

**MEMO# 32152**

January 16, 2020

# China: AMAC Releases Updated Version of Private Investment Fund Filing Notice (December 2019)

[32152]

January 16, 2020 TO: ICI Global Members

Global Operations Advisory Committee - Asia

ICI Global Pacific Chapter

ICI Global Regulated Funds Committee SUBJECTS: Alternative Investments

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Portfolio Oversight RE: China: AMAC Releases Updated Version of Private Investment Fund Filing Notice (December 2019)

On 23 December 2019, the Asset Management Association of China (AMAC) released an updated version of the *Private Investment Fund Filing Notice*[\[1\]](#) ("Filing Notice"). The Filing Notice will be implemented on 1 April 2020.

Replacing a prior notice issued in January 2018, the Filing Notice gives better details to clarify ambiguities in the private investment fund registration regime and provides a more comprehensive framework for the regulation of the activities of private investment funds in China. The key provisions in the Filing Notice include: (i) clarifying eligibility requirements for registration as a private investment fund, (ii) requiring fund issuers to adopt a look-through approach to verify investor qualification, (iii) strengthening information disclosure requirements and obligations, (iv) increasing investor protection measures, and (v) providing guidance concerning establishment, operation, and investment, etc. These changes could affect foreign asset managers with a wholly foreign-owned enterprise (WFOE) private investment fund management company (PFM) and their subsidiaries/affiliates engaging in Qualified Domestic Limited Partnership (QDLP) business in China. This memo gives a brief explanation of these key provisions.

## 1. Eligibility Requirements for Registration as a Private Investment

## **Fund**

The Filing Notice enlists businesses/activities that do not fall within the definition of a “fund” and thus will not be accepted for registration as a private investment fund (Chapter 1, paragraph 2). These activities include conducting, in a disguised form, the business of financial institutions in credit lending and deposit taking, directly investing in credit assets of financial institutions, engaging regularly in private lending activities, providing rigid payments, unconditional repurchase, guarantee of returns that are completely uncorrelated to the performance of the fund’s underlying investments, and investing in assets that conflict with the private investment fund’s business.

Where a private investment fund that has completed its filing application with AMAC before 1 April 2020 engages in any of those businesses/ activities that do not fall within the definition of a “fund,” that fund will be prohibited from further fundraising or making new investments after 1 September 2020 and will be liquidated on its maturity date (Chapter 5).

## **2. Look-Through Approach for Investor Verification**

The Filing Notice stipulates that private investment funds shall raise funds from qualified investors, according to the definition set forth in the *Interim Measures for Supervision and Administration of Private Investment Funds*,<sup>[2]</sup> through non-public means (Chapter 1, paragraph 5). Qualified individual investors shall have no less than RMB 3 million in financial assets or an average annual income of no less than RMB 500,000 in each of the recent three years, while qualified corporate investors shall have no less than RMB 10 million in net assets.

Where an investor is an unincorporated entity, e.g., a partnership, the fundraiser must verify that each of the ultimate beneficial owners/investors is a qualified investor. In addition, the total number of investors in the unincorporated entity must be taken into account when calculating whether the promotion of the fund is within the non-public offering threshold. However, asset management products that have been duly registered in accordance with applicable laws (including those products filed with AMAC and other regulators such as the China Banking and Insurance Regulatory Commission) are not subject to this requirement, i.e., there is no obligation to verify that investors who hold interests in such asset management products are each a qualified investor (Chapter 1, paragraph 6). In addition, the fundraiser must verify the legitimacy of the source of funds from the investors, and that the subscription amount paid by the investor is compatible with the investor’s financial ability to make the investment (Chapter 1, paragraph 7).

## **3. Enhancement of Information Disclosure Requirements and Obligations**

The Filing Notice has expanded the scope of information required to be disclosed in the fundraising and promotional materials e.g., the offering document/prospectus (Chapter 1, paragraph 8). This includes information on the manager and the management team, custody arrangements, duration, share class arrangements (if any), primary investment areas, investment strategy and methods, distribution of returns, performance fees, investment fees, etc. The fund must also disclose in its fundraising documents the principal investments/investment projects (if any) in which the fund intends to invest. Unless any such investment/investment project is another private securities investment fund, the fundraising document must also disclose the valuation assessment of such project, how the investment proceeds from the fund will be used in the project, and the fund’s exit strategy from such project.

