



# Han Kun Newsletter

Issue 189 (1st edition of 2023)

## Legal Updates

1. **AMAC to Update Rules on Fund Filing and Manager Registration**
2. **CBIRC Updated Measures for Corporate Governance Assessment**

# 1. AMAC to Update Rules on Fund Filing and Manager Registration

Authors: Yin GE | Sherry SI | Rachel ZHANG | Krystal HE

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”)<sup>1</sup>. 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:

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</p>

<sup>1</sup> The Draft Rules are available at: [https://www.amac.org.cn/businessservices\\_2025/privatefundbusiness/gzdt/202212/t20221230\\_14355.html](https://www.amac.org.cn/businessservices_2025/privatefundbusiness/gzdt/202212/t20221230_14355.html) (Chinese only).

Item	Content
	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 name <sup>2</sup> .
Business scope	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 words <sup>3</sup> .
Business premise	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. If the business sites are held by lease, the lease term must be more than one year, except that reasonable cause can be provided <sup>4</sup> .
Staffing	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 institutions <sup>5</sup> .
Internal control	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, etc <sup>6</sup> .
Emergency handling plan	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 risks <sup>7</sup> .
Registration time	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 registration, except for those whose registration needs to be suspended due to policy changes of relevant state departments <sup>8</sup> .

**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

<sup>2</sup> Guideline No. 1, art. 3.

<sup>3</sup> Guideline No. 1, art. 4.

<sup>4</sup> Guideline No. 1, art. 8.

<sup>5</sup> Draft Measures, art. 8 (4); Guideline No. 1, art. 9.

<sup>6</sup> Guideline No. 1, art 10.

<sup>7</sup> Guideline No. 1, art. 11.

<sup>8</sup> Guideline No. 1, art. 2.

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)<sup>9</sup>.

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 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

<sup>9</sup> Guideline No. 1, art. 6.

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
<p>Identification of the actual controller</p>	<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"> <li>■ 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</li> <li>■ 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 natural person.</li> </ul>
<p>Qualification conditions</p>	<ul style="list-style-type: none"> <li>■ 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</li> </ul>

Item	Content
	<p>9 and 10 of Guideline No. 2.</p> <ul style="list-style-type: none"> <li>■ 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.</li> <li>■ 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 prevail<sup>10</sup>.</li> <li>■ 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 specified<sup>11</sup>.</li> <li>■ 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 provided<sup>12</sup>.</li> </ul>
<p>Contribution structure</p>	<p>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<sup>13</sup>.</p>
<p>Groupization</p>	<p>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.</p>
<p>Stability</p>	<p>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.</p>

<sup>10</sup> Guideline No. 2, art. 5.

<sup>11</sup> Draft Measures, art. 9 (2).

<sup>12</sup> Guideline No. 2, art. 3.

<sup>13</sup> Guideline No. 2, art. 2.

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

Current AMAC Rules <sup>14</sup>	Draft Rules <sup>15</sup>
<ul style="list-style-type: none"> <li>■ branches of private fund managers;</li> <li>■ 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</li> <li>■ 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.</li> </ul>	<ul style="list-style-type: none"> <li>■ branches of the private fund manager;</li> <li>■ 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;</li> <li>■ 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</li> <li>■ 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.</li> </ul>

### 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 approach<sup>16</sup>, but also strengthen the requirements for SMP’s work experience and personnel stability of private fund managers.

Item	Content
Scope of SMP	<p>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, 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</p>

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

<sup>15</sup> Guideline No. 2, art. 19.

<sup>16</sup> Draft Measures, art. 16.



Item	Content
	as SMP and the legal representative no longer falls under the scope of SMP.
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"> <li>■ 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;</li> <li>■ persons who are subject to market access prohibition measures by CSRC, and the enforcement period has not yet expired;</li> <li>■ persons who are subject to administrative regulatory measures by CSRC or disciplinary measures by AMAC with serious circumstances in the last three years;</li> <li>■ 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;</li> <li>■ 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</li> <li>■ 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.</li> </ul>
Work experience	<ul style="list-style-type: none"> <li>■ 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, etc<sup>17</sup>. The detailed contents of the required work experience and investment performance are specified under Articles 4 and 5 of Guideline No. 3.</li> <li>■ 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 management<sup>18</sup>. The detailed contents of this work experience and investment performance</li> </ul>

<sup>17</sup> Draft Measures, art. 10 (2).

