

PANORAMIC

FUND MANAGEMENT

China



LEXOLOGY

Fund Management

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FUND MANAGEMENT REGULATION

Regulatory framework and authorities

How (in very general terms) is fund management regulated in your jurisdiction? Which authorities have primary responsibility for regulating funds, fund managers and those marketing funds?

In 2018, China's central banking, securities, insurance and foreign exchange authorities collectively introduced the 'Guiding Opinions on Regulating Asset Management Business of Financial Institutions' (New Asset Management Regulations) to regulate the asset management business of financial institutions (including commercial banks, trust companies, insurance asset management institutions, securities firms, fund management companies, futures companies, and financial asset investment companies). The new regulation aims to unify regulatory standards for asset management products of the same type and reshape the regulatory landscape of China's asset management industry. Various financial regulatory authorities have issued corresponding implementation rules. Some rules of the New Asset Management Regulations also apply to private funds managed by non-financial institutions.

The management, operation and sales activities of investment funds are mainly regulated by the China Securities Regulatory Commission (CSRC). Managers of public funds must obtain approval from the CSRC, and public funds must be registered with the CSRC after obtaining its approval. The CSRC authorises the Asset Management Association of China (AMAC) to oversee the registration of private fund managers and filing of private funds, as well as carrying out industry self-disciplinary supervision functions. Securities companies, fund management companies and futures companies must obtain approval from the CSRC before they can be engaged in private fund management business, while other private fund managers must register with AMAC. Private funds must complete filing with AMAC.

In addition, wealth management subsidiaries under commercial banks, trust companies and insurance asset management institutions can also engage in the management of certain asset management products. These financial institutions (including their subsidiaries) must obtain approval from their authority, the National Financial Regulatory Administration, and are subject to its supervision when engaging in the aforementioned business.

Law stated - 7  2024

Fund administration

Is fund administration (support services provided to funds such as book-keeping, preparing reports, trade settlement, etc) regulated in your jurisdiction?

In China, fund managers are ultimately responsible for all fund management and operation-related matters, such as fund unit registration, accounting, valuation and reporting.

Fund managers can delegate certain fund administration matters to qualified fund service providers. Public fund managers can outsource certain fund administration work, such as unit registration, accounting, valuation and information technology system services to fund administration service providers. These fund service providers must register or file with the

CSRC under CSRC regulations. Private fund managers can also engage fund administration service providers to provide these fund administration services. These service providers for private funds must register with AMAC and become AMAC members.

Law stated - 7  2024

Authorisation

What is the authorisation or licensing process for funds? What are the key requirements that apply to managers and operators of investment funds in your jurisdiction?

In China, public funds must be registered with the CSRC before they can be offered to the public. The fund applying for registration must comply with the CSRC's regulatory requirements in terms of investment direction, operation mode, fund type, subscription and redemption rules, etc. After a public fund is approved and registered, it can be offered to the public within a specified time frame. Upon the expiration of the offering period, an accounting firm is engaged to conduct capital verification, and then the fund should be filed with the CSRC. Once the CSRC provides its written confirmation of the filing, the fund contract becomes effective.

Private funds must file with AMAC after the fundraising is completed before they can commence investment activities. To complete filing with AMAC, the private fund must comply with AMAC's self-regulatory rules in terms of investment scope, initial capital contribution, fund duration, fund contract, etc. Currently, except for certain special products, the initial capital contribution of private funds shall not be less than 10 million yuan. The duration of private equity funds shall not be less than five years.

Public fund managers and private fund managers are subject to different regulatory requirements when obtaining business qualifications. Generally speaking, they must satisfy regulatory requirements in aspects such as the qualifications of shareholders and actual control persons, capital contribution, senior management and employees, business premises and facilities, internal management systems, etc.

Law stated - 7  2024

Territorial scope of regulation

What is the territorial scope of fund regulation? Can an overseas manager perform management activities or provide services to clients in your jurisdiction without authorisation?

In China, except as otherwise specifically provided, fundraising and management activities must be conducted by entities registered in mainland China and approved by financial regulatory authorities such as the CSRC or registered with AMAC.

Under the provisions of the CSRC's 'Interim Provisions on Administration of Recognised Hong Kong Funds' (effective on 1 July 2015), public funds established in Hong Kong in accordance with Hong Kong laws that satisfy the conditions stipulated by the CSRC can be registered with the CSRC by Hong Kong fund managers. These fund managers can engage

mainland institutions as agents to sell the funds in mainland China (known as 'Recognised Hong Kong Funds'). Hong Kong fund managers can also engage mainland service providers to handle matters such as product registration, information disclosure, sales arrangements, data exchange, fund clearing, regulatory reporting, communication, customer service and monitoring on their behalf. However, Hong Kong managers are still legally responsible to the mainland investors who subscribe to the Recognised Hong Kong Funds.

On 19 April 2024, the CSRC announced five measures for capital market cooperation with Hong Kong. One of the measures proposes allowing Recognised Hong Kong Funds to delegate investment management functions to overseas asset management institutions within the same group as the Hong Kong manager.

Law stated - 7  2024

Acquisitions

Is the acquisition of a controlling or non-controlling stake in a fund manager in your jurisdiction subject to prior authorisation by the regulator? (Restrict your answers to the regulator with responsibility for oversight of fund management. Do not answer with respect to other agencies, such as the merger control authorities.)

Approval from CSRC is required in China when a public fund manager changes its actual control person, major shareholders, non-major shareholders holding 5 per cent or more of the shares, or shareholders holding less than 5 per cent but having a significant impact on corporate governance.

