Order of the Ministry of Human Resources and Social Security and the Ministry of Finance No. 36); and

f Measures for the Management of Enterprise Annuity Funds (2015 Revision).

Product classification

Pension funds in China include national social security funds, basic old-age insurance funds, enterprise annuities and other products.

National Social Security Fund

The National Social Security Fund (NSSF) is composed of funds allocated by the central government, transfer of state-owned capital, fund investment proceeds and funds raised through other means approved by the State Council.

Note the following:

a regulators: the Ministry of Finance and the Ministry of Human Resources and Social Security;

b operation and management: the National Council for Social Security Fund (NCSSF) is responsible for the operation and management of the NSSF;[15] and

c investment scope: the scope of domestic investment includes bank deposits, bonds, trust loans, asset securitisation products, stocks, securities investment funds, equity investments and equity investment funds, etc. The scope of overseas investment includes bank deposits, banknotes, large transferable deposit certificates and other money market products, bonds, stocks, securities investment funds and derivative financial instruments, etc.

The NSSF has not made new investments in private funds in the past few years. We observed in practice that the NSSF resumed investing in private funds in 2019 and continued its investment in 2020 and 2021.

Basic old-age insurance funds[16]

Basic old-age insurance funds are composed of the contributions of individuals and their employers.

Note the following:

a regulators: the Ministry of Finance and the Ministry of Human Resources and Social Security, the PBC, the CBIRC and the CSRC;

b operation and management: the provincial people's governments entrust the NCSSF as the entrusted institution, and qualified managers are engaged to provide specific investment management service; and

c investment scope: bank deposits, central bank notes, interbank certificates of deposit, bonds, asset-backed securities, bond repurchase, pension products, securities investment funds, stocks, equities, stock index futures and treasury bond futures.

15 Article 6 of Interim Measures for Administration of National Social Security Fund Investment.

16 Notice of the State Council on Issuing the Measures for the Administration of Investment in Basic Pension Insurance Funds (State Council [2015] No. 48).

Supplemental old-age insurance funding – enterprise annuity funds

The enterprise annuity is a non-compulsory type of old-age insurance that supplements basic old-age insurance and is jointly paid by an enterprise and its employees. Enterprise annuity funds refer to funds raised by an enterprise in accordance with its enterprise annuity plan and the investment proceeds therefrom. Management of enterprise annuity funds is to be entrusted to a qualified pension management company or the enterprise's annuity council.

Note the following:

a regulators: the Ministry of Finance, Ministry of Human Resources and Social Security, the CBIRC and the CSRC;

b operation and management: qualified pension management company or the enterprise's annuity council; and

c investment scope: limited to investment in Mainland China and Hong Kong. The scope of investment in Mainland China includes bank deposits, standardised credit assets, repurchase of bonds, trust products, debt investment plans, public offered securities funds, stocks, share price index futures, treasury bond futures and pension products. The scope of investment in Hong Kong includes indirectly investing in stocks listed on the Stock Exchange of Hong Kong that are allowed to be traded under the interconnection mechanism for Mainland and Hong Kong stock markets by direct investment in stock pension products or public offered securities funds.[17]

iii Real property

The main asset management products in the real estate sector are as follows.

Real estate asset-backed securitisation

Asset-backed securitisation (ABS) business refers to business activities involving the issuance of asset-backed securities by securities companies, fund management subsidiaries and other relevant entities through the setting up of special purpose vehicles or through other structured financing methods. ABS products are created for purposes of credit enhancement, and income is derived from the cash flow generated from the underlying assets. Real estate ABS products in China mainly include supply chain ABS, securities backed by receivables from property sales, property management fee ABS, commercial real estate mortgage-backed securities and quasi-REITs.

REITs

REITs are a type of contractual or corporate fund. When an investor invests in a REIT, the investor's money is pooled together in a collective scheme that invests in a portfolio of income-generating real estate assets such as shopping malls, infrastructure, offices, hotels or serviced apartments. These assets are professionally managed by REIT managers and property managers who charge a fee in exchange for their services. Revenues generated from assets (primarily rental income) are normally distributed at regular intervals to REIT holders after accounting for fees such as REIT management fees and property management fees.