<sup>18</sup> Draft Measures, art. 10 (3).

Item	Content
	<p>are specified under Articles 6 and 7 of Guideline No. 3.</p> <ul style="list-style-type: none"> <li>■ 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 experience<sup>19</sup>. The detailed contents of the work experience are specified under Article 8 of Guideline No. 3.</li> </ul>
Dual-hatting restrictions	<ul style="list-style-type: none"> <li>■ 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 enterprises<sup>20</sup>.</li> <li>■ 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 Measures<sup>21</sup>.</li> <li>■ 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 provided<sup>22</sup>.</li> </ul>
Personnel stability	<ul style="list-style-type: none"> <li>■ After the departure of the original SMP, the private fund manager must appoint a new SMP within six months.</li> <li>■ Prior to the first private fund filing, the private fund manager may not change the legal representative, SMP, executive partner or its authorized representative.</li> <li>■ 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 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<sup>23</sup>.</li> </ul>

<sup>19</sup> Draft Measures, art. 10 (4).

<sup>20</sup> Draft Measures, art. 11; Guideline No. 3, art. 10.

<sup>21</sup> Draft Measures, arts. 11, 12, 17.

<sup>22</sup> Guideline No. 2, art. 3.

<sup>23</sup> Draft Measures, art. 21; Guideline No. 3, art 11.

## 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 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"> <li>■ the private fund involves an innovative business;</li> <li>■ the private fund has a complex structure;</li> <li>■ the private fund involves investment targets that are subject to special or large risks;</li> <li>■ the private fund's investors are mainly natural persons and the private fund invests in a single investment target;</li> <li>■ fund assets are mainly invested overseas;</li> <li>■ the private fund manager has large potential risks;</li> <li>■ 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</li> <li>■ other circumstances stipulated by CSRC and AMAC.</li> </ul> <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.**

## 2. CBIRC Updated Measures for Corporate Governance Assessment

Authors: TieCheng YANG | Yin GE | Ting ZHENG | Virginia QIAO | Mark MAO

Recently, the China Banking and Insurance Regulatory Commission (“**CBIRC**”) issued the *Measures for Regulatory Assessment of Corporate Governance of Banking and Insurance Institutions* (the “**2022 Measures**”)<sup>24</sup>, which replace the *Measures for Regulatory Assessment on Corporate Governance of Banking and Insurance Institutions (for Trial Implementation)* (the “**2019 Measures**”) issued by CBIRC on 25 November 2019.

In recent years, CBIRC has on many occasions strengthened its regulation of corporate governance of financial institutions. Since the issuance of the 2019 Measures, CBIRC has successively issued a series of important regulatory rules on corporate governance, such as the *Corporate Governance Rules of Banking and Insurance Institutions*, the *Measures on the Supervision of the Conduct of Major Shareholders of Banking and Insurance Institutions (for Trial Implementation)*, etc. As a mid- to long-term action plan for corporate governance, CBIRC also formulated the *Three-Year Action Plan (2020-2022) for Corporate Governance in the Banking and Insurance Industries* (the “**Action Plan**”). Meanwhile, we have also observed CBIRC increasingly targeting banking and insurance institutions (collectively, the “**institutions**”) over improper corporate governance acts.

In this respect, there is an actual need for CBIRC to modify and supplement the 2019 Measures in order to improve corporate governance assessment mechanisms, enhance their quality and effectiveness and to echo the newly issued rules and the Action Plan.

### New requirements / Major changes

We have conducted an overall comparison and analysis of the 2022 Measures against the 2019 Measures. In the following sections, we will highlight and comment on the **New requirements / Major changes** of the 2022 Measures versus the 2019 Measures.

#### I. New scope of application

The 2022 Measures expand the scope of application of the 2019 Measures.

In addition to commercial banks and insurance companies originally covered in the 2019 Measures, the 2022 Measures also include in their scope rural cooperative banks, financial asset management companies, financial leasing companies, finance companies of enterprise groups, auto finance companies, consumer finance companies and currency brokerage companies and specify the definition of insurance companies as property insurance companies, reinsurance companies, and life insurance companies (*Art. 3 of the 2022 Measures*).