Private fund managers must promptly file with AMAC with respect to changes as to equity holding. Changes in the control of private fund managers are subject to stricter restrictions. In principle, such changes shall not occur within three years from the date of registration (or change of registration). After the change, the private fund manager will be subject to an AMAC inspection to determine whether the private fund manager fully satisfies the registration requirements.

For financial institutions managing private funds, changes in their equity holding will be subject to the relevant regulations of their competent authorities.

Law stated - 7  2024

Restrictions on compensation and profit sharing

Are there any regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements?

In China, the main compensation for public fund managers is a management fee. Since the second half of 2023, the CSRC has begun promoting reforms to public fund fee rates. It has implemented a unified upper limit standard for actively managed public equity funds and adjusted the fee rates of existing products according to the same standard. At the same time, the CSRC has introduced pilot floating fee rate public fund products, where the management fee rate is linked to factors such as fund size, fund performance or holding period.

The main compensation for private fund managers includes management fees and performance-based carried interest (Carry). If private fund managers also make capital contributions to the fund, they can receive profit distributions as investors according to the fund agreement. Common management fee rates range between 0.5 per cent and 2 per cent, while common Carry percentages range between 10 per cent and 30 per cent. There are no specific regulatory restrictions on the percentages of management fees and Carry, but they need to be clearly stipulated in the fund agreement.

Law stated - 7  2024

FUND MARKETING

Authorisation

Does the marketing of investment funds in your jurisdiction require authorisation?

In China, the sale of public funds should be conducted by either the fund management companies or the fund sales agencies entrusted by the fund management companies. The fund sales agencies must register with the China Securities Regulatory Commission (CSRC) or its local offices and obtain the qualification for fund sales business (Qualified Sales Agencies). A public fund must be registered with the CSRC before sales of fund interests. After the offering period expires, a capital verification institution must be engaged to verify the raised funds, and the fund must be filed with the CSRC. Once written confirmation is obtained from the CSRC, the fund agreement becomes effective.

For private funds, private fund managers can promote fund products and raise funds by themselves, or engage Qualified Sales Agencies for sales of fund interests. After completion of fundraising, the fund should be filed with the Asset Management Association of China (AMAC).

Law stated - 7  2024

Authorisation

What marketing activities require authorisation?

In China, public offering refers to raising funds from non-specific targets or raising funds from specific targets with a cumulative number exceeding 200 people.

For private placement, the target investors must be specified qualified investors, and the offering must be conducted in a private manner. This means that it is not allowed to promote or advertise to non-specific targets through mass media such as newspapers, radio, television and the Internet, or through means such as telephone, text messages, instant messaging tools, emails, leaflets, lectures, seminars or analysis sessions. The total number of investors should not exceed the number stipulated by law (which varies depending on the organisational form of the fund).

Public funds should complete registration with the CSRC before any marketing or sales activities. After the fundraising period expires, capital verification and filing with the CSRC

should be conducted. On the other hand, private funds should file with AMAC after the fundraising is completed.

Law stated - 7  2024

Territorial scope and restrictions

What is the territorial scope of your regulation? May an overseas entity perform fund marketing activities in your jurisdiction without authorisation?

Unless otherwise clearly stipulated by Chinese law, entities conducting fundraising and sales activities within China must be legally registered in mainland China and obtain corresponding approval or qualifications from the CSRC and AMAC. Foreign institutions are not allowed to directly raise funds from domestic investors to establish funds in mainland China.

Pursuant to the Interim Provisions on Administration of Recognised Hong Kong Funds, Recognised Hong Kong Funds can be registered with the CSRC by its Hong Kong fund manager. The Hong Kong fund manager can then entrust a mainland institution as an agent, and either the Hong Kong fund manager or its mainland agent can sign a fund sales agreement with mainland fund sales agencies to sell the funds to mainland investors. On 19 April 2024, the CSRC released five measures for capital market cooperation with Hong Kong. One of these measures proposed appropriately relaxing the restrictions on the proportion of sales of mutually recognised funds in the Chinese mainland.

Law stated - 7  2024

Territorial scope and restrictions

If a local entity must be involved in the fund marketing process, how is this rule satisfied in practice?

Foreign institutions shall not directly, or indirectly through sales agencies, engage in fund sales or marketing activities in China. To market funds in China, overseas fund managers must register a domestic entity in China. To market its own funds, a fund manager should obtain approval from the CSRC and other financial regulatory authorities or complete registration with AMAC, depending on whether it is a public or private fund. The fund sales institutions entrusted by fund managers should be registered with the CSRC or its local offices and obtain the qualification for fund sales business. Among them, those entrusted by the private fund managers to raise private funds must also become members of AMAC.

Law stated - 7  2024

Commission payments

What restrictions are there on intermediaries earning commission payments in relation to their marketing activities in your jurisdiction?

In China, fund sales agencies can receive commission payments, but they must obtain the relevant qualifications from the CSRC.

Starting from July 2023, the CSRC has begun to promote reforms in the fee structure of public funds. The reform aims to gradually reduce the overall fee level of public funds in three steps: management fees and custody fees, transaction fees, and sales fees. As of now, reform measures regarding management fees and custody fees, and transaction fees have been introduced, while specific reform measures for sales fees have not yet been announced. Therefore, there are currently no specific restrictions on the rates or amounts of commission payments, but such fees should be clearly stipulated in the fund agreement and promotional materials.

Law stated - 7  2024

RETAIL FUNDS

Available vehicles

What are the main legal vehicles used to set up a retail fund? How are they formed?

Public funds in China are often established on the basis of a contractual scheme. Contractual funds can be formed by fund managers with the investors through the execution of an investment contract. Under such investment schemes, the investors and the fund managers form a trust relationship without establishing a legal entity.

