

Legal Commentary

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AMAC to Update Rules on Fund Filing and Manager Registration

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On December 30, 2022, the Asset Management Association of China (“**AMAC**”) issued a consultation draft of the *Measures for Registration and Filing of Private Investment Funds* (《私募投资基金登记备案办法 (征求意见稿)》) (the “**Draft Measures**”) and the ancillary Guidelines No. 1-3 on private fund manager registration (i.e. Guideline on Basic Operational Requirements (“**Guideline No. 1**”), Guideline on Shareholders, Partners and Actual Controllers (“**Guideline No. 2**”) and Guideline on Legal Representative, Senior Management Personnel, Executive Partner and Its Authorized Representative (“**Guideline No. 3**”)) (together with the Draft Measures, the “**Draft Rules**”)¹. The consultation period will end on January 10, 2023.

According to AMAC in its explanatory statement, the Draft Rules are intended to update and clarify the registration and filing requirements for private fund managers and private funds by amending the *Measures for the Registration of Private Investment Fund Managers and Filing of Funds (for Trial Implementation)* (《私募投资基金管理人登记和基金备案办法(试行)》) issued by AMAC in 2014, as well as consolidating relevant requirements provided under other self-regulatory rules. We summarize in this newsletter the key noteworthy aspects of the Draft Rules, in order to provide readers with a general understanding of the proposed amendments.

Private fund manager registration

I. Qualifications for registering as a private fund manager

1. Requirements on applicant’s basic information

The main requirements in the Draft Rules for the basic information of applicants are generally consistent with the current AMAC rules, while the Draft Rules, especially Guideline No. 1, provide further specific requirements as listed below:

¹ The Draft Rules are available at: https://www.amac.org.cn/businessservices_2025/privatefundbusiness/gzdt/202212/t20221230_14355.html (Chinese only).

Item	Content
Industry name	<p>No words such as “finance (金融)”, “financial management (理财)” or “wealth management (财富管理)” may be used in the manager’s name, unless otherwise stipulated by laws, administrative regulations, or the China Securities Regulatory Commission (“CSRC”).</p> <p>Without approval, no words such as “financial holding (金融控股)”, “financial group (金融集团)” or “China Securities (中证)” may be used in the manager’s name, no words identical with or similar to major national development strategies may be used in the name, and no words contrary to public order and good customs or causing adverse social impact may be used in the name².</p>
Business scope	<p>The business scope must not include any business that conflicts with or is unrelated to the private fund management business. The business scope of a private securities fund manager may not include “investment consulting (投资咨询)” or other consulting related words³.</p>
Business premise	<p>The manager must have an independent and stable business site, and may not use as a business site a location that is not stable, such as shared space. The manager may not work in the same business site as its shareholders, partners, actual controllers or related parties.</p> <p>If the business sites are held by lease, the lease term must be more than one year, except that reasonable cause can be provided⁴.</p>
Staffing	<p>The number of full-time employees must be no less than five. Full-time employees include the following: regular employees who have signed labor contracts with the private fund manager and paid social insurance, foreign employees who have signed labor contracts or service contracts, re-employed retired employees, and senior management personnel (“SMP”) appointed by enterprises funded and controlled by state organs, public institutions, government and their authorized institutions⁵.</p>
Internal control	<p>Other than internal control policies provided by the current AMAC rules, the manager must also formulate policies relating to firewalls and business isolation, fund security guarantees, investment business controls, fair trading, outsourcing controls, etc⁶.</p>
Emergency handling plan	<p>The manager shall establish an emergency disposal plan to make clear arrangements for handling emergencies that seriously damage the interests of investors, affect normal operations or may cause systemic risks⁷.</p>
Registration time	<p>The entity that intends to register as a private fund manager shall apply for registration with AMAC within one year from the date of industry and commerce</p>

² Guideline No. 1, art. 3.

³ Guideline No. 1, art. 4.

⁴ Guideline No. 1, art. 8.