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<sup>24</sup> **Note:** The 2022 Measures are accessible at: <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=1083754&itemId=928>.

## II. Incremental requirements for the key contents of assessment

The 2022 Measures refine scenarios to be directly assessed as Grade E (*Art. 8 of the 2022 Measures*):

1. shareholders conduct illegal related-party transactions with their institutions, which seriously affects the authenticity of the capital adequacy ratio and solvency adequacy ratio of the institutions; and
2. the shareholder's (general) meeting or the board of director have been unable to hold regular meetings or make decisions for more than **one year**.

## III. Incremental and modified requirements for the procedures

The 2022 Measures optimize the assessment mechanism and highlight the key areas of corporate governance. Noteworthy requirements / major changes mainly include:

1. specifying the frequency of regulatory assessment: the institutions should in principle conduct assessments on an annual basis; the frequency for institutions with results of Grade B or above could be appropriately reduced (to at least biennially) (*Art. 10 of the 2022 Measures*);
2. with respect to the processes of regulatory assessment, adding the two steps of "annual assessment plan formulation" and "regulatory review", and modifying the "results feedback" to "results analysis and feedback" (*Art. 12 of the 2022 Measures*);
3. instead of adopting the fixed indicators in the 2019 Measures, CBIRC will dynamically adjust the assessment plan and assessment indicators on an annual basis pursuant to changes in the macroeconomic and financial situation, risk characteristics of corporate governance within the industry, regulatory rules and the focuses of attention (*Art. 13 of the 2022 Measures*);
4. modifying the time requirements and overall steps of the assessment (see the table below for details) (*Arts. 14 to 23 of the 2022 Measures*); and
5. clarifying the coverage of on-site assessment, from "no less than 30% coverage of each type of institutions each year" to "full coverage of the institutions under a 3-year cycle" (*Art. 16 of the 2022 Measures*).

## IV. Incremental requirements / Material changes for the results and applications of the assessment

The 2022 Measures have made the following enhancements on top of the 2019 Measures:

1. Grade A: CBIRC will conduct regular regulatory activities to urge institutions to maintain good corporate governance, removing the statement of "not conducting any special regulatory measures" under the 2019 Measures (*Art. 26 of the 2022 Measures*);
2. Grade D or below: such institutions should be classified as regulatory targets. CBIRC will specify clear regulatory measures and rectification requirements based on their identified problems in corporate governance (*Art. 27 of the 2022 Measures*);
3. Grade E: in addition to the regulatory measures against Grade D institutions, such institutions may



further be restricted from carrying out credit-granting, capital-use and capital-based related-party transactions in accordance with the *Measures on the Management of the Related-Party Transactions of Banking and Insurance Institutions*. CBIRC may also conduct on-site inspections of the relevant institutions (*Art. 26 of the 2022 Measures*);

4. in principle, the specific information of the regulatory assessment of corporate governance is only for the internal use of regulators; regulators may take appropriate measures to share the results with relevant government departments when necessary (*Art. 28 of the 2022 Measures*); and
5. leaving space for the potential regulatory targets, allowing CBIRC to conduct trial assessments of corporate governance on institutions that are not included in the 2022 Measures (*Art. 29 of the 2022 Measures*).

#### V. Procedures and steps of the corporate governance assessment process

Procedures and steps	Due date	Notes
1. CBIRC issues an annual assessment plan	/	<ol style="list-style-type: none"> <li>a. CBIRC formulates an annual assessment plan for corporate governance regulatory assessments and specifies the targets, assessment points, scoring criteria and specific arrangements according to changes in the macroeconomic and financial situation, risk characteristics of industry corporate governance, regulatory rules and focuses of attention; and</li> <li>b. as of now, CBIRC has not issued an annual assessment plan for this year.</li> </ol>
2. Institutions conduct self-assessments to formulate reports	By the end of February	Institutions shall submit corporate governance self-assessment reports and relevant supporting materials to regulators.
3. CBIRC implements the regulatory assessments	By the end of May	<ol style="list-style-type: none"> <li>a. for the institutions directly supervised by CBIRC Headquarters: the regulator is the institutional supervisory department of CBIRC; and</li> <li>b. for the institutions supervised by a local CBIRC: the regulator is the local bureau.</li> </ol>
		<p><b>On-site assessments:</b> on-site material reviews, systems checks, and communications with directors, supervisors and senior management personnel, combined with daily off-site supervision and prior on-site inspections.</p>
		<p><b>Off-site assessments:</b> review of self-assessment reports and the supporting materials submitted by institutions, combined with daily off-site supervision and prior on-site inspections.</p>
4. Institutional supervisory	By the end of	<ol style="list-style-type: none"> <li>a. reviewing the results based on daily supervisory information and the risk status of the institutions;</li> </ol>



