
CHAMBERS GLOBAL PRACTICE GUIDES

Alternative Funds 2022

Definitive global law guides offering
comparative analysis from top-ranked lawyers

China: Law & Practice

Yuan Yuan, Tony (Xianlai) Liu, Jinghe Wang and Zhihong Jian
Global Law Office

Law and Practice

Contributed by:

Yuan Yuan, Tony (Xianlai) Liu,
Jinghe Wang and Zhihong Jian

Global Law Office see p.15

Contents

1. General	p.3	3. Managers	p.10
1.1 General Overview of Jurisdiction	p.3	3.1 Legal Structures Used by Fund Managers	p.10
2. Funds	p.3	3.2 Managers: Regulatory Regime	p.10
2.1 Types of Alternative Funds	p.3	3.3 Managers: Tax Regime	p.11
2.2 Fund Structures	p.3	3.4 Rules Concerning Permanent Establishments	p.11
2.3 Funds: Regulatory Regime	p.4	3.5 Taxation of Carried Interest	p.11
2.4 Loan Origination	p.5	3.6 Outsourcing of Investment Functions/ Business Operations	p.12
2.5 Non-traditional Assets	p.5	3.7 Local Substance Requirements	p.12
2.6 Regulatory Approval Process	p.6	3.8 Local Regulatory Requirements for Non-local Managers	p.12
2.7 Requirement for Local Investment Managers	p.6	4. Investors	p.12
2.8 Other Local Requirements	p.6	4.1 Types of Investors in Alternative Funds	p.12
2.9 Rules Concerning Other Service Providers	p.6	4.2 Marketing of Alternative Funds	p.12
2.10 Requirements for Non-local Service Providers	p.6	4.3 Rules Concerning Marketing of Alternative Funds	p.13
2.11 Funds: Tax Regime	p.6	4.4 Local Investors	p.13
2.12 Double-Tax Treaties	p.7	4.5 Investors: Regulatory Regime	p.13
2.13 Use of Subsidiaries for Investment Purposes	p.7	4.6 Disclosure Requirements	p.13
2.14 Origin of Promoters/Sponsors of Alternative Funds	p.7	4.7 Investors: Tax Regime	p.14
2.15 Origin of Investors in Alternative Funds	p.7	4.8 Foreign Account Tax Compliance Act (FATCA)/Common Reporting Standard (CRS) Compliance Regime	p.14
2.16 Key Trends	p.7		
2.17 Disclosure/Reporting Requirements	p.8		
2.18 Anticipated Changes	p.9		

1. General

1.1 General Overview of Jurisdiction

The alternative investment funds industry in China is relatively new yet fast-growing compared to many more developed regions in the West, with fewer than 20 years of history. Under the Chinese financial regulatory regime, oversight of the asset management industry is allocated to different regulatory bodies based on the asset manager or sponsor's type of business. For example, financial institutions in banking, insurance, securities, investment funds, futures and trusts each have their own respective regulator overseeing the business and operations of such financial institutions and the financial products (including alternative investment products) they issue or sponsor.

This discussion on alternative investment funds will mainly focus on private investment funds. In the past ten years, China gradually established and enhanced its private investment fund legislation and regulatory regime, which facilitated a rapidly growing fund industry. To July 2022, there were more than 24,000 registered private fund managers and more than 130,000 private funds filed with the Asset Management Association of China (AMAC), a self-disciplinary industry body under the Chinese securities regulator (the China Securities Regulatory Commission – CSRC), with a total of CNY20.39 trillion in funds raised.

2. Funds

2.1 Types of Alternative Funds

In accordance with the AMAC filing system, private investment funds can be classified into the following categories:

- venture capital funds (including funds of funds investing in underlying funds of the same type), which mainly invest in equities of private companies;
- private equity funds (including funds of funds investing in underlying funds of the same type), which mainly focus on mergers and acquisitions of mature companies, private offerings of public securities, as well as real estate and infrastructure investment opportunities;
- private funds investing in public securities (including fund of funds investing in underlying funds of the same type), which mainly invest in public securities (“private securities funds”);
- other types of private investment funds (including fund of funds investing in underlying funds of the same type) that invest in arts, wine, movies, etc; and
- fund of funds that invest in a portfolio of private equity funds, venture capital funds and private securities funds.