⁵ Draft Measures, art. 8 (4); Guideline No. 1, art. 9.

⁶ Guideline No. 1, art 10.

⁷ Guideline No. 1, art. 11.

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	registration, except for those whose registration needs to be suspended due to policy changes of relevant state departments ⁸ .

2. Negative list provided - circumstances where an entity may not act as a private fund manager

Articles 8 and 15 of the Draft Measures specify certain circumstances where an entity may not act as a private fund manager, among which note the following two:

- The private fund manager’s paid-in monetary capital is less than RMB 10 million or its equivalent, except for any special requirement otherwise provided for venture capital fund managers.

This is the first time for AMAC rules to specify a paid-in capital requirement for private fund managers.

- The private fund manager’s legal representative, executive partner and its authorized representative, and SMP in charge of investment management do not hold equity shares of the private fund manager or the aggregate holdings are below a certain percentage - their total paid-in capital may not be less than 20% of the paid-in capital of the private fund manager or not less than 20% of the minimum paid-in monetary capital of the private fund manager as stipulated in Item (i)⁹.

The above equity holding restrictions do not apply to, the private fund managers controlled by commercial banks, securities companies, fund management companies, futures companies, trust companies, insurance companies and other financial institutions, the private fund manager funded and effectively controlled by the government and its authorized institutions, the private fund manager with a total foreign shareholding of not less than 25%, and other private fund managers in line with the relevant provisions.

3. Reiteration of special requirements for foreign-funded managers

Article 14 of the Draft Measures stipulates that any private securities fund manager that has a total foreign ownership of 25% or above must fulfill the following requirements:

- the private securities fund manager is a company established in China;
- the foreign shareholder is a financial institution approved or licensed by the financial regulatory authority of the country/region in which it is located, and the securities regulatory authority of the country/region in which it is located has signed a memorandum of understanding on securities regulatory cooperation with CSRC or other institutions recognized by CSRC;
- the private securities fund manager and its foreign shareholder have not been subject to significant penalties by any regulator or judicial authority in the last three years;
- the use of capital and RMB funds derived from foreign exchange settlement shall comply with the

⁸ Guideline No. 1, art. 2.

⁹ Guideline No. 1, art. 6.

relevant regulations of the State Administration of Foreign Exchange;

- when engaging in securities and futures trading within China, it must make independent investment decisions and not place trade orders through foreign institutions or foreign systems, except as otherwise provided by CSRC; and
- other requirements specified by laws, administrative regulations, CSRC and AMAC.

Where the private securities fund manager has a foreign actual controller, the foreign actual controller must also comply with the requirements set out in (ii) and (iii) above. While the above requirements are generally consistent with the current ones applicable to wholly foreign-owned private securities fund managers, it is worth noting that AMAC has set the foreign ownership threshold at 25%.

4. Consolidation and addition of circumstances where a fund manager registration will be suspended or rejected

Articles 24 and 25 of the Draft Measures provide detailed circumstances where a fund manager registration will be suspended or rejected. Compared to the current AMAC rules, the requirements are stricter - e.g., if the applicant, which has been rejected due to not meeting the registration requirements of Articles 8 to 21 of the Draft Measures, is rejected again for not meeting such requirements, the applicant may not apply for the private fund manager registration again within six months from the date of the second rejection.

II. Qualifications for controlling shareholders, actual controllers and related parties

The Draft Rules, especially Guideline No. 2, provide further specific requirements for the qualifications of a private fund manager’s controlling shareholder, actual controller and related parties as listed below.