Law stated - 7  2024

Laws and regulations

What are the key laws and other sets of rules (regulatory and self-regulatory) that govern retail funds?

The regulatory framework for public funds in China is mainly based on the Securities Investment Funds Law of the PRC (Securities Investment Funds Law), and consists of specific departmental rules and regulations issued by the China Securities Regulatory Commission (CSRC), including:

- Administrative Measures for the Supervision and Regulation of Managers of Public Investment Funds (regulating public fund managers);
- Administrative Measures for the Operation of Public Investment Funds (regulating the operation of public funds);
- Administrative Measures for Securities Investment Fund Custody Business (regulating public fund custody);
- Administrative Measures for the Supervision and Administration of Public Investment Fund Sales Agencies (regulating public fund sales agencies);
- Administrative Measures for Information Disclosure for Public Investment Funds (regulating public fund information disclosure); and

- Administrative Measures for the Supervision and Regulation of the Directors, Supervisors, Executives and Practitioners of Securities Fund Operators (regulating the management personnel and practitioners of public fund managers).

Law stated - 7  2024

Authorisation

Must retail funds be authorised or licensed to be established or marketed in your jurisdiction?

Yes, public funds can only start sales after completing registration with the CSRC. After the sale of fund units is completed, capital verification should be conducted and then the fund should be filed with the CSRC. After obtaining written confirmation from the CSRC, the fund contract takes effect and the fund can begin operation.

Law stated - 7  2024

Marketing

Who can market retail funds? To whom can they be marketed?

The following entities can raise public funds:

- financial institutions approved to manage publicly offered asset management products, such as fund management companies approved by the CSRC; and
- qualified fund sales institutions. Fund sales institutions should be registered with the CSRC or its local offices and obtain the qualification for fund sales business.

There are no qualification requirements for investors in public funds. However, fund managers and fund sales agencies should make sure that fund interests are only sold or marketed to investors with a suitable risk profile and tolerance.

Law stated - 7  2024

Managers and operators

Are there any special requirements that apply to managers or operators of retail funds?

Public fund managers are subject to the regulatory approval requirements of the CSRC. Only fund management companies and other asset management institutions approved by the CSRC can conduct public fund management activities. The Administrative Measures for the Supervision and Regulation of Managers of Public Investment Funds provide regulations on the entry requirements, registered capital, internal control, governance and operation, personnel, and business premises, along with other requirements on public fund managers, specifically:

- shareholders and actual control persons should meet the specified conditions;

- managers of public investment funds should have articles of association that comply with the regulations;
- the registered capital should be no less than 100 million yuan, and shareholders must make capital contributions of their own from legitimate sources; foreign shareholders should contribute in freely convertible currencies;
- managers of public investment funds should have directors, supervisors and senior management personnel, as well as personnel responsible for research, investment, operation, sales, compliance and other positions that meet the requirements of laws, administrative regulations and CSRC regulations. In principle, there should be no fewer than 30 personnel who have obtained the qualification for engaging in fund-related businesses;
- managers of public investment funds should have internal management systems, business premises, safety and security facilities, system equipment and other facilities related to the business that meet the requirements; and
- managers of public investment funds should establish an organisational structure and work positions with reasonable division of labour and clear responsibilities.

Other asset management institutions applying for public fund management qualifications should mainly meet the following requirements:

- sound corporate governance, internal control and risk; business status, management capabilities, asset quality and financial status in good standing; capital strength suitable to the public fund management business;
- in good standing with respect to credibility and compliance; the main regulatory indicators in compliant with regulatory requirements;
- having more than three years of experience in securities asset management, in good standing without major violations or risk incidents;
- with the requisite internal management systems, business premises, safety and security facilities, system equipment and other facilities related to the business that meet the requirements;
- having directors, supervisors, senior management personnel and personnel responsible for research, investment, operation, sales, compliance and other positions that meet the requirements of laws, administrative regulations and CSRC regulations. In principle, there should be no fewer than 30 personnel who have obtained the qualification for engaging in fund-related businesses; the organisational structure and division of positions are established clearly with clear responsibilities; and
- established clear and effective control mechanisms for maintaining the independence of the public fund management business, risk prevention and prevention of inappropriate transfer of benefits.

Law stated - 7  2024

| Investment and borrowing restrictions

What are the investment and borrowing restrictions on retail funds?

Based on the different types of investments, public funds in China can be classified into equity funds, bond funds, monetary market funds, funds of funds and hybrid funds. The fund type and investment type must be specified in the fund contract, and the investment operation should be carried out strictly according to the agreement.

In addition, the investment restrictions on public funds are mainly imposed on investment concentration. For example, a single fund holding securities issued by one company should not exceed 10 per cent of the fund's net asset value.

There are express restrictions on the leverage ratios of public funds. Generally speaking, the total assets of a fund should not exceed 140 per cent of the fund's net assets. For closed-ended funds and principal-guaranteed funds, the leverage ratio can be up to 200 per cent. There are no clear restrictions for leveraged funds, but the fund name should include the words 'leveraged fund'.

Law stated - 7  2024

Tax treatment

What is the tax treatment of retail funds? Are exemptions available?

Individual investors are exempt from taxation on any gain made from buying and selling public funds, but they are subject to 20 per cent income tax on the distributions received from public funds (withheld by the public funds). Corporate investors are subject to enterprise income tax on the gains made from buying and selling public funds, but are exempt from taxation on the distributions received from public funds.

For individual investors, the price difference income generated from buying and selling public funds is not subject to individual income tax and the dividend and bonus income from stocks and the interest income from corporate bonds obtained from the distribution of public funds are subject to an actual individual income tax rate of 20 per cent (withheld by the stock and bond issuers). Interest from national bonds, interest from savings deposits, and income from price differences in buying and selling stocks obtained from fund distribution are not subject to individual income tax.