17 Article 2 of Notice by the Ministry of Human Resources and Social Security of Adjusting the Investment Scope of Annuity Funds.

REITs can be managed internally or externally. Internally managed REITs employ their own personnel to manage the trust's assets and real estate. Externally managed REITs employ a third party to act as the manager, who can manage assets, real estate or both.

Following the issuance on 30 April 2020 of the Notice of the CSRC and the NDRC on Promoting the Work Related to the Pilot Program of REITs in the Infrastructure Field, the NDRC, together with its general office, issued a series of notices, including instructions for applying for the REIT pilot project,[18] establishing the REIT pilot project pool[19] and promoting the REIT piloting work.[20] On 21 June 2021, the first batch of nine public REITs were listed on the stock exchanges, which marks the official commencement of the public REIT market in China.[21] The nine projects target four categories of technical facilities, which include three industrial parks, two warehousing and logistics facilities, two eco-friendly facilities and two highways, which cover major national strategic regions such as the Beijing-Tianjin-Hebei region, the Yangtze River Economic Belt, the Yangtze River Delta and the Guangdong-Hong Kong-Macao Greater Bay Area.[22]

Real estate private funds

Prior to the introduction of certain AMAC restrictions on private funds' debt investments, real estate funds focused mainly on debt-related investments. Following these restrictions, real estate private funds have increasingly focused on equity-related investments. Since 2021, real estate enterprises have been faced with increasingly tight liquidity and stricter supervision and policies, which make it difficult to change the circumstance that resources are concentrated in certain major enterprises in the real estate industry. According to the public information disclosed by AMAC,[23] only five private equity funds with 'real estate' in their names were filed with AMAC in 2021.

18 For more information, please see the Notice of the General Office of the NDRC on the Declaration Work of Real Estate Investment Trusts (REITs) Pilot Projects in the Infrastructure Field (NDRC Investment [2020] No. 586), issued 31 July 2020.

19 For more information, please see the Notice of the General Office of the NDRC on Establishing the National Pilot Project Pool of the Real Estate Investment Trusts (REITs) in the Infrastructure Field (NDRC Investment [2021] No. 35), issued 13 January 2021.

20 For more information, please see the Notice of the NDRC on Further Effectively Completing the Work of the Pilot Program of Real Estate Investment Trusts (REITs) in the Infrastructure Field (NDRC Investment [2021] No. 958), issued 29 June 2021.

21 Data and information are sourced from China ViewPoint - China REITs Update, CBRE China, June 2021.

22 Data and information are sourced from REITs Development Report, Deloitte China, October 2021.

23 Data and information are sourced from the Private Equity Public Disclosure System of the AMAC, please see https://gs.amac.org.cn/amac-infodisc/res/pof/fund/index.html.

iv Hedge funds

Public securities funds

Compared with regulations for other asset management products, the regulation of public funds is more consistent with the principles of the New AMR, and public funds are thus less affected by the New AMR. According to AMAC statistics, by the end of 2021 there were 9,288 public funds, compared with 7,913 in the same period in 2020, with a total AUM of 25.56 trillion yuan, compared with 19.89 trillion yuan in the same period in 2020.[24]

In October 2019, the CSRC promulgated the Notice on the Pilot Implementation of the Public Offered Mutual Fund Investment Advisory Business, which marked the establishment of a pilot programme for investment advisory services in publicly offered funds. According to the CSRC statistics, 18 institutions obtained the pilot qualification in the first batch issued. As of 16 July 2021, investment advisory services have been provided to assets in the total amount of more than 50 billion yuan, with nearly 2.5 million investors being served. Accordingly, a development system for more sophisticated and standardised fund investment advisory business has been initially established and will be improved rapidly.[25]

Since 1 April 2020, the restrictions on the shareholding ratio of foreign investors in fund management companies have been lifted nationally by the CSRC. On 21 August 2020, the CSRC approved the establishment of BlackRock Fund Management Co, Ltd, making it the first wholly foreign-owned public fund management institution in China. Later, in July 2021, BlackRock applied for the filing of its first public fund product. Thereafter, on 5 August, Fidelity Fund Management (China) Co, Ltd, a subsidiary of Fidelity International, was also approved for establishment by the CSRC. On 26 September, CSRC approved the establishment of Neuberger Berman Fund Management (China) Co, Ltd. So far, three wholly foreign-owned public fund management companies have been established in China.