2.2 Fund Structures

The most commonly used fund structures in China include contractual collective investment schemes, limited partnerships and companies (including limited liability companies and companies limited by shares).

Contractual Collective Investment Schemes (“Contractual Funds” or a “Contractual Fund”)

Most private securities funds are established as contractual funds. The number of investors in a single contractual fund shall not exceed 200. Contractual funds are not considered legal entities and forming a contractual fund does not require registration with the business administration bureau. Instead, rights and obligations of all parties of the fund will be provided

in the fund agreement. A contractual fund formation will become effective upon filing with the AMAC.

Limited Partnerships

Most private equity funds and venture capital funds are established as limited partnerships in China. Funds established as limited partnerships can have up to 50 investors in a single fund vehicle with a minimum of one general partner and one limited partner. The general partner bears unlimited liability and the limited partners assume liabilities and indebtedness of the limited partnership to the extent of their respective capital contributions.

Limited Liability Companies or Companies Limited by Shares

Private investment funds can be established in the form of limited liability companies or companies limited by shares. As China has a relatively advanced legal framework in the areas of company law and corporate governance, government funded or sponsored funds, or corporate funds under state-owned enterprises may prefer the corporate form as their chosen fund structure.

2.3 Funds: Regulatory Regime

China has promulgated many laws and regulations covering the private investment fund industry, the most important of which are the following.

Partnership Law (2006)

The implementation of the Partnership Law is particularly significant because it provided a clear legal foundation for the use of limited partnerships for private investment funds.

Securities Investment Fund Law (2015)

The Securities Investment Fund Law, while mainly focusing on the regulation of mutual funds, includes a chapter on regulation of private securities funds. It provides that investors in a private investment fund must be Qualified Investors (as defined below) and the number of investors in a single fund vehicle cannot exceed 200. The Securities Investment Fund Law provides that a private investment fund cannot engage in fundraising with any investors who are not Qualified Investors or with the general public, especially through public media such as newspapers, television, radio and the internet or by way of general solicitation such as lectures, reports or seminars that are open to the public. It also provides that private investment funds can invest in publicly traded stocks, bonds, fund interests and other securities and derivatives as approved by the securities regulatory body of the State Council.

Interim Measures for the Supervision and Administration of Private Investment Funds (2014) (“Interim Measures”)

The Interim Measures are the primary regulation on private funds and fund managers in China issued by the CSRC. Specifically, the Interim Measures provide that the fund managers should, upon completion of fundraising, file a private fund with the AMAC. The Interim Measures further provide that a Qualified Investor is an entity or individual that is able to invest at least CNY1 million in investment interests of a fund and has the capacity for risk assessment and risk tolerance, and must meet the following net worth or income requirements:

- if the investor is a legal entity, it should have net assets of at least CNY10 million; or
- if the investor is an individual, they should hold at least CNY3 million in financial assets,

or have a personal average annual income of no less than CNY500,000 for the last three years (“Qualified Investor”).

The Interim Measures also require that fund managers and fund sales agencies should not make guarantees that there will be no loss of investment capital or of minimum returns.

Guiding Opinion on Regulation of Asset Management Business of Financial Institutions (2018) (“the Guiding Opinion”)

Asset management products issued by different types of financial institutions such as commercial banks, insurance companies and securities firms are overseen by different financial regulators under different sets of rules and regulations. Therefore, the same type of fund products may be subject to different regulations issued by different regulatory authorities. The Guiding Opinion is aimed at consolidating the regulatory requirements of different financial regulators on the asset management products issued by different financial institutions (including their subsidiaries) to prevent opportunistic arbitrage due to policy differences. For the first time, the Guiding Opinion set forth requirements and restrictions on asset management business under all financial institutions, such as limits on leverage ratios, a prohibition on multiple-layer structures and maturity mismatches, which significantly impacted the private fund industry.