The Filing Notice also gives further details on the risk disclosure requirements for the fund. (Chapter 1, paragraph 9). In addition to investment risks, managers are required to disclose “special risks” to investors, including any affiliate relationships between the fund distributors and the manager, investments in underlying assets through special purpose vehicles, if the fund is investing in just one single underlying investment, nominee shareholding arrangements with respect to the manager of contractual funds, etc.

#### **4. Protective Measures for Investors**

There are a number of measures designed to ensure fair treatment of investors. One such measure is the prohibition of asset managers from setting up, within a private investment fund, different investment sub-funds for different investors investing in different underlying assets. This practice could also lead to asset managers being able to evade registration obligations for the sub funds (Chapter 1, paragraph 15). Under another measure, it is stipulated that until 70% of the total subscribed and paid-up capital contributions of an established private equity fund has been fully invested, the manager of the fund may not, except upon the unanimous approval of all investors in accordance with a decision-making process recognized by all investors, establish another fund with substantially the same investment strategy, scope, and phase as those of the established fund (Chapter 3, paragraph 36).

The Filing Notice also sets parameters for the use of ad hoc dealing days (Chapter 2, paragraph 31). Where a fund contract provides an ad hoc dealing day mechanism, it must also specify the triggering conditions for the mechanism to be invoked. In principle, asset managers may not use the ad hoc dealing day mechanism for subscription/additional purchase by new and existing investors. Asset managers may not randomly trigger the ad hoc dealing day mechanism in the fund contract.

On performance fees, it is stipulated that a single private securities investment fund may adopt only one performance fee accrual method to ensure fair treatment to all investors. The performance fee shall not exceed 60% of the investment return above the benchmark as set forth in the fund contract. While the interval between two consecutive performance fee charges should be no less than three months, AMAC encourages an interval of six months or longer (Chapter 2, paragraph 32).

With regard to related-party transactions, the Filing Notice requires asset managers to specify in the fund contract the ex-ante and ex-post information disclosure arrangements and the special decision-making and contingency systems for such transactions (Chapter 1, paragraph 19).

#### **5. Restrictions Concerning Establishment, Operation, and Investment**

Investment before completion of filing with AMAC is now permitted for cash management purposes. Permitted investments in this space include demand deposits, treasury bonds, central bank bills, money market funds, and other cash management tools approved by the China Securities Regulatory Commission (CSRC) (Chapter 1, paragraph 12).

Returns to investors must be compatible with the actual performance of the fund’s underlying investments. The manager may not calculate and pay investment returns based on formulas akin to deposit interest rate calculations (Chapter 1, paragraph 13).

A private investment fund is encouraged to confirm in its fund contract the proportion of the fund’s total subscribed and paid up capital contributions that may be invested in any single asset management product or project (Chapter 1, paragraph 16). Private asset

allocation funds are to invest primarily through fund of funds, and 80% of their investments shall be asset management products that have been registered/filed in accordance with applicable laws (Chapter 4, paragraph 37). Private asset allocation funds may not allocate more than 20% of their total subscribed and paid up capital contributions into any single asset management product or project (Chapter 2, paragraph 16).

Where the assets under management of a private investment fund continues to fall below RMB 5 million, or its paid-up capital contributions are below 20% of the total subscription (committed) amount, AMAC will disclose such information publicly on its website until the situation is reversed (Chapter 1, paragraph 27).

While the Filing Notice does not set any maximum duration for private investment funds, it nevertheless prescribes that the minimum duration shall be not less than five years, and that a seven-year or longer duration is encouraged (Chapter 1, paragraph 17).

The Filing Notice came into effect immediately after its release on 23 December 2019. Commencing 1 April 2020, AMAC will not accept new applications or continue to process existing applications that do not meet the requirements under the Filing Notice.

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#### **endnotes**

[1] The Filing Notice (available in Chinese) is available at:  
[http://www.amac.org.cn/aboutassociation/gyxh\\_xhdt/xhdt\\_xhgg/201912/t20191223\\_1510.html](http://www.amac.org.cn/aboutassociation/gyxh_xhdt/xhdt_xhgg/201912/t20191223_1510.html)

[2] The Interim Measures for Supervision and Administration of Private Investment Funds (available in Chinese) is available at:  
[http://www.csrc.gov.cn/pub/zjhpublic/zjh/201408/t20140822\\_259483.htm](http://www.csrc.gov.cn/pub/zjhpublic/zjh/201408/t20140822_259483.htm)