For corporate investors, the price difference income generated from buying and selling public funds is subject to enterprise income tax, with a general tax rate of 25 per cent but the income obtained from the distribution of public funds is not subject to enterprise income tax.

Law stated - 7  2024

Asset protection

Must the portfolio of assets of a retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

Yes, public funds must be held in custody by a fund custodian. Fund custodians should be a legally established commercial bank or other financial institution (including foreign bank branches) that are approved by the CSRC as fund custodians.

In addition, public fund managers should take the following measures to protect fund assets:

- establish sound investment management policies and process, as well as mechanisms for preventing conflicts of interest such as management of related-party transactions; and
- ensure fair treatment of different fund assets and client assets managed by the company, and fully protect the interests of fund unitholders.

Law stated - 7  2024

Governance

What are the main governance requirements for a retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

There are specific requirements for fund governance in the following aspects:

- subscription, redemption and trading of fund units;
- fund investment strategies and income distribution;
- change of fund form or type, merger and change of registration; and
- general meeting of fund unitholders.

After a public fund is registered, if it needs to make substantive changes to the original registered matters, it should follow the relevant procedures in accordance with laws and regulations, and the fund contract. If it continues to publicly raise funds, it should apply to the CSRC for changes to the registered matters.

Fund managers should take proper bookkeeping measures in relation to the sales materials and investor suitability management materials of the fund.

The CSRC imposes certain requirements on the qualifications of public fund managers. Public fund managers are required to have personnel responsible for research, investment, operation, sales, compliance and other positions related to public fund management business, and should have in principle, no fewer than 30 people who have obtained the qualification for engaging in fund-related business.

Law stated - 7  2024

Reporting

What are the periodic reporting requirements for retail funds?

The information disclosure rules for public funds are mainly stipulated by the CSRC departmental rules such as the Administrative Measures for Information Disclosure for Public Securities Investment Funds. A public manager should prepare quarterly reports within 15 working days after the end of each quarter, prepare interim reports (ie, semi-annual reports) within two months after the end of the first half of the year and prepare annual reports within three months after the end of each year. A public fund manager should publish

the periodic reports on the website designated by the CSRC and publish the indicative announcements of the periodic reports in the designated newspapers.

Law stated - 7  2024

Issue, transfer and redemption of interests

Can the manager or operator place any restrictions on the issue, transfer and redemption of interests in retail funds?

Public funds fall into two categories: open-ended funds and the closed-ended funds. Closed-ended funds cannot be redeemed within the term of the fund contract. For open-ended funds, redemption can be conducted on the 'open day' when redemption is allowed. Fund managers can choose an open-ended or closed-ended strategy as they set up their funds.

For open-ended funds, managers can also impose restrictions on subscription and redemption in the following aspects:

- Setting of open days. Pursuant to the Public Securities Investment Funds Law, fund managers have the discretion to set open days in the fund contract. In practice, the open-ended funds are categorised as daily open funds and periodically open funds. With daily open funds, the fund units can be subscribed and redeemed on every working day (trading day), while with periodically open funds, subscription and redemption are only open on specific open days after the end of the closed period, and then enter into the closed period again after the end of the open day(s).
- Management of the subscription process. After the fund reaches a certain size, the fund manager may no longer accept subscriptions. The fund manager may set restrictions on the proportion or number of fund units held by a single investor. If the manager believes that the subscription will harm the interests of existing investors, it may refuse or suspend the subscription. However, the fund contract and promotional materials should stipulate the circumstances under which the manager restricts subscription.
- Restriction on large redemption. If a large redemption event occurs in the fund (usually a single day's redemption exceeds 10 per cent of the total fund units), the large redemption can be postponed in accordance with the specific provisions of the fund contract.

Pursuant to the Public Securities Investment Funds Law, investors in public securities funds have the right to transfer their fund units. However, as most public funds can provide liquidity through redemption, there is a lack of demand to obtain liquidity through transfer of public fund units, and a large-scale fund transfer market has not yet been formed. Among them, closed-ended funds, exchange-traded funds and other funds that meet the listing requirements can be listed and traded on stock exchanges in China.

Law stated - 7  2024

NON-RETAIL POOLED FUNDS

Available vehicles

What are the main legal vehicles used to set up a non-retail fund? How are they formed?

Although there are three organisational form choices – limited partnerships, limited liability companies and contractual schemes – private funds that invest in assets such as stocks, bonds, depositary receipts, asset-backed securities, futures contracts, option contracts, swap contracts, forward contracts and securities investment fund interests primarily adopt the contractual form. Private funds that invest in unlisted company equities, unlisted public company stocks, stocks issued by listed companies to specific investors, listed company stocks traded through block trades and agreement transfers, non-publicly issued or traded convertible bonds and exchangeable bonds, market-oriented and rule-of-law-based debt-to-equity swaps and equity investment fund interests primarily adopt the form of limited partnership.

Limited partnership funds are established in accordance with the Partnership Enterprise Law of the PRC (revised in 2006, hereinafter the Partnership Law). Investors act as limited partners, while the fund manager or its affiliates act as general partners. The rights and obligations of general partners and limited partners are stipulated in the limited partnership agreement. Partnership funds are registered with the Administration for Market Regulation and are considered non-legal person entities.

Whether a fund is open-ended or closed-ended depends on the specific investment targets of the fund. Funds that directly or indirectly invest in unlisted equities (or their beneficiary rights or rights to returns) are usually closed-ended, and subsequent additional fundraising is only allowed to a certain extent when specified conditions are met.