Several Provisions on Strengthening the Regulation of Private Investment Funds (2021) (“Several Provisions”)

The Several Provisions upgraded regulations on private investment funds and their fund managers by specifying a number of new rules. The Several Provisions emphasised that use of “fund” or “fund management” or similar phrases shall not be used without satisfying the

requisite registration and filing requirements with AMAC. The Several Provisions further provide that assets of private investment funds shall not be used for:

- providing loans, guarantees, or debt financing disguised as equity financing (however, assets of private investment funds can be used for short-term bridge loans or guarantees for portfolio companies with a term of no more than one year);
- investing in factoring assets, financial leasing assets, mortgage financing assets and other credit assets, or equity interests or other interests lined to credit assets;
- investments with unlimited liability; or
- other activities that are prohibited by applicable laws, regulations or the CSRC.

Additionally, the AMAC has established relatively well-developed self-disciplinary rules for the regulation of the private fund industry from the fundraising stage to investments and exit of funds’ investments.

2.4 Loan Origination

Private investment funds in China are not allowed to originate loans, except that private investment funds can provide bridge loans or guarantees of a term of no more than one year to portfolio companies for the purpose of equity investment, provided that the total amount of such loans or guarantees shall not exceed 20% of the fund’s total capital commitment.

2.5 Non-traditional Assets

Currently, Chinese regulatory authorities are rather prudent in their regulation of the types of assets private investment funds are allowed to invest in. Many non-traditional investment targets such as cryptocurrency, credit assets, distressed assets and rights to profit-sharing are

not eligible investment assets for private investment funds. The regulations expressly prohibit private investment funds from investing in factoring assets, financial leasing assets, mortgage financing assets, and other credit assets or equity interests or other interests lined to credit assets.

2.6 Regulatory Approval Process

Once fundraising is completed, a private fund manager should submit the filing on behalf of the fund with the AMAC within 20 working days. Upon full and complete submission of filing materials, certain credible and reputable fund managers can complete the filing within the next working day through a fast-track process. For fund managers that do not enjoy fast-track submission, it will take approximately two weeks to complete the fund filing process.

2.7 Requirement for Local Investment Managers

To manage or to raise private investment funds domiciled in China, the fund manager must have a registered legal presence in China and obtain the requisite qualifications and registrations.

2.8 Other Local Requirements

The legal framework does not require private investment funds to hire local employees or to have an actual place of business. The local substance requirements, such as employee qualifications and business premises, are aimed at private fund managers.

2.9 Rules Concerning Other Service Providers

Other fund service providers to private investment funds in China, such as custodians, appraisers and fund interest registration agencies, must be established in China and have

obtained the requisite qualifications. In general, private investment funds in China shall engage a custodian to safeguard fund assets. Qualified commercial banks and securities firms are permitted to provide custodian services to private investment funds. Other service providers, such as appraisers and registration agencies, are generally securities firms with the relevant qualifications.

2.10 Requirements for Non-local Service Providers

Currently, service providers established outside of China or without the requisite qualifications are not allowed to provide services to private investment funds in China.

2.11 Funds: Tax Regime

The following tax regimes apply to alternative funds in China.

Income tax

In China, private equity funds are subject to different tax collection methods and tax rates depending on the fund's organisational structure. Funds in the form of limited partnerships are pass-through entities and thus investment proceeds derived from the fund are distributed to investors without being subject to enterprise income tax at the fund level. If an investor is an entity, the investor will fulfil its own tax filing obligations. If the investor is an individual, the fund will be obligated to withhold personal income tax on behalf of such individual at the rate of 20% or 5–35% as determined by local tax authorities.

For contractual funds, because the fund itself is not a tax person under Chinese law, the fund or the investors of the fund are not subject to taxation at the fund level. Instead, investors will be

responsible for submitting their own tax filings in relation to investment proceeds.

For a private investment fund in the form of a company, profits from investment proceeds of the fund will be subject to a 25% enterprise income tax. For investors that are legal entities, distribution of proceeds as dividends from the fund will not be subject to double taxation. However, for individual investors, distribution as dividends from the fund will be subject to 20% personal income tax.