Item	Content
Identification of the actual controller	<p>Articles 11, 12, 16 and 17 of the Guideline No. 2 specify the identification approach of the actual controller of the company and the partnership enterprise respectively, as well as the circumstances of joint actual controllers and absence of an actual controller, which are consistent with the current AMAC rules.</p> <p>Article 13 to Article 15 of the Guideline No. 2 stipulate the tracing path of the actual controller, where the actual controller shall be traced back to the natural person, state-owned enterprise, listed company, public institution such as university and research institute, social organization legal person, etc. The provisions also mention the case where the actual controller involves a foreign party:</p> <ul style="list-style-type: none"> ■ for a private securities fund manager - where the actual controller is an offshore institution, it shall be traced back to a financial institution regulated by the offshore financial regulator which has signed a memorandum of cooperation with CSRC; and ■ for a private equity fund manager - where the actual controller is an offshore institution or natural person, it shall be traced back to a financial institution regulated by the offshore financial regulator which has signed a memorandum of cooperation with CSRC, an overseas listed company or a

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	natural person.
Qualification conditions	<ul style="list-style-type: none"> ■ Article 9 of the Draft Measures specifies the circumstances of not being qualified as the private fund manager’s contributor (shareholder, actual controller or partner) – e.g. the controlling shareholder, actual controller or general partner does not have relevant experience in operations, management, or engagement in asset management, investment or other related industries, or possesses less than five years of relevant experience. The experience for the actual controller of the private securities fund manager and private equity fund manager is separately regulated in Articles 9 and 10 of Guideline No. 2. ■ Article 15 of the Draft Measures stipulates the qualification requirements for a private fund manager’s controlling shareholder, actual controller, general partner or major contributors by using the negative list method. ■ The actual controller of a private fund manager must not be an asset management product (“AMP”). An AMP may not act as the major contributor to a private fund manager and the proportion of direct or indirect capital contributions in the private fund manager may not be higher than 25% in total. Where there are separate regulations on private fund managers established by governments at or above provincial level and their authorized agencies, such regulations will prevail¹⁰. ■ Where the actual controller of a private fund manager is a natural person, he/she must also serve as the legal representative, SMP or executive partner and its authorized representative of the private fund manager, unless otherwise specified¹¹. ■ Where the private fund manager’s controlling shareholder or actual controller acts as the SMP of a listed company, materials evidencing that the listed company is aware of relevant situation must be provided¹².
Contribution structure	Without justified reasons, the capital contribution structure of a private fund manager may not establish two or more levels of nested structure through special purpose vehicles and must not circumvent relevant requirements for finance, integrity and professional competence of shareholders, partners and actual controllers by setting up special purpose vehicles or other means ¹³ .
Groupization	According to the Articles 17 and 18 of the Draft Measures, if the same controlling shareholder or actual controller controls more than two private fund managers, it must have reasonable and necessary reasons for doing so. The above controlling shareholder or actual controller must also establish a continuous compliance and risk management system that is commensurate with the management scale and business conditions of private fund managers under its control, and strengthen the supervision and inspection of private fund managers.

¹⁰ Guideline No. 2, art. 5.

¹¹ Draft Measures, art. 9 (2).

¹² Guideline No. 2, art. 3.

¹³ Guideline No. 2, art. 2.

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Stability	According to the Article 20 of the Draft Measures, a private fund manager's controlling shareholder, actual controller or general partner may not transfer equity, property shares or effective control within three years from the date of registration, unless otherwise specified.

Regarding the scope of related parties of private fund managers, the Draft Rules propose further amendments as below:

Current AMAC Rules ¹⁴	Draft Rules ¹⁵
<ul style="list-style-type: none"> ■ branches of private fund managers; ■ a financial institution or a listed company in which the private fund manager holds more than 5% of the equity interests, or other enterprise in which the private fund manager holds 20% of the equity interests; and ■ financial institutions, private fund managers, investment enterprises, institutions conducting business in conflict with the private fund management business, investment consulting enterprises, financial service enterprises and others that are controlled by the same controlling shareholder/actual controller. 	<ul style="list-style-type: none"> ■ branches of the private fund manager; ■ a financial institution or a listed company in which the private fund manager holds more than 5% of equity interests, or other enterprise in which the private fund manager holds 30% of the equity interests or serves as the general partner, except for partnership private funds filed with AMAC; ■ financial institutions, private fund managers, listed companies, companies listed on the National Equities Exchange and Quotations, investment enterprises, institutions conducting business in conflict with the private fund management business, investment consulting enterprises, financial service enterprises and others that are directly controlled by the same controlling shareholder, actual controller or general partner; and ■ other legal persons or organizations that have a special relationship with the private fund manager, which may affect the interests of the private fund manager.

