The Asset Management Review

Tenth Edition

Editor
Paul Dickson

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PREFACE

Last year we reflected on how 2020 might primarily be remembered as the year of the novel covid-19 pandemic. A few events of global significance punctured covid-19's monopoly of economic news: the Democrats winning the White House; an eleventh-hour 'deal' being reached between the European Union and the United Kingdom a mere week before the end of the transition period; and a wrong turn in the Suez canal. However, a year on and the pandemic continues to dominate the global geopolitical landscape and remains a source of significant uncertainty. While it is clear that 2021 will also be overshadowed by the pandemic, successful vaccination campaigns appear to be providing fragile grounds for economic optimism in the near future. Yet unprecedented levels of government spending combined with labour shortages and supply chain disruption mean any recovery will have to grapple with rising inflationary pressures. In the asset management world, it is clear that the sector has faced one of its greatest and most sustained tests in recent history. The need for the industry to remain adaptable and resilient has perhaps never been greater.

Leaving all of this aside though, the importance of the asset management industry continues to grow. Nowhere is this truer than in the context of pensions, as the global population becomes larger, older and richer, and government initiatives to encourage independent pension provision continue. Both industry bodies and legislators are also increasingly interested in pursuing environmental, social and governance (ESG) goals through private sector finance. This should not be a surprise: lack of shareholder engagement has been identified as one of the key issues that contributed to the governance shortcomings during the financial crisis. Given the importance of the asset management industry in investing vast amounts on behalf of clients, the sector is the natural focus of regulatory and governmental initiatives to promote effective stewardship and take the lead in instilling a corporate cultural focus on sustainability and ESG initiatives.

The activities of the financial services industry remain squarely in the public and regulatory eye, and the consequences of this focus are manifest in ongoing regulatory attention around the globe. Regulators are continuing to seek to address perceived systemic risks and preserve market stability through regulation. Operational resilience – a concept focused on ensuring asset managers' holistic preparedness against any risk event, particularly significant operational risks – continues to be a significant focus point for global regulators.

It is not only regulators who continue to place additional demands on the financial services industry: the need to rebuild trust has led investors to call for greater transparency around investments and risk management from those managing their funds. Senior managers at investment firms are, through changes to regulatory requirements and expectations as to firm culture, increasingly being seen as individually accountable within their spheres of responsibility. Industry bodies have also noted further moves away from active management into passive strategies, illustrating the ongoing pressure on management costs. This may, in itself, be storing up issues for years to come.

The rise of fintech and other technological developments, including cryptocurrencies, data analytics and automated (or 'robo') advice services, is also starting to have an impact on the sector, with asset managers looking to invest in new technologies, seeking strategies to minimise disruption by new entrants, or both. While regulators are open to the development of fintech in the asset management sector, they also want to ensure that consumers do not suffer harm as a consequence of innovations. Regulators across various jurisdictions launched the Global Financial Innovation Network (GFIN), which aims to facilitate collaboration and communication between regulators regarding financial innovation and to create a cross-border sandbox in which firms can test their new technologies. This continues to be a period of change and uncertainty for the asset management industry, as funds and managers act to comply with regulatory developments and investor requirements, and adapt to the changing geopolitical landscape and respond to the ongoing uncertainties brought about by the global pandemic. Although the challenges of regulatory scrutiny and difficult market conditions remain, a return of risk appetite has also evidenced itself, and the global value of assets under management continues to increase year-on-year. The industry is not in the clear, but, prone as it is to innovation and ingenuity, it seems well placed to navigate this challenging and rapidly shifting environment.

The publication of the tenth edition of *The Asset Management Review* is a significant achievement, which would not have been possible without the involvement of the many lawyers and law firms who have contributed their time, knowledge and experience to the book. I would also like to thank the team at Law Business Research for all their efforts in bringing this edition into being.

The world of asset management is increasingly complex, but it is hoped that this edition of *The Asset Management Review* will be a useful and practical companion as we face the challenges and opportunities of the coming year.