If the investor of a private investment fund is not a Chinese tax resident, then proceeds distributed to such an investor will be subject to a 10% withholding tax at the fund level or will be subject to tax at a higher rate if the non-tax-resident investor is considered to have a permanent establishment in China through its investment in the private investment fund. Additionally, if such non-Chinese tax resident is an individual, then depending on different cases, the fund should withhold personal income tax from proceeds to be distributed to the investor at the rate of 20% or 5–35% depending on different cases.

VAT

Transfer of financial products (including stock or other securities), interest income and other financial assets are subject to value-added tax.

2.12 Double-Tax Treaties

Private investment funds in China do not necessarily qualify for benefits directly under double tax treaties. Non-tax resident investors shall apply for tax benefits under double tax treaties on a case-by-case basis.

2.13 Use of Subsidiaries for Investment Purposes

It is not a common practice for private investment funds in China to set up subsidiaries or SPVs to make investments. Most private funds invest directly into target companies (or other assets). Depending on the transaction structure and tax planning goals, private investment funds may occasionally establish downstream SPVs for certain transactions.

2.14 Origin of Promoters/Sponsors of Alternative Funds

Sponsors or promoters of private funds domiciled in China must establish a registered legal presence in China and register with the AMAC as private investment fund managers. Foreign promoters or sponsors cannot engage in management of a private fund in China directly from an offshore entity. Additionally, foreign holders of equity in the promoters/sponsors/managers of Private Securities Funds must satisfy certain regulatory requirements.

2.15 Origin of Investors in Alternative Funds

Investors in private investment funds in China are mainly Chinese institutional and individual investors. In accordance with regulations on Qualified Foreign Limited Partners (QFLP), approved private fund managers can sponsor and manage QFLP funds which are private investment funds invested by foreign investors. The origins of foreign investors are quite broad and may vary from fund to fund.

2.16 Key Trends

Government guidance funds have become increasingly active in the fundraising activities of private equity funds and venture capital funds. According to the public information, in 2021, the number and scale of government guidance

funds established increased by 77% and 207% respectively, which have become the most active force in the private equity funds market and one of the most significant sources for the fundraising of private equity funds and venture capital funds.

In terms of the type of private funds, secondary funds (“S funds”) have become increasingly active recently. The main reason behind this trend is that private funds in China boomed during 2010-15, and as the term of these funds is coming to an end, investors in these funds are under pressure to exit their investments therefore creating more demand in the market.

As China gradually loosens its foreign exchange control policies, foreign investors are seeing more opportunities to participate in Chinese domestic private funds. Meanwhile, domestic CNY private funds are increasingly active in cross-border or foreign investments in recent years.

Some private fund managers who used to manage a single type of asset are seeking to broaden the scope of assets and product types under their management. Many fund managers started to deploy multiple investment and asset management strategies, including different investment stages, objectives and different product types.

Industries such as technology, advanced manufacturing, healthcare and clean energy are more favoured by investment funds as government-encouraged industries. There is a strong trend towards investing in early-stage enterprises, small enterprises and the technology industry. According to the public information, in 2021, the number and scale of new investments in small/medium enterprises, high-tech enterprises,

start-up science and technology enterprises made by private equity funds and venture capital funds have reached a record high. The number and scale of new investments in industries such as semiconductor, network information, biological medicine and new energy are at the forefront of the investments within all industries.

As to the regulation and self-disciplinary trends, the reform to streamline administration and delegate power, improve regulation and upgrade services has been further enhanced. By issuing the list of registration and management of private fund managers, the main points of private investment fund filing, making public the registration handling procedures of private fund managers, the AMAC has improved the transparency of registration/filing and the service quality. By expanding the scope of application of the separate channel for the filing of funds, in which funds can be filed upon reporting, the AMAC has substantially improved the efficiency of fund filing. In terms of policies, by promoting pilot innovations, such as the transfer of partnership interest of private equity funds/venture capital funds and the distribution of stock in kind by private equity funds/venture capital funds, the exit methods of private equity funds/venture capital funds are expected to become more diversified.

2.17 Disclosure/Reporting Requirements

Private fund managers and custodians bear the obligation to make disclosures to the investors in relation to the fund.