Law stated - 7  2024

Laws and regulations

What are the key laws and other sets of rules (regulatory and self-regulatory) that govern non-retail funds?

Regardless of the legal form of a private fund, the qualifications of its manager and the fundraising and investment operations of the fund are all subject to the Securities Investment Funds Law, the Regulations on the Supervision and Management of Private Investment Funds and a series of self-regulatory rules issued by the Asset Management Association of China (AMAC). If the manager is a financial institution or its subsidiary, the applicable rules should be determined based on the specific type of the financial institution, its subsidiary or the fund it manages. It may be necessary to specifically apply relevant departmental rules or normative opinions issued by its competent authority, or to apply them in conjunction with the aforementioned relevant rules. Regulations in relation to foreign investment in private funds include the Administrative Measures for Domestic Securities and Futures Investment Made by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors (with respect to Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors) and pilot policies issued by different provinces (with respect to foreign investors participating as limited partners in domestic limited partnership funds, ie Qualified Foreign Limited Partners).

In addition to the aforementioned provisions on the fundraising, management and investment operations of private funds, if a private fund is established in the form of a company, it should also comply with the Company Law. If it is established in the form of a limited partnership, it should comply with the Partnership Law.

Law stated - 7  2024

Authorisation

Must non-retail funds be authorised or licensed to be established or marketed in your jurisdiction?

Private funds must be managed by qualified managers. The business qualifications of financial institutions that manage private funds (including wealth management subsidiaries of commercial banks, trust companies, securities companies and their subsidiaries, fund management companies and their subsidiaries, futures companies and their subsidiaries, insurance asset management institutions, and financial asset investment companies) should be authorised by their competent authorities. Other managers should register with AMAC as private fund managers before conducting business.

The above-mentioned qualified managers can raise funds by themselves or entrust private fund sales institutions that are registered with the China Securities Regulatory Commission (CSRC) and have obtained fund sales qualifications to raise funds. Except for some private funds managed by financial institutions or their subsidiaries, which must complete registration before fundraising in accordance with the special regulations of their competent authorities, a private fund manager should make filings with AMAC of its funds after the fundraising is completed and before starting investment.

Law stated - 7  2024

Marketing

Who can market non-retail funds? To whom can they be marketed?

The following types of entities can market non-retail funds in China:

- Financial institutions (including wealth management subsidiaries of commercial banks, trust companies, securities companies and their subsidiaries, fund management companies and their subsidiaries, futures companies and their subsidiaries, insurance asset management institutions, and financial asset investment companies) can raise non-retail funds (usually called private asset management products) managed by them in accordance with their respective applicable rules.
- Private fund managers registered with AMAC can raise non-retail funds managed by themselves.
- Commercial banks, securities companies, futures companies, insurance companies, insurance brokerage companies, insurance agents, securities investment consultancies and independent fund sales agencies that are registered with the CSRC and have obtained business licences can engage in fund sales as engaged by fund

managers. Among them, those entrusted by the private fund managers mentioned above to raise private funds must also become members of AMAC. In addition, independent fund sales agencies can only engage in the sales of public funds and private securities investment funds.

Private funds can only be marketed to qualified investors, and the total number of investors in a single private fund shall not exceed the number specified by law.

The criteria for qualified investors include:

- having suitable risk identification and risk-bearing capabilities;
- investing no less than a certain amount in a single fund;
- natural persons must have certain investment experience and meet certain asset or income criteria. Legal persons must meet certain net asset requirements; and
- other circumstances that financial regulatory authorities may deem as qualified investors.

Different types of managers may have slightly different specific criteria for qualified investors based on the regulations of their competent authorities.

Law stated - 7  2024

Ownership restrictions

Do investor-protection rules restrict ownership in non-retail funds to certain classes of investor?

Yes. The managers and fund sales agencies should conduct 'suitability matching' between investors and funds based on the risk tolerance of investors and funds' risk levels, and market appropriate funds to suitable investors.

Investors are categorised as general investors and professional investors. General investors enjoy special protection in terms of information disclosure, risk disclosures and suitability matching.

If investors request to invest in funds with a risk level higher than their risk tolerance, they must go through special risk disclosure procedures. Moreover, investors at the lowest risk tolerance level cannot invest in funds with a risk level higher than their risk tolerance.

The additional subsequent fundraisings of private funds are subject to certain fund size restrictions. However, if the investors participating in such subsequent fundraisings are certain specified types of investors, such as social securities funds, corporate pension funds and insurance funds, certain exceptions will apply to the fund size restrictions.

Law stated - 7  2024

Managers and operators

Are there any special requirements that apply to managers or operators of non-retail funds?

Currently, foreign institutions are not allowed to directly raise funds from domestic investors to establish private funds. To engage in private fund business in China, the entity must be registered and established within China.

Financial institutions or their subsidiaries engaging in private fund business should meet the conditions required by the regulatory rules issued by their competent authorities and obtain permission.

Other private fund managers should register as private fund managers with AMAC before conducting business. Private fund managers should meet certain specific requirements in terms of financial status, capital contribution and personnel composition. To summarise:

- the private fund managers should have a good financial status and meet the minimum capital contribution requirement;
- the private fund managers should have a clear and stable capital contribution structure, with shareholders, partners and actual control persons having a good credit record, and controlling shareholders, actual control persons and general partners having the required relevant experience;
- the legal representative, executive partner or their appointed representative, and senior management responsible for investment management should directly or indirectly hold a certain proportion of the equity or property shares of the private fund manager;
- the private fund manager should have senior management personnel in specific positions, such as the main person in charge of business management, senior management responsible for investment management, compliance and risk control officer, etc. Private securities fund managers should also designate investment managers for the funds they manage. The senior management of the managers of private securities funds should have a good credit record, possess professional competence corresponding to their positions and have the required relevant work experience. The fund manager should also have a certain number of full-time employees;
- the private fund managers should have a sound internal governance structure, and complete risk control and compliance systems and conflict of interest prevention mechanisms; and
- the private fund managers should have a name, business scope, business premises and facilities related to fund management business that meet the requirements of AMAC or CSRC.