Paul Dickson
Slaughter and May
London
August 2021

Chapter 5

CHINA

Huaying (Daisy) Qi and Lin Zhou[1]

I OVERVIEW OF RECENT ACTIVITY

On 31 July 2020, the People's Bank of China and other relevant authorities extended until the end of 2021 the transition period for the Guiding Opinions on Regulating the Asset Management Business of Financial Institutions (the New AMR), which was originally scheduled to terminate at the end of 2020. The New AMR aims to implement the unified functional regulation of the entire asset management industry in China so that different asset management products are subject to the same regulations, thereby avoiding regulatory arbitrage arising from standards set by different authorities. The transition period was extended in response to market feedback to allow additional time for asset management products to conform to the New AMR requirements.

China's asset management industry experienced 10 per cent year-over-year growth in assets under management (AUM) in 2020, despite the impact of the global pandemic. There is a total of 122 trillion yuan of AUM, which has bounced back to the level in 2017, the year when the New AMR has not yet been implemented.[2] Additionally, while the total AUM remained the same, the proportion of expected yield products has declined significantly, and the quality of assets has seen a dramatic improvement.

II GENERAL INTRODUCTION TO THE REGULATORY FRAMEWORK

The primary regulators for asset management business in China include the Financial Stability and Development Committee, the People's Bank of China (PBC), the China Banking and Insurance Regulatory Commission (CBIRC) and the China Securities Regulatory Commission (CSRC). There is no unified regulatory authority in the asset management industry. Regulators for cross-border asset management businesses also include the Ministry of Commerce (MOFCOM) and the State Administration of Foreign Exchange (SAFE). It is notable that some self-regulatory organisations also issue rules that apply to their respective industries, including the Securities Association of China (SAC), the Asset Management Association of China (AMAC), the China Trustee Association (CTA), the China Banking Association (CBA), the China Futures Association (CFA) and the Insurance

1 Huaying (Daisy) Qi and Lin Zhou are partners at Han Kun Law Offices. The authors acknowledge the assistance of John D. Fitzpatrick, Pengxiang Zhang, Yaxi Wang, Yizhen Lang, and Mingyu Xia from Han Kun Law Offices.

2 China Asset Management Industry 2020, released by China Everbright Bank and The Boston Consulting Group.

Asset Management Association of China (IAMAC), among others. In fact, asset management institutions more often rely upon self-regulatory rules for their routine operations, rather than departmental rules and normative documents promulgated by regulators.

III COMMON ASSET MANAGEMENT STRUCTURES

i Types of issuers of asset management products

To issue asset management products, asset management institutions in China are required to apply for licences with their respective regulators or industry self-regulatory organisations. Licensed institutions may issue and operate asset management products within the scopes of their licences. Asset management products may be categorised by both their competent regulators and by different types of issuers:

Issuer	Asset management product	Legal structure	Open-ended or closed-ended
Securities companies and their subsidiaries	• Collective asset management plan • Directional asset management plan • Special asset management plan	Contractual arrangement	Open-ended or closed-ended
Fund management companies and their subsidiaries	• Public fund • Specific asset management plan	• Securities investment fund • Contractual arrangement	Open-ended or closed-ended
Futures companies and their subsidiaries	• Collective asset management plan • Single asset management plan	Contractual arrangement	Open-ended or closed-ended
Trust companies	• Single fund trust • Collective fund trust	Trust	Open-ended or closed-ended
Insurance asset management companies	• Equity investment plan • Debt investment plan • Hybrid insurance asset management product	Contractual arrangement	Equity investment plan should be closed-ended
• Wealth management departments of commercial banks • Wealth management subsidiaries of commercial banks	• Public wealth management product • Private wealth management product	Contractual arrangement	Open-ended or closed-ended
Private fund managers	• Private securities investment fund • Private equity investment fund • Asset allocation fund, etc.	• Corporation, partnership • Contractual arrangement	Closed-ended

ii Types of investors – public and private asset management products

Asset management products can be classified as either publicly offered or privately offered, depending on the offering targets. Publicly offered products are offered to unspecified members of the public, with the criteria for determining a 'public offering' outlined in the Securities