Mandatory disclosure requirements of the fund managers (and fund custodians) include:

- fund contract;
- private placement memorandum (PPM) and other fund promotional documents;

- the main rights and obligations included in the fund sales agreements (if any);
- summary of fund investments;
- fund balance sheet;
- fund investment return distribution;
- fund expenses and incentive fees;
- potential conflicts of interest;
- material litigation or arbitration involving fund management, fund assets and the fund custodian; and
- other material information as determined by the CSRC and AMAC to have a material impact on investors' rights.

During the fundraising period, the following information should be included in the fund promotional materials (such as the PPM):

- fund basic information – fund name, fund structure (master-feeder structure, parallel funds), fund type, place of establishment (if any), target fund size, minimum subscription amount, close-end or open-end (or other liquidity window provisions), fund term, contact persons and contact information, fund custodian (if any);
- basic information on the fund manager – fund manager's name, fund structure (such as whether it is a master-feeder fund, or a parallel fund), type of fund, place of registration/place of business, fund size, minimum subscription amount, open-ended or close-ended (liquidity window), fund term, contact person and contact information, fund custodian (if any);
- fund investment information – fund investment objective, investment strategies, investment direction, performance benchmarks (if any), risk/return profile, etc;
- fundraising duration – first closing date and final closing date (if any);

- fund valuation policy, procedures and valuation model;
- main fund terms – including terms on capital contribution, distribution of proceeds, loss allocation, management fee calculation and payment, fund expenses, fund reports and financial statements;
- fund subscription and redemption; and
- statement on creditworthiness of the fund manager from the last three years.

During a private investment fund's operation, the fund manager should provide periodic reports to investors. The fund manager should also report to investors promptly upon the occurrence of material changes in the fund or fund manager.

Information disclosure shall be made in accordance with provisions of the fund agreements. Fund managers should also make appropriate periodic filings and disclosures in connection with the fund and fund manager as required by the AMAC through the AMAC's online filing system. However, disclosures made by private investment funds shall not be made to the public.

2.18 Anticipated Changes

The Regulations on the Supervision and Administration of Private Investment Funds is still under consideration and is not yet formally issued. The draft for public opinion of this upcoming regulation shows that it will impose heavier penalties for regulatory violations.

3. Managers

3.1 Legal Structures Used by Fund Managers

As China has a relatively well-developed company law legal framework, fund managers usually use limited liability companies as the preferred legal form. Due to tax planning and other business considerations, some private fund managers also choose limited partnerships as their legal form.

3.2 Managers: Regulatory Regime Registration Requirements

In accordance with the Interim Measures, private fund managers are subject to registration requirements before they can sponsor a private investment fund or engage in any fundraising activities. There are certain qualifications and substance requirements that a fund manager must satisfy in order to successfully obtain registration status with the AMAC. Additionally, pursuant to the Announcement on Several Matters concerning Further Regulating the Registration of Private Investment Fund Managers (2016), a private fund manager applicant must engage a Chinese law firm to issue a legal opinion on whether the applicant is eligible for application of registration and whether the applicant satisfies all the application requirements. The legal opinion is one of the most important documents that the AMAC will review to determine whether the applicant meets the registration requirements.

Restrictions and Limitations on Business Activities of a Fund Manager

Private fund managers must include the following language in their legal and business names: “private investment fund manager”, “private investment fund”, “venture capital investment”, and include words indicating the type of asset management business in the business’s

scope such as “private investment fund management”, “private securities investment fund management” and “private equity investment fund management”. Private fund managers can only promote and market funds to specific Qualified Investors without engaging in a public offering or general solicitation. During their marketing and promotional activities, private fund managers cannot make statements to the effect of any promise of return or safety of investment capital to the investors. Each private fund manager can only manage a single type of private fund (see 2.1 Types of Alternative Funds). A private fund manager shall not engage in any business unrelated to or conflicting with private fund management such as lending, providing guarantees or factoring. Additionally, a private fund manager shall not manage any fund that has not completed its filing with the AMAC.

Private fund managers shall also establish effective internal control systems to prevent conflicts of interest and other unethical conduct.

Substance Requirements

See 3.7 Local Substance Requirements for substance requirements of private fund managers.