Procedures and steps	Due date	Notes
department reviews the assessment results by the local CBIRC	June	and b. institutional supervisory department should provide the review results to the local CBIRC.
5. CBIRC analyses assessment results	/ <i>(before the next step due in July)</i>	a. institutional supervisory department of CBIRC/local CBIRC analyzes the annual assessment status and assessment results, summarizes the risk issues, promotes relevant recommendations and reports them to the Office of Corporate Governance Regulatory Assessment; and b. the Office of Corporate Governance Regulatory Assessment may, in conjunction with institutional supervisory department of CBIRC/local CBIRC, conduct random checks of regulatory assessments during/after the assessment process to align the assessment standards.
6. CBIRC provides feedback on assessment results	By the end of July	a. institutional supervisory department of CBIRC or local CBIRC conducts “one-on-one” feedback; b. the feedback includes but is not limited to: the assessment results, the major problems of corporate governance and rectification requirements; and c. institutional supervisory department of CBIRC/local CBIRC supervises institutions to complete rectification of the problems.
7. Institutions communicate the assessment results internally	/	<ul style="list-style-type: none"> <li>■ communicating the assessment results to the board of directors, supervisory board and senior management of institutions;</li> <li>■ the communication includes but is not limited to: the assessment results, feedback from regulators on major problems and rectification requirements; and</li> <li>■ timely completing rectification of problems according to regulatory requirements.</li> </ul>
8. CBIRC takes supervisory measures	/	a. institutional supervisory department of CBIRC/local CBIRC takes supervisory measures according to assessment results; and b. timely initiating the investigation procedures if the institution's violation may result in administrative penalties.
9. Post-evaluation of	/	a. timely conducting post-evaluation of the

Procedures and steps	Due date	Notes
effectiveness		effectiveness of regulatory assessment, continuously improving and perfecting the system of regulatory assessment of the institution' s corporate governance; and b. establishing information systems for regulatory assessment of corporate governance of institutions, strengthening the information management of the whole assessment process.

**VI. Comparison of the 2022 measures with the 2019 measures**

Score of regulatory assessment (out of 100 points)	Regulatory measures in 2019 measures	Regulatory measures in 2022 measures	Changes in regulatory measures
<p><b>Grade A -excellent (above 90):</b> <i>All aspects of corporate governance are sound, no obvious compliance and effectiveness issues have been identified, and the corporate governance mechanism is operating effectively.</i></p>	No special regulatory measures.	<u>Conducting regular supervision to urge institutions to maintain good corporate governance.</u>	Regular supervision of Grade A institutions.
<p><b>Grade B – good (below 90 and above 80):</b> <i>Corporate governance is basically sound, while there are some weaknesses, and the relevant institutions can actively take measures to rectify and improve.</i></p>	Paying attention to changes in corporate governance risks and guiding institutions to gradually improve corporate governance through window guidance and regulatory conversations.	Paying attention to changes in corporate governance risks and guiding institutions to gradually improve corporate governance through window guidance and regulatory conversations.	None.
<p><b>Grade C –qualified (below 80 and above 70):</b> <i>There are certain deficiencies in corporate governance, and the compliance or effectiveness of corporate governance needs to be improved.</i></p>	In addition to the supervisory measures on the Grade B institutions, Grade C institutions may also be subject to measures in accordance with the circumstances (such as issuance of supervisory letters, <del>holding the responsible</del>	In addition to the supervisory measures on the Grade B institutions, Grade C institutions may also be subject to measures in accordance with the circumstances (such as issuance of supervisory letters, rectification within a	Removing the requirement to order institutions to hold the responsible persons accountable.