III. Qualifications of SMP and other personnel

AMAC has shown its consistent focuses on the qualifications of private fund manager personnel. The Draft Rules not only explicitly set out the qualification requirements for private fund manager SMP, executive partners and their authorized representatives by adopting the negative list approach¹⁶, but also strengthen the requirements for SMP's work experience and personnel stability of private fund managers.

Item	Content
Scope of SMP	Article 80 (1) of the Draft Measures amends the scope of SMP recognized by AMAC, which includes a company's general manager, deputy general manager,

¹⁴ *Registration Instructions of Private Fund Managers* (《私募基金管理人登记须知》), art. 6(1).

¹⁵ Guideline No. 2, art. 19.

¹⁶ Draft Measures, art. 16.

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	<p>investment officer, compliance and risk control officer, other personnel who actually perform the above duties and other personnel stipulated in the company's articles of association, as well as the personnel in a partnership enterprise who perform the above duties of operation management and risk control and compliance, etc.</p> <p>Compared with the current AMAC rules, the investment officer is firstly recognized as SMP and the legal representative no longer falls under the scope of SMP.</p>
Negative list	<p>Article 16 of the Draft Measures specifies the circumstances where the persons shall not act as the director, supervisor, SMP, executive partner and its authorized representative of a private fund manager. This is the first time AMAC rules specify the requirements on the directors and supervisors of the private fund manager. Compared with the requirements on directors and supervisors set out in Article 146 of the <i>Company Law of the People's Republic of China</i>, the negative list is more concentrated on the administrative regulatory and qualification conditions of such personnel, such as the following:</p> <ul style="list-style-type: none"> ■ persons who are subject to an administrative penalty imposed by the financial authorities in the last three years for major violations of laws and regulations; ■ persons who are subject to market access prohibition measures by CSRC, and the enforcement period has not yet expired; ■ persons who are subject to administrative regulatory measures by CSRC or disciplinary measures by AMAC with serious circumstances in the last three years; ■ practitioners of fund managers, fund custodians, stock and futures exchanges, securities companies, securities depository and clearing organizations, futures companies and other organizations and personnel of State agencies who are dismissed for committing illegal acts, and a 5-year period has not elapsed since the date of dismissal; ■ lawyers, certified public accountants and employees of asset valuation organizations and certification organizations, investment advisory practitioners whose practicing certificate/qualification is revoked/cancelled for committing illegal acts, and a 5-year period has not elapsed since the date of revocation/cancellation of practice certificate/qualification; and ■ persons having a relatively large amount of debt which is due and outstanding, or being listed as a seriously dishonest person or being included in the list of dishonest persons subject to enforcement.
Work experience	<ul style="list-style-type: none"> ■ Private fund securities fund manager - the legal representative, executive partner and its authorized representative, as well as SMP in charge of investment management must have no less than five years of relevant work experience in securities, funds, futures investment management, etc¹⁷. The detailed contents of the required work experience and investment performance are specified under Articles 4 and 5 of Guideline No. 3.

¹⁷ Draft Measures, art. 10 (2).