Wholly-Foreign Owned or Joint-Venture Private Securities Fund Managers

The Questions and Answers on Registration and Filing of Private Investment Funds (Number 10) for the first time clarified the requirements for setting up a wholly-foreign owned private securities fund manager or a foreign-Sino joint venture private securities fund manager in China. The main requirements for setting up private securities fund managers with foreign equities include:

- the private securities fund manager applicant should be a company established in China;

- each foreign shareholder of the private securities fund manager should be a licensed financial institution or a financial institution approved by the financial regulator in its home jurisdiction, and the financial regulator of its home jurisdiction should have entered into a memorandum on collaboration on the securities regulation with the CSRC or another regulatory body designated by the CSRC; and
- the private securities fund manager and its foreign shareholders must not have been subject to significant penalties by the relevant regulators or enforcement agencies.

Currently, there are no specific regulatory requirements on the foreign shareholders of the private equity fund manager.

3.3 Managers: Tax Regime

Private fund managers in the form of companies are subject to enterprise income tax and VAT. The enterprise income tax rate is 25% of the company's profit (including management fees and any performance incentive fees), and VAT is taxed at 6% and is applicable to management fee revenue and other incomes received from the fund in the form of fees, such as performance incentive fees.

Private fund managers in the form of limited partnerships are considered tax pass-through entities and are not subject to enterprise income tax (while incomes received in the form of fees are still subject to VAT). Management fees and carried interest received by the limited partnership manager will be distributed to the non-individual partners which will in turn make their own tax filings. For individual partners, the limited partnership manager will withhold individual income tax at the rate of 5%-35% based on the amount of proceeds received.

3.4 Rules Concerning Permanent Establishments

There are no clear rules on whether foreign investors investing passively in a private fund domiciled in China with no participation in the management and operation of the fund will be deemed to have a "permanent establishment" in China. Therefore, if such foreign investors are considered to have "permanent establishment" through their investment in a private fund in China, they may be subject to a tax rate higher than the 10% withholding tax by the Chinese tax authorities. For fund management teams that manage both offshore funds and onshore China-domiciled funds, there could be potential questions as to whether the same management team's presence in China will constitute "permanent establishment" of the offshore fund and fund manager. There are no well-established rules in China as to what constitutes an exemption to "permanent establishment". However, in practice, offshore funds and fund managers should ensure that they do not have a permanent business presence in China, and that the investment decisions and operations of the offshore funds are carried out in an offshore jurisdiction to avoid being deemed to have "permanent establishment" in China.

3.5 Taxation of Carried Interest

There are no specific rules applying to taxation of carried interest. If a company is the receiving entity of the carried interest, the company is subject to 25% enterprise tax on its profits for the year. If a limited partnership is the entity receiving carried interest, because limited partnership is treated as a pass-through entity, carried interest will be taxed at the partner level of the limited partnership. For individuals receiving carried interest from a partnership entity, the partnership will withhold tax at the tax rate of 20% or 5%-35%, depending on whether the

local tax authority deems the carried interest as proceeds derived from an equity transfer or from income of business operations.

3.6 Outsourcing of Investment Functions/Business Operations

The Chinese legal framework allows private fund managers to outsource some of the fund management and operation functions, such as the fund assets custodian, valuation and fund interest registration. The service providers should be institutions legally established in China with the requisite qualifications.

3.7 Local Substance Requirements

To register as a private fund manager in China, the applicant must satisfy the following requirements.

- The applicant should have a minimum of five full-time employees (working part-time or full-time in other capacities is generally not allowed and senior executives should not work at an un-affiliated fund manager), including investment personnel and risk control personnel with commensurate experience and capabilities.
- The legal representative and compliance (risk control) officer should be qualified as a fund industry practitioner. If applying for registration as a private securities fund manager, all senior executives (including legal representatives, executive partners (general partners), general managers, vice presidents and compliance officers) should be qualified as fund industry practitioners.
- The applicant should have an independent place of business that meets the business needs of its operations.
- The applicant should have enough capital for its business operations, the minimum of which should be no less than CNY2 million.

- The applicant should have a comprehensive internal control system.