Law stated - 7  2024

Tax treatment

What is the tax treatment of non-retail funds? Are any exemptions available?

Private funds of different forms have different tax treatments:

- Private funds established in contractual form do not have an independent legal entity. Therefore, at the fund level, there is no enterprise income tax. Instead, tax will pass through to investors after investors receive fund distributions.
- Limited partnerships are not subject to enterprise income tax at the partnership level. The investment income obtained by the limited partnership will be passed to the partners of the fund and will be taxed separately at each partner's level.
- Companies are subject to enterprise income tax. The investment income obtained by a company is subject to enterprise income tax. For the after-tax profit distribution received by shareholders, if the shareholder is also an enterprise income taxpayer, there is no need to pay income tax again. If the shareholder is a natural person, the distribution will be subject to individual income tax.

For foreign investors, investment income from domestic private funds in China is subject to a 25 per cent enterprise income tax if the foreign investor has an establishment or place of business in China. Otherwise, they should pay a 10 per cent withholding tax and may enjoy applicable tax treaty benefits.

Law stated - 7  2024

Asset protection

Must the portfolio of assets of a non-retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

In certain circumstances, the assets of the fund should be independently held by a qualified third-party custodian in China (for example, private asset management products managed by financial institutions; private funds investing through special purpose vehicles). The fund custodian is a commercial bank or other financial institution that is established in accordance with the law and has obtained the qualification for fund custody. Custodians should set up separate accounts for different fund assets under their custody, such as capital accounts and securities accounts necessary for investment transactions. For fund assets other than cash and securities, such as unlisted company equity, there is no requirement to appoint a separate local custodian to hold the assets, but the custodian needs to perform its duties in accordance with the law to ensure the independence and security of private fund assets.

If the fund is not subject to mandatory custody requirements, and the fund contract clearly stipulates that there are no third-party custody requirements, then the assets of the private fund do not have to be held in custody. However, the fund contract should clearly specify the measures to ensure the safety of private fund assets and the dispute resolution mechanism.

Aside from fund custody requirements, according to regulatory requirements, private fund managers should take the following measures to better protect fund assets. The manager should:

- open a special fundraising supervision account (Special Fundraising Account). The investment funds paid by fund investors should be remitted into the Special Fundraising Account;

- establish a sound internal risk control and asset segregation system. The assets of private funds should be operated independently and accounted for separately from the assets of the private fund manager and between different private funds; and
- clearly stipulate related party transaction and conflict of interests provisions in the fund contract to prevent insider trading or other inappropriate transactions, and ensure the independent operation of private funds.

Law stated - 7  2024

Governance

What are the main governance requirements for a non-retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

For private asset management products managed by financial institutions and their subsidiaries, the managers should fulfil their reporting, compliance and internal governance obligations in accordance with the applicable regulatory requirements of their respective competent supervising authorities.

For funds raised and established by private fund managers of non-financial institutions, the managers should file with AMAC after the fundraising is completed. Their internal governance is mainly stipulated in the fund contract. Pursuant to the applicable regulations, private fund contracts should include:

- the meeting mechanism, agenda items and voting methods of the shareholders, partners or the fund unitholders;
- mechanisms for identifying related party transactions, transaction decision-making and information disclosure;
- fund disclosure and reporting schedule and investors' rights for information;
- arrangements when the fund assets are not held in custody; and
- the decision-making mechanism, meeting and voting mechanism and procedure, and voting ratio for changing the fund manager and liquidation when the private fund manager is unable to perform or neglects to perform management duties due to reasons such as loss of contact, cancellation of private fund manager registration, bankruptcy, etc.

When there are changes in matters in relation to registration and filing of the private fund manager and private funds, the manager should promptly file the update with AMAC in accordance with regulations.

Private fund managers should back up various types of information disclosure reports on the private fund information disclosure backup platform designated by AMAC in accordance with regulations, and fulfil the responsibilities of opening, maintaining, and managing investor inquiry accounts; they should report relevant information to AMAC in accordance with regulations.

Private fund managers should properly keep records, books, statements, and other relevant materials of private fund asset management business activities, as well as

relevant materials such as investor suitability management business materials, information disclosure materials, and investment decision-making materials involved in the operation of the fund.

Private fund managers should continuously meet the manager qualification requirements, including having at least a certain required number of employees and senior management with professional competence and relevant work experience.

Law stated - 7  2024

Reporting

What are the periodic reporting requirements for non-retail funds?

For private asset management products managed by financial institutions and their subsidiaries, they should fulfil their information disclosure obligations in accordance with the applicable regulatory requirements.

For private funds managed by non-financial institutions:

- Private equity funds: private fund managers should file semi-annual reports before the end of September each year and file annual reports within six months after the end of each year. Quarterly reports are not mandatory.
- Private securities funds: Quarterly reports should be filed within one month from the end of each quarter, and annual reports should be filed within four months from the end of each year. For a single private securities investment fund with assets under management of 50 million yuan or more, monthly reports should also be submitted within five working days from the end of each month.

Law stated - 7  2024

SEPARATELY MANAGED ACCOUNTS

Structure

How are separately managed accounts (ie, accounts through which investor funds are segregated – not pooled – and the investor owns the underlying assets, which are managed at the investment manager’s discretion) typically structured in your jurisdiction?