Score of regulatory assessment (out of 100 points)	Regulatory measures in 2019 measures	Regulatory measures in 2022 measures	Changes in regulatory measures
	<del>persons accountable</del> , rectification within a prescribed period).	prescribed period).	
<p><b>Grade D – weak (below 70 and above 60):</b></p> <p><i>There are more outstanding problems in corporate governance: relatively poor compliance, deficiencies in effectiveness and weak foundation of corporate governance.</i></p>	<p>In addition to the measures taken against Grade C institutions, Grade D institutions would be identified to be not up to good standards in market entry application.</p> <p>At the same time, supervisory measures (such as suspension of business or branch set-up) may also be taken in accordance with laws and regulations.</p>	<p>In addition to the measures taken against Grade C institutions, Grade D institutions would be identified to be not up to good standards in market entry application.</p> <p>At the same time, supervisory measures (such as suspension of business or branch set-up) may also be taken in accordance with laws and regulations.</p> <p><u>CBIRC should classify institutions of Grade D or below as key regulatory targets and put forward clear regulatory measures and rectification requirements.</u></p>	<ol style="list-style-type: none"> <li>1. regulators should classify the institutions with Grade D or below as key regulatory targets and put forward clear regulatory measures and rectification requirements; and</li> <li>2. for Grade E institutions, the 2022 Measures incrementally require regulators to restrict institutions from carrying out credit granting, capital-use and capital-based related-party transactions in accordance with the <i>Measures on the Management of the Related-Party Transactions of Banking and Insurance Institutions</i> and conduct on-site inspections.</li> </ol>
<p><b>Grade E – poor (below 60):</b></p> <p><i>There are serious problems with corporate governance: poor compliance, serious deficiencies in effectiveness, and overall failure of corporate governance.</i></p>	<p>In addition to the measures taken against Grade D institutions, CBIRC may also impose penalties on Grade E institutions and responsible persons in accordance with the laws and regulations.</p>	<p>In addition to the measures taken against Grade D institutions, <u>CBIRC may also restrict Grade E institutions from carrying out credit granting, capital-use and capital-based related-party transactions in accordance with the <i>Measures on the Management of the Related-Party</i></u></p>	

Score of regulatory assessment (out of 100 points)	Regulatory measures in 2019 measures	Regulatory measures in 2022 measures	Changes in regulatory measures
		<p><u>Transactions of Banking and Insurance Institution. Besides, CBIRC may conduct on-site inspections, and impose penalties on institutions and responsible persons in accordance with the laws and regulations. CBIRC should classify institutions of Grade D or below as key regulatory targets and put forward clear regulatory measures and rectification requirements.</u></p>	

**Other notable highlights of the 2022 measures**

**I. Scope of institutions not included in regulatory assessment of corporate governance**

The 2022 Measures add Article 29, which empowers the institutional supervisory department of CBIRC and local CBIRC to conduct trial assessments on banking and insurance institutions that are not explicitly included in the 2022 Measures (collectively, the “**other institutions**”) to promote the effectiveness of corporate governance.

To understand the other institutions that may be covered under this provision, we refer to the definition of banking and insurance institutions in the *Measures for Administration of Licensing of Banking and Insurance Institutions*. In addition to the institutions listed in Article 3 of the 2022 Measures, other institutions may include: policy banks, trust companies, bank financing companies, financial asset investment companies and other non-banking financial institutions and their branches approved by CBIRC and its dispatching agencies, insurance intermediaries such as insurance agency group (holding) companies, insurance brokerage group (holding) companies, insurance professional agency companies, insurance brokerage companies and agencies engaging in insurance distribution.

We suggest that such institutions also follow the requirements in accordance with the 2022 Measures as far as possible in order to improve the corporate management and meet the possible regulatory requirements of the regulators.

## II. Analysis of key points in the regulatory assessment on corporate governance

### 1. Management of shareholders

The issues of shareholders' capital contributions, abuse of shareholders' rights and status, and shareholders' related-party transactions have been the key concerns of the regulators.