3.8 Local Regulatory Requirements for Non-local Managers

Currently, the Chinese legal framework does not allow foreign private fund managers to sponsor or manage private funds domiciled in China.

4. Investors

4.1 Types of Investors in Alternative Funds

China has the following common types of investors:

- government guidance funds;
- social security funds and pension funds;
- insurance companies;
- different types of asset management investment funds;
- corporate investors; and
- high net worth individuals.

4.2 Marketing of Alternative Funds

Under the Chinese legal framework, private fund managers can promote and market funds to specific Qualified Investors without engaging in public offering or general solicitation. Please see the definition of “Qualified Investor” in 2.3 Regulatory Regime.

The following investors are deemed to be “Qualified Investors”:

- social security funds, pension funds and charitable foundations;
- investment funds legally established and filed with the AMAC;
- fund managers and their staff when investing in the fund under their management; and

- other investors as determined by the CSRC.

Foreign investors investing in domestic CNY funds in China may be subject to higher investor subscription standards as local rules and regulations on QFLPs may vary.

4.3 Rules Concerning Marketing of Alternative Funds

Marketing and sales of private investment funds can only be made to specific Qualified Investors in private placement without engaging in public offering or general solicitation. The following conduct is strictly prohibited:

- offering fund interests to investors other than Qualified Investors, or aggregating multiple investors who taken individually are not qualified, in an attempt to qualify in the aggregate, or loaning money to investors who are not qualified in an attempt to increase their assets such that they would appear to be Qualified Investors;
- promoting and marketing fund interests through public media such as newspapers, radio, television and the internet, or promoting and marketing fund interests to the general public;
- promising the safety of investment capital or guaranteeing investment returns directly or indirectly, orally or in writing by text messages, instant messages, etc;
- promoting and marketing fund interests in exaggerated fashion or through deliberately misleading one-sided statements;
- promoting the investment objectives of the fund to investors differently from what was provided in the fund agreements;
- including false statements, misleading statements or material omissions in marketing materials;

- engaging in misleading promotional activities, including using registration status, financial institution custodian or government funding to enhance credibility;
- engaging agencies or individuals who do not have fund sales qualifications to provide fundraising services;
- establishing subsidiaries to engage in fundraising activities (including the establishment of covert subsidiaries); and
- other conduct prohibited by any law, regulation or the CSRC.

4.4 Local Investors

A Chinese individual or entity that is a Qualified Investor can invest in alternative funds in China that suit the investor's risk tolerance.

4.5 Investors: Regulatory Regime

Once a private fund manager obtains registration status with the AMAC, it can engage in marketing and sales of fund interests in accordance with applicable laws and regulations without any additional filings.

If the fund manager engages a placement agency to conduct fund marketing and sales on its behalf, such placement agency must have the requisite fund sales qualifications.

4.6 Disclosure Requirements

In accordance with investor suitability requirements, the fund manager should obtain the following information from its investors:

- basic information on the investor, such as name, address, profession, age, contact information, name of legal entity, registered address, business address, nature and qualification of business, and business scope;

- source of income and amount, amount of assets and debt, and other financial information;
- investment-related education, work and investment experience;
- investment objectives such as investment term, investment type and investment expectations;
- risk appetite and risk tolerance;
- credit history;
- ultimate control person of the investor and ultimate beneficiary of the investment;
- other disclosure requirements as provided by laws, regulations and industry self-disciplinary rules; and
- other information as deemed necessary.

To verify if an investor satisfies the Qualified Investor test, investors will provide certain information in relation to their legal status and qualifications, finances and assets. For investors in the form of limited partners and contractual arrangements, investors will be required to provide information as to their investors and interest holders unless an exception applies.

Investors are also required to provide information regarding their identity and source of funding to comply with anti-money laundering regulations.

With respect to CRS reporting obligations, investors are also required to provide certain information in relation to their tax residency.

4.7 Investors: Tax Regime

If the private investment fund is established as a limited partnership or a contractual fund, an investor in the form of a company will be subject to 25% enterprise income tax on its overall

annual profits. An individual investor investing in such a fund will be subject to 20% or 5–35% tax (which will be withheld by the fund) as determined by local tax authorities for the proceeds derived from their investment in the fund.