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	<ul style="list-style-type: none"> ■ Private fund equity fund manager - the legal representative, executive partner and its authorized representative, as well as SMP in charge of investment management must have no less than five years of relevant work experience in equity investment or other relevant industry management¹⁸. The detailed contents of this work experience and investment performance are specified under Articles 6 and 7 of Guideline No. 3. ■ The compliance and risk control officer must have at least three years of investment-related legal, accounting, supervision, or audit work experience or asset management industry compliance, risk control, supervision, and self-discipline management and other related work experience¹⁹. The detailed contents of the work experience are specified under Article 8 of Guideline No. 3.
Dual-hatting restrictions	<ul style="list-style-type: none"> ■ The legal representative, SMP, executive partner and its authorized representative may not dual hat in unaffiliated private fund managers or other institutions with conflicts of interest with the private fund manager they belong to, such as the institutions conducting business in conflict with the private fund management business, or become their controlling shareholders, actual controllers or general partners. Notably, the Draft Rules specify that these dual-hatting restrictions do not apply in the circumstances where such personnel serve in an enterprise invested in by a private fund or act as directors or supervisors in other enterprises²⁰. ■ The compliance/risk control officer and other professionals may not hold concurrent positions outside of the private fund manager, unless otherwise provided for the private fund managers under the same controlling shareholder or actual controller, as stipulated in the Article 17 of the Draft Measures²¹. ■ Where the private fund manager's general partner, legal representative, SMP, executive partner or its authorized representative acts as the SMP of a listed company, materials evidencing that the listed company is aware of such circumstances must be provided²².
Personnel stability	<ul style="list-style-type: none"> ■ After the departure of the original SMP, the private fund manager must appoint a new SMP within six months. ■ Prior to the first private fund filing, the private fund manager may not change the legal representative, SMP, executive partner or its authorized representative. ■ When employing a person who frequently changes jobs within a short period of time as the SMP in charge of investment management, the private fund manager must conduct due diligence on his/her credit record, professional

¹⁸ Draft Measures, art. 10 (3).

¹⁹ Draft Measures, art. 10 (4).

²⁰ Draft Measures, art. 11; Guideline No. 3, art. 10.

²¹ Draft Measures, arts. 11, 12, 17.

²² Guideline No. 2, art. 3.

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	conduct and professional ethics. In principle, an SMP's work experience and investment performance will not be recognized where he/she works in three or more enterprises within two years or provides the same performance materials for two or more private fund managers within two years ²³ .

Private fund filing

I. Fundraising threshold

In Article 33 of the Draft Measures, AMAC specifies for the first time the initial minimum paid-in capital scale for each type of private funds as follows.

- private securities fund – RMB 10 million;
- private equity fund – RMB 20 million;
- venture capital fund – RMB 10 million.

II. Investment scope

Compared with the current AMAC rules, Article 31 of the Draft Measures: (i) adds asset-backed securities, swap contracts and forward contracts for the investment scope of private securities funds; and (ii) deletes market-oriented and legalized debt-to-equity swaps and adds shares of unlisted public companies to the investment scope of private equity funds.

III. Fund documentation

Article 28 of the Draft Measures provides more detailed risk disclosure requirements such as information on private fund manager and the management team, investment scope, investment strategy, investment structure, fund structure, custody condition, relevant fees, dividends distribution principles, fund exit and other important information, as well as investment risks, operation risks, liquidity risks and other risks, which must be disclosed to investors in fundraising and promotion materials, risk disclosure letter.

Article 28 further provides a series of circumstances where the private fund manager must give special notice to investors in the risk disclosure letter, which add the following circumstances compared with the current AMAC rules: (i) risks of overseas investment of fund assets; (ii) risks of non-completion of filing with AMAC of change on private fund manager's actual controller during the fundraising period; and (iii) a catch-all clause of other material investment risks or interests conflict risks.

Article 29 of the Draft Measures consolidates the essential elements of the fund contracts. Compared to the current AMAC rules, the following elements are newly added or further detailed: (i) the disclosure of the related party transactions including the identification of the related party transactions and determination mechanism of the relevant transaction consideration; (ii) the decision-making

²³ Draft Measures, art. 21; Guideline No. 3, art 11.

mechanisms relating to change of the private fund manager and fund liquidation, the convening parties, voting methods, voting procedures and voting ratios in case the private fund manager is unable to perform or neglects to perform the management duties due to loss of contact, cancellation of the manager registration, bankruptcy and other reasons; (iii) the marketization exit regime as stipulated in the Article 58 of the Draft Measures.