Private securities funds

Private securities funds are privately offered to qualified investors, managed by institutions licensed as private securities fund managers, and mainly invest in stocks, bonds, futures and other securities.

Notably, private securities fund management business has opened up to foreign investors much earlier than public fund management. Eligible foreign-invested private securities fund managers may carry out fund management business within China in the form of a joint venture or wholly foreign-owned entity (WFOE), according to the Answers to Questions No. 10 concerning the Registration and Record-filing of Privately Offered Funds issued by AMAC on 30 June 2016. In 2021, another four wholly foreign-owned private securities fund managers (WFOE PFMs) registered with AMAC. As of December 2020, a total of 37 WFOE PFMs had registered with AMAC.[26]

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24 Data and information are sourced from the Asset Management Business Statistics (Q4 2021) and the Asset Management Business Statistics (Q4 2020) published by AMAC.

25 Data and information are sourced from the CSRC press release dated 16 July 2021, available at http://www.csrc.gov.cn/csrc/c100029/c0d1ef2b845b34714af0abb063b656a6c/content.shtml.

26 Data is from AMAC Privately Offered Fund Manager Comprehensive Inquiry Platform, please see http://gs.amac.org.cn/amac-infodisc/res/pof/manager/index.html

v Private equity

The market in China does not recognise clear differences between private equity funds and venture capital funds; thus, unless otherwise specified, references to private funds in this chapter include both private equity funds and venture capital funds.

Depending on their organisational form, private funds may be divided into corporate funds, partnership funds and contractual funds. The first two types of funds are registered as legal entities in accordance with the Company Law of the People's Republic of China (2018 Amendment) and the Law of the People's Republic of China on Partnership Enterprises (2006 Revision), respectively.

AMAC is a self-regulatory organisation for the fund industry that supervises the fund industry under the authorisation and guidance of the CSRC. Responsibilities of the AMAC include formulating and implementing industry self-regulatory rules, processing registrations of private fund managers, filing of private funds, management of professional qualifications and practitioners, information disclosure and the performance of other functions in accordance with relevant laws and regulations.

In respect of foreign investment, overseas investors can invest in yuan-denominated funds in the People's Republic of China (PRC) pilot cities as QFLPs[27] or make fund investments directly through foreign-invested enterprises. In 2021, QFLP pilot cities increased significantly, including Nanning, Xiong'an, Ningbo, Wuxi, Nanjing, Dongguan, Hangzhou, Kunshan, Jiashan, Zhongshan and Hengqin. Shenzhen,[28] Beijing,[29] Zhuhai[30] and Xiamen[31] have updated their QFLP rules.

In 2021, guided by the Achieving Carbon Peaking in 2030 and Carbon Neutrality in 2060 strategy, more and more companies and investment institutions integrated ESG investment strategies into their investment decision-making. Relevant authorities were also engaged in advancing ESG information disclosure, encouraging listed companies to take the lead in green development and performing social responsibilities and governance improvement. According to the survey conducted by the AMAC, private equity fund managers have paid more attention to ESG in recent years. In 2021, fund managers continued to put their investment interests in the fields of healthcare, information technology and, in particular, the

27 In practice, cities such as Tianjin and Wuxi accept the set-up of a foreign invested limited partnership (FILP). With more accommodative requirements and less time cost, setting up a FILP is relatively easier than for a QFLP, and filing with the AMAC is not a necessity for FILPs in Tianjin and Wuxi as long as the FILP does not raise funds from onshore investors.

28 On 29 January 2021, Shenzhen updated its QFLP rules by promulgating the Measures of Shenzhen City for the Pilot Program of Foreign-invested Equity Investment Enterprises.