Based on the requirements of the *Measures for the Supervision of the Conduct of Major Shareholders of Banking and Insurance Institutions (for Trial Implementation)*, in order to strengthen shareholder governance, we suggest that shareholders take note of the following points:

- fully understanding the industry characteristics, risk attributes and prudent operation rules of the industry, allocating investments rationally, using legal funds to acquire shares, ensuring that the investment conduct is in line with relevant regulatory requirements, and properly carrying out equity management and registration, while strengthening look-through supervision and examination;
- supporting the institution to establish an independent and sound corporate governance structure with effective checks and balances, and being strictly prohibited from irregularities in improper interventions or restrictions on the institution, and acting in the principle of maximizing the interests of the institution;
- strictly enforcing relevant regulations on related-party transactions, ensuring transparency and fairness of transactions, preventing improper concealment of related-party transactions, and reporting and disclosing in accordance with relevant laws and regulations; and
- exercising shareholders' rights in good faith, practicing the principle of honesty, performing the duties of information reporting and notification in order to better protect stakeholders' information and inquiry rights.

### 2. Management overboard of directors

The key challenges encountered by institutions may include: unclear definitions and boundaries of the roles and responsibilities among the board of directors, the shareholders and the senior management, the lack of performance by the board of directors, and the imperfect system related to the establishment and operation of the board of directors.

According to the *Corporate Governance Rules of Banking and Insurance Institutions* and by reference to industry practice, we suggest that institutions consider the following points:

- building a differentiated board structure with multi-dimensional complementary strengths, including personnel diversification in professional and industry knowledge, sources and experience;
- implementing the duty of loyalty and duty of diligence, formulating scientific, reasonable and robust development strategies, clarifying market positioning and development goals, and reviewing and revising them in accordance with market and economic development;

- clearly defining and performing the roles and responsibilities of the board of directors in accordance with laws, regulatory provisions and the institution's situation, establishing a scientific decision-making process and implementing supervisory duties of the board over senior management; and
- improving the evaluation criteria for the performance of the board of directors and its members, implementing the application of the evaluation results, and improving the effectiveness of the board of directors.

### 3. Management of board of supervisors and senior management

The management of the board of supervisors and senior management is one of the elements explicitly listed in the 2022 Measures.

Industry practice and regulatory penalties evidence problems among boards of supervisors fulfilling their roles efficiently and compliantly. This is in addition to problems involving senior management and its members failing to exercise diligence, conducting business in violation of the law and abusing management power, etc.

Based on the *Measures on the Performance Evaluation of Directors and Supervisors of Banking and Insurance Institutions (for Trial Implementation)* and the *Corporate Governance Rules of Banking and Insurance Institutions*, we suggest institutions:

- regulating the conduct of supervisors and senior management personnel in performing their duties and strengthening the supervisory assessment and inspection of the performance; and
- deepening the candidate reviews for supervisors and senior management personnel, selecting the high-quality candidates, and conducting special training activities in follow-ups to improve their professionalism and basic quality.

In addition, due to the different positions of the board of supervisors and the senior management in the corporate governance framework, we recommend that institutions pay attention to the following roles and responsibilities of the board of supervisors and the senior management.

#### ***Supervisors/Board of supervisors:***

- implementing the supervision of board of supervisors to the board of directors and its members, senior management and its members, development strategies and business philosophy, financial position, internal control compliance, comprehensive risk management structure, incentive and restraint mechanisms, regulatory reporting data, and implementation of regulatory opinions, and giving full play to the role of the board of supervisors in the development of the institution; and
- establishing the rules of procedure of the board of supervisors in accordance with the laws and regulations and the institution's articles of association, convening meetings of the board of supervisors timely, actively safeguarding the legal compliance of the procedures and implementing the duties of the board of supervisors.

**Senior management:**

- being responsible to the board of directors in accordance with the laws and articles of association, while being supervised by the board of supervisors, actively carrying out business management activities, implementing the resolutions of the general meetings of shareholders and the board of directors, reporting on the business management of institutions in a timely, accurate and complete manner, and providing relevant information; and
- complying with laws and regulations to have good professional conduct, abiding by a high standard of professional ethics code, performing the duty of loyalty and duty of diligence to the institution, performing their duties in good faith, diligence and prudence, and ensuring that they have sufficient time and energy to perform their duties and do not neglect to perform their duties or exceed their duties.

**4. Internal risk control**

The internal risk control points of institutions focus on the weak awareness of risk management, the need to strengthen the risk assessment mechanism, and the failure to effectively implement the internal control system. Based on the above, we propose the following suggestions.