IV. Closed-ended funds

According to Article 35 of the Draft Measures, private equity fund investors are required not to redeem or quit after fund filing is completed. Compared with the current *Instructions for Private Investment Fund Filing* (《私募投资基金备案须知》), this provision: (i) does not mention the closed-ended module for private asset allocation funds; (ii) does not limit investors' initial/subsequent subscription during closed-ended operations while the current AMAC rules only allow existing investors raise their capital or new investors to subscribe for private funds under certain circumstances; and (iii) adds the exception of reduction of investors' capital contribution, which would not be deemed as the violation of the closed-ended operation requirement.

V. Filing suspension and prudent filing

The Draft Measures also provide specific circumstances for suspension of filing and prudent filing respectively, as summarized below:

Item	Content
Filing suspension	Article 42 of the Draft Measures provides that AMAC will suspend fund filing of private fund managers if certain instances of non-compliance occur.
Prudent filing	<p>Article 44 of the Draft Measures provides that, under one of the following circumstances, AMAC may adopt certain measures such as enhancing investor requirements, enhancing scale requirements, requiring fund custody, requiring fund custodians to issue due diligence reports, enhancing information disclosure, notifying special risks, quota management, restricting related-party transactions, and requiring private fund managers to issue internal compliance opinions, submit legal opinions or relevant financial reports:</p> <ul style="list-style-type: none"> ■ the private fund involves an innovative business; ■ the private fund has a complex structure; ■ the private fund involves investment targets that are subject to special or large risks; ■ the private fund's investors are mainly natural persons and the private fund invests in a single investment target; ■ fund assets are mainly invested overseas; ■ the private fund manager has large potential risks; ■ management scale of the private fund manager at the end of each quarter for the most recent two years has been less than RMB 5 million; and ■ other circumstances stipulated by CSRC and AMAC. <p>Kindly note that AMAC will separately formulate the implementing rules for the foregoing provisions.</p>

Other noteworthy points

I. Reporting of basic information and material registration information

- In case of any change to the following information of the private fund manager, the private fund manager will be required to perform change procedures with AMAC within ten working days from the date of such change, which includes: (i) basic information such as name, business scope, capital, registered address, office address; (ii) shareholder(s), partners, related parties; (iii) legal representative, SMP, executive partner and its authorized representative; and (iv) other information stipulated by CSRC and AMAC.
- If the material registration information such as the controlling shareholder, actual controller or general partner of the private fund manager changes, the private fund manager will undertake the change procedures with AMAC within 30 working days from the date of the change and submit a special legal opinion.

If the actual control right of a private fund manager changes, the manager must submit a legal opinion on whether it is in full compliance with the registration requirements as a private fund manager after the change. AMAC will conduct a comprehensive verification of the fund manager pursuant to the new registration requirement. The administrative transfer or change of equity shares in accordance with the provisions, or the transfer between different entities controlled by the same actual controller will not be deemed as a change of actual control.

In case of the change to the actual control right, the assets under management of the private fund manager for the most recent year must be continuously no less than RMB 30 million.

II. AMAC self-regulatory management

According to the Articles 66 to 71 of the Draft Measures, in the event a private fund manager has any irregularities, AMAC may impose self-regulatory measures on the manager, relevant practitioners and intermediaries due to their non-compliance with the Draft Measures.

AMAC also intends to strengthen the administration of the time limit for the fund filing – according to the Draft Rules, AMAC will deregister a private fund manager's qualification and announce the same if the manager does not launch its first private fund within 12 months upon registration or does not launch a new private fund within 12 months upon the liquidation of all its filed private funds.

The Draft Rules are subject to change and clarification, such as how existing private fund managers should cope with the proposed amendments, whether there will be any further guidance on the groupization of private fund managers, etc. We anticipate there will be comments from the industry players and it remains to be seen whether and how such comments will be reflected in the final version. We will closely monitor the developments and provide further insight on a timely basis.

We have also prepared an English translation of the Draft Rules. Please contact us if you wish to receive a copy.

Important Announcement

This Legal Commentary has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

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