29 On 28 April 2021, Beijing updated its QFLP rules introducing the QFLP programme in 2011 by promulgating the Interim Measures for Launching the Pilot Program of Qualified Foreign Limited Partners in Beijing.

30 On 25 May 2021, Zhuhai promulgated the Measures of Zhuhai City for the Pilot Program of Foreign-funded Equity Investment-oriented Enterprises, replacing its QFLP rules issued in January 2019.

31 According to relevant provisions, the Xiamen QFLP rules should have been invalid since 22 July 2021. We consulted with Xiamen on 28 June 2022 and were told that the Xiamen Local Financial Supervision and Administration had issued an undisclosed supplementary notice on 26 September 2021, which extended the duration of the Xiamen QFLP rules to 30 September 2022.

new energy.[32] In addition, the AMAC also established its Green and Sustainable Investment Committee on 16 November 2021, dedicated to promoting research and development capabilities and standards and a culture of green investment.

vi Other sectors

QDLPs

The QDLP pilot programme was first introduced in Shanghai in 2012 and, subsequently, Chongqing, Tianjin, Qingdao, Beijing and other regions promulgated relevant regulations for the launch of their own QDLP pilot programmes. The QDLP programme allows qualified foreign investment managers (QDLP managers) to raise capital from qualified domestic investors to set up overseas investment funds (QDLP funds) in China for outbound investment. At present, QDLP funds can be organised in the form of a limited partnership fund or contractual fund, and their investment scope is also extended to all overseas investments (including making investments through fund of funds entities).

According to the AMAC rules, QDLP managers that carry out private investment fund business in China must be registered with AMAC as private fund managers.[33]

It is noteworthy that the Interim Measures of Overseas Investment Pilot Program of QDLP in Hainan Province was promulgated in April 2021, highlighting lower access thresholds, broader investment scope and fewer restrictions on investment quotas. On 8 August, the first batch of Hainan QDLPs was released;[34] on 24 August, the first Hainan QDLP fund was launched;[35] and by the end of October 2021, seven enterprises registered in Haikou had been approved for the QDLP pilot qualification, with a quota of US$1.36 billion, accounting for 34 per cent of the total approved quota.[36]

Qualified domestic investment enterprise

Shenzhen introduced the qualified domestic investment enterprise (QDIE) programme in 2014, which is currently available only in Shenzhen. Compared with QDLP, QDIE has been more relaxed and flexible in terms of fund organisation form and investment scope since its implementation. QDIE funds can be established in various forms, such as company, partnership, contract and special account, and their investment scope covers all overseas investments. At the end of 2020, with the approval of SAFE, Shenzhen increased its QDIE quota from US$5 billion to US$10 billion.[37] On 30 April 2021, Shenzhen issued the

32 Data and information are sourced from the China Private Equity Fund Industry Development Report (2021) published by AMAC.

33 According to the Special Statement on the Registration of Qualified Domestic Limited Partners (QDLP) as Managers released by AMAC on the WeChat platform on 19 June 2018, a management body of a QDLP that intends to carry out private equity investment fund business within the territory of China shall be registered with AMAC as a privately offered fund manager, and the current QDLP management body can be registered as other privately offered fund manager.

34 The information is sourced from the official website of Hainan Free Trade Port. Please see: https://mp.weixin.qq.com/s/kjG69fFJU-XMvbO58lGULA.

35 The information is sourced from the official website of Hainan Free Trade Port. Please see: http://www.hnftp.gov.cn/xwzx/ywsd/202108/t20210824_3039674.html .

36 The information is sourced from the official website of Hainan Free Trade Port. Please see: http://www.hnftp.gov.cn/xwzx/xxjl/202111/t20211130_3102270.html.

37 The information is sourced from Shenzhen Government Online. Please see: http://www.sz.gov.cn/zfgb/zcjd/content/post_9899695.html.

Measures of Shenzhen Municipality for the Administration of the Implementation of the Pilot Program of Overseas Investment by Qualified Domestic Investment Enterprises, which came into effect on 7 May 2021 with a duration of five years. The QDIE rules, introduced in 2014, became invalid accordingly.