Non-financial private fund managers can set up private funds with only a single investor, adopting different legal structures based on the different investment scopes of the fund. Most often, private equity funds adopt the form of a limited partnership, while private securities funds that mainly invest in public securities usually adopt a contractual form.

For separately managed accounts managed by financial institutions and their subsidiaries, the accounts are normally set up in a contractual form.

In recent years, more and more institutional investors in China have chosen separately managed accounts to meet their personalised asset allocation needs and investment

preferences. Separately managed accounts usually have more flexible arrangements in respect of management fees, performance sharing, fund operation and governance.

Law stated - 7  2024

Key legal issues

What are the key legal issues (eg, standard of care, indemnification) to be determined when structuring a separately managed account?

From a regulatory perspective, currently there is no substantial difference between separately managed accounts and other collective investment schemes with multiple investors. Managers should follow the principles of voluntariness, fairness, honesty and putting clients' interests first, and diligently and prudently safeguard the rights and interests of investors. Managers have the right to make investment decisions independently according to the provisions of the fund contract.

Separately managed accounts managed by financial institutions or their subsidiaries have greater flexibility in terms of investment diversification, capital contribution and liquidation distribution methods (cash or other financial assets), and capital contribution in instalments, compared to pooled investment funds under the management of these managers. All of these terms and arrangements can be negotiated between the manager and investors and stipulated in the contract, subject to the specific regulatory requirements of the competent authorities.

Law stated - 7  2024

Regulation

Is the management or marketing of separately managed accounts regulated in your jurisdiction? (If so, how does this operate? Is this the same regime for fund management?)

Marketing and management of separately managed accounts are regulated businesses. There is no substantial difference with regard to the qualifications of managers and requirements for fund registration and filing between separately managed funds and pooled investment vehicles. Except that separately managed accounts should meet the minimum capital contribution requirement to file with the Asset Management Association of China, there are no other special requirements for investors in separately managed funds.

Law stated - 7  2024

GENERAL

Proposed reforms

Are there proposals for further regulation of funds, fund managers or marketers of funds in your jurisdiction?

After the promulgation of the Regulations on the Supervision and Management of Private Investment Funds, the China Securities Regulatory Commission (CSRC) revised the Interim Measures for the Supervision and Administration of Private Investment Funds to form the Measures for the Supervision and Regulation of Private Investment Funds (Draft for Comment) (Private Funds Draft Measures) and solicited public opinions.

Compared with the current rules, the main changes in the Private Funds Draft Measures are as follows:

- Further adjustments and restrictions are made to the criteria for qualified investors, specifically for the minimum investment amount for a single fund made by an individual qualified investor and the look-through verification requirement of an individual qualified investor. Further adjustments and restrictions are made to the rules for additional subsequent fundraising, mainly reflected in the limitation of additional fundraising targets to qualified investors of specific types that meet the regulations, or other qualified investors with a single investment amount of more than 10 million yuan.
- For the first time, 'fund of funds' is introduced as a concept parallel to private equity investment funds and private securities investment funds, with several relevant provisions for fund of funds proposed.
- Requirements are put forward for single investor funds, with investors limited to specific types such as financial institutions and social security funds, and the capital contribution shall not be less than 100 million yuan.
- Stricter requirements are proposed for private funds that primarily invest in a single target, mainly including capital contribution requirements for individual investors, mandatory custody, and restrictions on additional fundraising targets.
- Compared with the current regulations, the administrative penalty measures have been increased in relation to the scope of subjects and the number of penalties.

At the time of writing, the official version of the Measures for the Supervision and Regulation of Private Investment Funds has not yet been released.

In terms of the supervision of publicly offered funds, the CSRC issued the Provisions on the Administration of Investment Advisory Business for Public Securities Investment Funds (Draft for Comment) and the Provisions on Strengthening the Management of Securities Trading of Public Securities Investment Funds (Draft for Comment) in 2023, further stipulating the business norms of investment advisors for publicly offered funds, the management of securities trading of public funds, and the management of securities trading commissions and distribution. However, the specific implementation time of these two draft provisions for comment has not yet been determined.

In March 2024, the CSRC issued the Opinions of the China Securities Regulatory Commission on Strengthening the Supervision of Securities Companies and Public Funds and Accelerating the Construction of First-class Investment Banks and Investment Institutions (for Trial Implementation), which proposed phased general objectives for the development of the securities and fund industry.

Law stated - 7  **2024**

Public listing

Outline any specific requirements for stock-exchange listing of retail and non-retail funds.

For public funds (including closed-end funds, exchange-traded funds and other funds) to be listed on a stock exchange, they generally should meet regulatory requirements in terms of the fund term, fund size, number of fund unitholders, etc. For example, the Rules Governing the Listing of Securities Investment Funds on Shanghai Stock Exchange (amended) provide the following requirements for listing of a public fund:

- the fund has been approved for sale by the CSRC and the fund contract has taken effect;
- the duration of the fund contract is more than five years;
- the fund has raised no less than 200 million yuan;
- there are no fewer than 1,000 fund unitholders; and
- the fund has an approved fund manager and an approved fund custodian.

Only public funds that meet these conditions can be listed and traded on the stock exchange.

After a fund is listed, it needs to continuously fulfil its information disclosure obligations (including periodic reports and disclosure of major events).

Furthermore, specific types of products should comply with special regulations. For example, public infrastructure securities investment funds (Publicly Offered Real Estate Investment Trusts) that primarily invest their fund assets in infrastructure asset-backed securities should also comply with relevant stock exchange rules, such as the Applicable Guidelines of the Shanghai Stock Exchange for the Rules for Public Offered Infrastructure Securities Investment Funds Business, which require the examination of underlying investment projects and the qualifications of relevant stakeholders.