Law of the People's Republic of China (2019 Revision) (Presidential Order No. 37). By contrast, privately offered products are offered in a non-public manner to qualified investors, defined in relevant departmental rules and normative documents promulgated by regulators.

iii Types of underlying investments

Asset management products can also be classified by the nature of the underlying investments, which include fixed-income products, equity products, commodity or financial derivative products, and hybrid products.

Asset management institutions are required to disclose to investors the types of asset management products based on these classification standards when the products are issued and are required to make investments in accordance with the designated targets and strategies.

IV MAIN SOURCES OF INVESTMENT

Looking back at 2020, the bank wealth management industry continued to grow while undergoing a transition, with trust AUM steadily dropping and the overall rapid growth of public funds, private funds, and the insurance asset management and other industries. Recent industry growth highlights include:

a Bank wealth management industry: 69,000 financial products were issued in 2020, which raised a total amount of 124.56 trillion yuan; at the end of 2020, there were 39,000 existing products, with a remaining balance of 25.86 trillion yuan. The industry growth rate has slowed since 2017 owing to stricter supervision. However, we observe that stable growth has been achieved of late with the implementation of the new asset management regulations. In 2020, the year-over-year growth of AUM in bank wealth management industry was 10 per cent. A healthy trend of sustainable development has gradually unfolded.[3]

b Trust industry: by the end of the fourth quarter of 2020, the amount of trust AUM was 20.49 trillion yuan, which was 1.12 trillion yuan less than at the same period in 2019. The trust industry has entered a steady downturn with relatively few fluctuations since 2017 when it witnessed a peak AUM of about 26.25 trillion yuan.[4]

c The products under AMAC supervision: the total AUM reached 58.99 trillion yuan by the end of 2020. Public fund management institutions managed 7,913 publicly offered funds, and the AUM was approximately 19.89 trillion yuan; 17,843 private asset management plans were sponsored or managed by securities companies and their subsidiaries, reaching AUM of approximately 8.55 trillion yuan; 24,561 private fund managers were registered with AMAC, the number of which in 2019 was 24,471; 96,818 private funds have filed with AMAC, the size of which reached approximately

3 Data and information from the China Banking Wealth Management Market Report (2020), issued by the Banking Wealth Management and Registration Centre.

4 For data and information from the Assessment and Analysis of China's Trust Industry Development for 2020 published on the official website of the CTA, please see http://www.xtxh.net/xtxh/statistics/46670.htm.

16.96 trillion yuan.[5] In addition, the size of pension funds managed by fund management companies and the number of asset-backed special plans filed with AMAC continued to increase.

d Insurance asset management industry: in 2020, the size of private insurance equity plans registered by various insurance asset management institutions and the insurance private fund managers increased significantly, with year-over-year growth of 71.6 per cent.[6]

e QDII for securities investments: the Qualified Domestic Institutional Investors (QDII) programme is an institutional arrangement for domestic institutions to invest offshore in stocks, bonds, and to engage in other securities investment businesses in overseas capital markets. According to SAFE data, the approved quota for QDIIs reached US$147.319 billion as of 2 June 2021.[7]

V KEY TRENDS

i Further opening up of financial markets

In 2020, the CBIRC and the CSRC successively: removed restrictions on foreign shareholding percentages in banks, life insurance institutions, securities institutions, fund management institutions, futures institutions and other institutions; gradually relaxed market access requirements for foreign-funded financial institutions such as foreign-funded banks and insurance institutions; expanded the business scope of foreign-funded financial institutions; relaxed restrictions on the scale of foreign assets, term of operation and shareholders' qualifications; and expanded the scope of industries open to cooperation between Chinese and foreign financial markets. Recently, many foreign asset management institutions have actively participated in asset management in China by setting up wholly foreign-owned enterprises or joint ventures. For instance, BlackRock, the asset management giant, established the first wholly foreign-owned publicly offered investment fund management company in China and JP Morgan Chase founded the first wholly foreign-owned futures company.