Qualified domestic institutional investors

The qualified domestic institutional investor (QDII) programme is an arrangement for domestic institutions to invest offshore in stocks and bonds and to engage in other securities investment business in overseas capital markets. According to SAFE data, the approved quotas for QDIIs reached US$157.519 billion as of 15 December 2021.[38]

Qualified foreign institutional investors and RMB qualified foreign institutional investors

Pursuant to applicable regulations, qualified foreign institutional investors (QFIIs) and RMB qualified foreign institutional investors (RQFIIs) may invest in domestic securities investment funds.

On 1 November 2020, the Measures for Administration of Domestic Securities and Futures Investment by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors (QFII and RQFII Measures) issued by the CSRC and other authorities came into effect, the key points of which involve the following aspects: (1) the QFII and RQFII qualifications and rules were combined into one, relaxing access conditions; (2) expansion of the scope of investment in a steady and orderly manner (the QFII and RQFII Measures allow QFII and RQFII to invest in National Equities Exchange and Quotations (NEEQ)-listed securities, private investment funds, financial futures, commodity futures and options, etc.); and (3) continuously strengthening regulation. By the end of the third quarter of 2021, for the first time, the number of A-shares companies invested in by QFIIs exceeded 1,000, with a total market value of 283.6 billion yuan.

VII TAX LAW

i Taxation of asset management products and investors

Public funds are currently not subject to enterprise income tax in respect of investment proceeds obtained in securities markets, including net gains on the sale of shares and debentures, equity dividends and bonuses, interest and other income.[39] PRC-sourced income derived by QFIIs and RQFIIs from the transfer of equity investments such as shares and from bond interest in the domestic bond market are temporarily exempt from enterprise income tax.[40]

38 Form for the Examination and Approval of Investment Quota of QDII (by 15 December 2021) released by SAFE.

39 Article 2(1) of Circular of Ministry of Finance and State Administration of Taxation on Enterprise Income Tax Incentive Policies (Cai Shui [2008] No. 1).

40 Notice of the Ministry of Finance, the State Administration of Taxation and the China Securities Regulatory Commission on Issues Concerning Temporarily Exempting the Income Derived by QFII and RQFII from the Transfer of Stock or Any Other Equity Investment Asset in China from Enterprise Income Tax (Cai Shui [2014] No. 79).

Investors may also be entitled to tax incentives in respect of certain distribution proceeds received from asset management products. For example, no income tax is imposed on interest from treasury bonds or savings deposit interest, and net proceeds obtained by enterprise investors from the sale of publicly traded securities are not subject to income tax.

Private funds commonly adopt the limited partnership form, which is considered fiscally transparent and thus not a taxpayer for enterprise income tax purposes. Rather, the partners themselves are considered to realise taxable income from the partnership's investment activities. Differences existed in the past between official rules and practices in respect of whether the 20 per cent income tax rate applicable to fund distributions applies to income that investors derive from venture capital fund distributions. In January 2019, Notice of the Ministry of Finance, the State Administration of Taxation, the National Development and Reform Commission and the China Securities Regulatory Commission on Issues Concerning Income Tax Policies for Individual Partners of Venture Capital Enterprises was promulgated, which has provided a clearer, uniform basis for taxation, allowing venture capital funds to elect for their individual investors a flat 20 per cent rate or graduated rates of 5 per cent to 35 per cent.

On 30 December 2021, the Announcement of the Ministry of Finance and the State Taxation Administration on the Administration of the Collection of Individual Income Tax on Income from Equity Investment Operations was promulgated, providing that individual income tax shall be calculated and collected by means of tax collection on audit of accounts to individual proprietorship enterprises and partnership enterprises that conduct equity investment such as holding equities, stocks and partnership interests.

ii Taxation of asset management product managers

Asset management product managers, as value-added tax taxpayers, are subject to a 3 per cent VAT on their taxable activities deriving from asset management product business (including private investment funds), including loan services, direct financial service fees, insurance services and transfers of financial products.[41] There remains an ongoing debate whether VAT is assessable on carried interests, which are often received by general partners of limited partnership private funds.