If the private investment fund is established as a company, an investor in the form of a company will not be subject to enterprise income tax again for the proceeds distributed to the investor as dividends derived from its investment in the fund. An individual investor in such a fund will be subject to 20% individual income tax for proceeds distributed to the investor as dividends received from the fund.

In general, non-Chinese tax residents that are foreign entities will be subject to a 10% withholding tax for the proceeds derived from investment in private investment funds in China, or they will be subject to a higher tax rate if such investor is considered to have a permanent establishment in China through its investment in the private investment fund. Foreign individual investors will be subject to 20% or 5–35% individual income tax, as determined by local tax authorities, which will be withheld by the fund.

4.8 Foreign Account Tax Compliance Act (FATCA)/Common Reporting Standard (CRS) Compliance Regime

Private investment fund managers are required to implement a CRS review process in connection with their investors.

Global Law Office (GLO) dates back to 1979 and is now known as one of the leading Chinese law firms, with more than 500 lawyers practising in the Beijing, Shanghai, Shenzhen and Chengdu offices. GLO is recognised as one of the best PRC firms in investment funds practice and in private fund business. The firm provides comprehensive and full-coverage legal services for clients in the formation, funding, management, investment and exit of private funds. Its team represents fund managers participating in ne-

gotiations with various investors, which include mainstream institutional investors in the market. GLO completes fund investment on behalf of institutional investors, and provides high-quality and efficient private fund manager registration, significant event change and private fund filing legal services for a range of private fund managers. It also offers legal services relating to compliant operation, internal governance and team motivation of private fund management institutions.

Authors



Yuan Yuan is a partner at Global Law Office based in Beijing. She has represented various international and leading domestic investment institutions regarding private equity (PE)/

venture capital (VC) investment funds design and formation. Yuan represents various top-tier investment institutions and PE/VC funds. She assists renowned managers of PE/VC funds in the design and formation of their first and subsequent series of CNY funds in the Chinese market and is also active in special investment vehicles for various types of projects. Her practice also focuses on advising PE/VC fund managers on matters of private equity management institutions' compliance management, internal governance arrangements and economic incentives.



Tony (Xianlai) Liu is a partner at Global Law Office based in Beijing. He specialises in investment fund, private equity (PE)/venture capital (VC), M&A, capital market and dispute

resolution. Tony has over 15 years of experience in investment fund and VC areas. He has extensive knowledge of the Chinese PE/VC market and previously worked as the general counsel of New Horizon Capital, one of the top PE funds in China. Tony regularly attends meetings of the Asset Management Association of China (AMAC), the supervisor of PE/VC fund industry, to analyse new rules and provide advice on the monitoring of investment funds.

Contributed by: Yuan Yuan, Tony (Xianlai) Liu, Jinghe Wang and Zhihong Jian, **Global Law Office**



Jinghe Wang is a partner at Global Law Office based in Beijing. He specialises in private equity (PE)/venture capital (VC) and investment funds practice. With over 10 years of experience

in this area, Jinghe has represented various international and domestic leading investment institutions regarding PE/VC investment funds design and formation as well as investment vehicle-related matters. He has advised many funds, insurance companies and start-ups on many minority equities investment/financing, M&A and mezzanine investment matters with significant transaction values.



Zhihong Jian is a partner at Global Law Office based in Beijing. He specialises in private equity (PE)/venture capital (VC) and investment funds practice as well as investment and

financing. Zhihong has extensive experience in investment fund structure, negotiations with investors and other legal issues related to fund formation. He also represents various top-tier investment institutions and PE/VC funds. He provides legal services regarding registration of investment fund managers, fund filing and other compliance-related matters. In addition to representing a large number of general partners, Zhihong represents a large number of limited partnerships looking to invest in various investment funds.

Global Law Office (Beijing)

15&20/F Tower 1
China Central Place
No 81 Jianguo Road
Chaoyang District
Beijing 100025
China

Tel: +86 10 6584 6688
Fax: +86 10 6584 6666
Email: global@glo.com.cn
Web: www.glo.com.cn



CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com