Based on the *Guidelines on the Internal Control of Commercial Bank*, the *Guidelines on the Management of Comprehensive Risk of Financial Institutions in Banking Industry* and the Action Plan, we suggest the institutions take note of the following requirements:

- establishing and improving the internal control system, firmly realizing the awareness of compliance, and building a compliance culture so that internal control and compliance covers the entire process and all aspects of the institution's businesses;
- strengthening the education and training of personnel in compliance positions to enhance sensitivity and responsiveness to various risk events in order to realize the effective implementation of the internal control system;
- continuously developing and deepening the construction of internal control and compliance management, guaranteeing the implementation of the rules, conducting self-assessment on the internal risk management system, and improving the self-restraint mechanism;
- establishing a sound risk management information system for risk identification, measurement, assessment, detection and reporting, etc.; and
- setting up a special department or chief risk officer to handle internal control matters as far as circumstances permit, maintaining such employees independent from other positions, and fully grasping and handling the institution's internal risk circumstances.

**5. Management of related-party transactions**

The problems of related-party transactions of institutions generally concentrate on imperfect management rules and systems of related-party transactions and the failure to identify, audit, disclose and recuse oneself from related-party transactions in accordance with the regulatory requirements,



which easily result in unfair related-party transactions.

According to the *Measures on the Management of the Related-Party Transactions of Banking and Insurance Institutions*, we suggest that the institutions define related-party transactions in accordance with the principles of “*look-through and substance over form*”, refine the rules and system for managing related-party transactions, establish a cross-departmental office for the management of related-party transactions, establish archive and scope of related information, report and record information to the regulator in a timely manner, and improve the digitalization of the management of related-party transactions.

## **6. Market discipline**

External market discipline is an important element of modern corporate governance, and as one of the three pillars of the Basel Accord, it is placed on the same level of importance as “*Supervision and Inspection by Regulators*”. We suggest that, in order to effectively play the role of market discipline, according to the requirements of the Action Plan, it is necessary to further strengthen the regulation of the external audit work of institutions, improve the regulatory requirements for information disclosure of the banking and insurance industry, strengthen the daily supervision of the quality of information disclosure, and create a good atmosphere of joint supervision by the whole society, so that institutions can identify and resolve their potential issues as soon as possible.

## **7. Management of stakeholders**

According to the general principles of the Action Plan, the competitiveness and ultimate success of an institution is the result of the joint contribution of investors, employees, creditors, customers, suppliers and other stakeholders. The protection of stakeholders is the basic work to play its governance role. We suggest that institutions establish sound rules and systems for the protection of stakeholders, integrate the protection of stakeholders into all aspects and the whole process of corporate governance, support and protect stakeholders to supervise the institution, govern the institution in an orderly manner and promote the institution's long-term development.



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## ***Important Announcement***

This Newsletter 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.

If you have any questions regarding this publication, please contact:

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<b>Beijing</b>	<b>Wenyu JIN</b>	<b>Attorney-at-law</b>
	Tel:	+86 10 8525 5557
	Email:	wenyu.jin@hankunlaw.com
<hr/>		
<b>Shanghai</b>	<b>Yinshi CAO</b>	<b>Attorney-at-law</b>
	Tel:	+86 21 6080 0980
	Email:	yinshi.cao@hankunlaw.com
<hr/>		
<b>Shenzhen</b>	<b>Jason WANG</b>	<b>Attorney-at-law</b>
	Tel:	+86 755 3680 6518
	Email:	jason.wang@hankunlaw.com
<hr/>		
<b>Haikou</b>	<b>Jun ZHU</b>	<b>Attorney-at-law</b>
	Tel:	+86 898 3665 5000
	Email:	jun.zhu@hankunlaw.com
<hr/>		
<b>Wuhan</b>	<b>Jiao MA</b>	<b>Attorney-at-law</b>
	Tel:	+86 27 5937 6200
	Email:	jjiao.ma@hankunlaw.com
<hr/>		
<b>Hong Kong</b>	<b>Dafei CHEN</b>	<b>Attorney-at-law</b>
	Tel:	+852 2820 5616
	Email:	dafei.chen@hankunlaw.com

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