VIII OUTLOOK

With the transition period of the New AMR terminated at the end of 2021, and as a result of the implementation of a series of regulatory provisions and policies, the optimised and standardised asset management industry in China continued and will continue to serve a critical function of connecting capital and assets to effectively prevent and resolve systemic financial risks. All subsectors of China's asset management industry entered a new path of development in the new environment, seeking a balance between unified regulation and differentiated development, and striving to enhance their capabilities to provide professional and customised services. Against the backdrop of the continued and expanded two-way opening up of China's financial market, we expect the entry of more and more foreign asset management institutions to enrich and diversify China's asset management industry and bring new vitality and growth.

41 Article 1 of Circular on Issues Relating to VAT on Fund Management Products (Cai Shui [2017] No. 56).

Appendix 1

ABOUT THE AUTHORS

HUAYING (DAISY) QI

Han Kun Law Offices

With over 10 years of experience in fund formation and investment management-related practice areas, Huaying (Daisy) Qi concentrates her practice on the formation and operation of domestic and international investment funds, including venture capital funds, M&A funds and buyout funds, funds of funds, hedge funds, real estate funds, and other types of investment funds and alternative investment vehicles. She also has substantial experience in representing institutional investors (including insurance companies, funds of funds, public companies, family offices and asset/wealth management firms) in structuring and negotiating their investments in investment funds. Ms Qi has been deeply involved in, and is familiar with, internal performance incentives and governance arrangements at the GP/management company level and other arrangements relating to sponsored funds. In addition, she has experience in venture capital and private equity financings, M&A relating to investment management firms and general corporate matters.

Prior to joining Han Kun, Ms Qi worked at two leading international law firms, Simpson Thacher & Bartlett LLP (New York and Hong Kong) and Cooley LLP (San Francisco and Shanghai).

Ms Qi has been recognised as a 'leading individual' in the area of fund establishment by various global authoritative legal rating agencies and publications, including *IFLR1000*, *Chambers and Partners*, *The Legal 500: United States* and *The Legal 500: China*.

LIN ZHOU

Han Kun Law Offices

With over 10 years of experience in fund formation and asset management-related practice areas, Lin Zhou has focused her practice on the formation and operations of various types of funds and other asset management products, including the structuring and formation of venture capital funds, private equity funds, film and entertainment funds, sports funds, infrastructure funds, real estate funds, securities funds, and other investment funds and asset management products. She has assisted in designing different fund structures, including master-feeder funds, alternative investment vehicles, parallel funds, co-investment funds and other multilevel structure arrangements, together with various organisational forms, such as corporate funds, partnership funds and contractual funds.

Ms Zhou has represented a number of managers in the asset management industry, including financial institutions, top reputable private equity fund managers and sponsors in the market.

Ms Zhou has a deep understanding of the laws, regulations and regulatory policies relating to the asset management industry and has been actively involved as a representative of lawyers in the communication and policy discussions on laws, regulations and implementing measures in the asset management industry with regulatory authorities such as the CSRC and AMAC.

LI YANG

Han Kun Law Offices

Li Yang joined Han Kun Law Offices in 2012, and her practice primarily focuses on the fields of investment fund formation and operation and asset management. Ms Yang has represented PRC domestic and international fund sponsors, fund managers and institutional investors in raising and investing in hundreds of private investment funds, including funds employing venture capital, buyouts, PIPE, real estate, secondaries and funds of funds investment strategies. The clients Ms Yang represents include various domestic and international venture capital and private equity firms, licensed financial institutions and their subsidiaries, funds of funds, guidance funds, listed companies, and other industrial and strategic investment institutions.

Ms Yang is especially well versed in handling transnational investment fund formation and investment transactions. She has accumulated abundant experience in these practice areas. She has represented many renowned domestic and international institutions in either sponsoring or investing in various QFLP, QDLP/QDIE, QDII, QFII funds and/or offshore funds, including several of the first batch of QFLP funds approved in China and the first QDIE fund established in Shenzhen.

Before joining Han Kun, Ms Yang worked at King & Wood Mallesons (Guangzhou and Beijing offices) and Kim & Chang (Seoul office).

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