Since 2020, the CSRC has successively approved pilot programs for the transfer of equity investment fund interests and venture capital fund interests in certain regions. These regional pilot programs provide certain liquidity in the secondary market to the private funds. However, private fund shares cannot be publicly traded on stock exchanges.

Law stated - 7  2024

Overseas vehicles

Is it possible to redomicile an overseas vehicle in your jurisdiction?

No, an overseas vehicle cannot be redomiciled to China.

Law stated - 7  2024

Foreign investment

Are there any special rules relating to the ability of foreign investors to invest in funds established or managed in your jurisdiction or domestic investors to invest in funds established or managed abroad?

As an important exploration of foreign exchange management policies under capital accounts, China has been promoting the implementation of pilot policies for cross-border private equity funds, such as Qualified Foreign Limited Partners (QFLP) and Qualified Domestic Limited Partners (QDLP), in Beijing, Shanghai, Shenzhen and other regions.

QDLP allows domestic fund managers that have obtained pilot qualifications to raise funds within China and invest in overseas equity capital markets.

On the other hand, QFLP allows domestic fund managers that have obtained pilot qualifications to raise funds from foreign investors and invest in Chinese equity capital markets.

The specific requirements and supporting policies for QDLP and QFLP vary to a certain extent across different pilot regions.

Currently, both QFLP and QDLP are promoting reforms in the foreign exchange management system to further facilitate the cross-border flow of capital.

Law stated - 7  2024

Funds investing in derivatives

Are there any special requirements in your jurisdiction relating to funds investing in derivatives?

For public funds, when fund managers use the fund's assets to invest in securities derivatives they should follow the principles of risk management and establish strict authorisation management systems and investment decision-making processes. They should also fully disclose information such as the product's position, risk control measures and other arrangements. If there is a grading arrangement, the classification ratio of priority units and posterior units of financial derivative products should be subject to certain restrictions.

Private securities funds that mainly invest in derivatives should also apply restrictive regulations on the grading ratio. When private fund managers and fund sales agencies raise funds from investors, they should provide special risk disclosures to investors in relation to the investment targets in the fund promotional materials, risk disclosure statements and other documents.

Private equity funds are not allowed to invest in financial derivatives.

Law stated - 7  2024

UPDATE AND TRENDS

Recent developments

Are there any other current developments or emerging trends in your

jurisdiction that should be noted? Please include reference to world-wide regulatory concerns, such as restrictions on foreign ownership in strategic industries, high-frequency trading, commodity position limits, capital adequacy for investment firms and 'shadow banking'.

On 12 April 2024, the State Council issued the Guideline on Strengthening Regulation, Forestalling Risks and Promoting the High-Quality Development of the Capital Market (New Nine Articles), which is the third guiding document for the capital market issued by the State Council after the two 'Nine Articles' in 2004 and 2014.

The New Nine Articles put forward the phased goals for the development of China's capital market in the next five years, 2035, and the middle of the 21st century. It proposes opinions on tightening access to public offering, strictly supervising listed companies on an ongoing basis, increasing supervision on delisting, strengthening the supervision of securities fund institutions, strengthening trading supervision, promoting the entry of medium and long-term funds into the market, and further deepening reform and opening up. It is expected to have a far-reaching impact on the long-term development of China's capital market.

Following the release of the New Nine Articles, the China Securities Regulatory Commission (CSRC) issued relevant supporting policy documents and draft rules for public consultation. The documents and drafts respond to and improve the system for many issues of market concern, such as:

- **Algorithmic Trading.** In recent years, the CSRC and other competent regulatory authorities in China have further strengthened the key control over the algorithmic trading of quantitative private funds. The stock exchanges in various regions have issued notices on strengthening the management of algorithmic trading, clarifying the implementation of reporting management for algorithmic trading. Investors who have not reported cannot conduct algorithmic trading, and the standards for monitoring and controlling abnormal trading have been improved. The supporting policies of the New Nine Articles released also include provisions on algorithmic trading, and the relevant supervision is expected to be more stringent and improved.
- **Share reduction system.** The draft further strengthens the regulation of share reduction and makes targeted adjustments and improvements to the outstanding problems reflected in the market. Changes mainly include: improving the share reduction regulations, strictly regulating share reduction by major shareholders, effectively preventing circumvention of share reduction, refining clauses on responsibilities for violations, optimising provisions on prohibiting share reduction for illegal and non-compliant behaviours, and strengthening the responsibilities of major shareholders and board secretaries.
- **Supervision of listed companies.** The draft further strengthens and improves the supervision of listed companies. The current rules are revised mainly in the following aspects: overall regulation of public financing, improving corporate governance, strengthening internal control and risk management requirements, improving information disclosure requirements, and enhancing the level of investor protection.

With respect to attracting foreign investment, the Chinese government has introduced relevant action plans to attract and utilise foreign investment with greater efforts through

a series of measures such as reasonably shortening the negative list for foreign investment access, carrying out pilot programs to relax foreign investment access in the field of scientific and technological innovation and implementing supportive tax policies. In March 2024, the Chinese Ministry of Commerce issued the 'Several Policy Measures on Further Supporting Overseas Institutions to Invest in Domestic Technology-Based Enterprises', which clearly proposed several measures to facilitate and encourage overseas institutions to invest in domestic technology-based enterprises. These measures include supporting foreign investors to invest in domestic technology-based enterprises in aspects of entry approval, foreign exchange management and ongoing supervision processes, as well as through the Qualified Foreign Limited Partnership program.

Law stated - 7  **2024**