ii Rapid development of different asset management businesses

Rapid development of bank wealth management companies

By 2020, the CBIRC approved the establishment of 22 bank wealth management subsidiaries and two foreign-owned wealth management companies, among which 19 bank wealth management subsidiaries and one foreign-owned wealth management company have commenced operations. After more than a year's operation, the net worth scale of bank wealth management industry has increased rapidly.[8] By the end of 2020, the scale of the wealth

5 For data and information from the Statistical Flash Report on Asset Management Business (4th Quarter of 2020) published on the official AMAC website, please see https://www.amac.org.cn/researchstatistics/datastatistics/comprehensive/zcglhybg/202103/P020210531362928709760.pdf.

6 For data and information from the Product registered with China Insurance Asset Management Association (December 2020) issued by CIAMA, please see https://www.iamac.org.cn/cpzc/zcsj/202102/t20210204_7004.html.

7 Form for the Examination and Approval of Investment Quota of QDII released by SAFE.

8 Data and information come from the China Asset Management Series Report 2020 by BCG & Everbright Bank (EBC).

management market in banks had reached 25.86 trillion yuan, up 6.9 per cent year-on-year.[9] The wealth management business of banks has been progressing steadily with a focus on net worth transformation: the existing scale and proportion of net worth wealth management products have been growing rapidly, and the dissolution of stock assets has advanced in an orderly manner.

Rapid development of insurance asset management

In 2020, the CBIRC issued a 'one plus three' series of rules, including the Interim Measures for Administration of Insurance Asset Management Products and the implementation rules for three types of products, indicating that the insurance asset management industry has entered a period of rapid development. According to data from the IAMAC, in 2020, the scale of products under the 'one plus three' series of rules registered by insurance management institutions and insurance private equity fund managers increased by 71.6 per cent year-over-year.[10]

These rules have relaxed regulations on the sell side, as insurance asset managers have been allowed to operate high-net-worth client business, institutions such as financial institutions are qualified to be sales agents of the products registered with the IAMAC, and pension funds may now be qualified investors, which means that insurance asset managers can now engage in personal wealth management and pension funds business.

Official start of publicly offered infrastructure REITs

In April 2020, the CSRC and National Development and Reform Commission (NDRC) jointly released the Circular on Work Related to Advancing the Pilot Programme of Real Estate Investment Trusts (REITs) for the infrastructure sector. In August 2020, the CSRC issued the Guidelines for Publicly Offered Infrastructure Securities Investment Funds (for Trial Implementation). In September, the Investment Department of the NDRC issued relevant circulars on applications for the first batch of pilot projects for publicly offered infrastructure REITs, marking the official start of the pilot programme for REITs in China. Publicly offered infrastructure REITs can convert relatively illiquid infrastructure assets into more liquid financial assets, which can expand the investment coverage of social capital and further satisfy the needs of investors.

Securities investment consulting institutions usher in development opportunities

On 17 April 2020, the CSRC issued the Measures for Administration for Investment Consultancy Business of Securities Funds (Draft for Comment) (Investment Consultancy Measures), which would divide the securities fund investment consulting business into securities investment consulting business, fund investment consulting business, issuing securities research report business and other securities fund investment consulting business recognised by the CSRC. The Investment Consultancy Measures would greatly raise the

9 Data and information come from the China Banking Wealth Management Market Report (2020), issued by the Banking Wealth Management and Registration Centre.

10 Data comes from Insurance Asset Management Association of China.

entry threshold and compliance costs for such institutions. Once it is formally implemented, several new institutions with standardised governance, regulatory adaptability and strong capital strength will be allowed to enter the investment consulting market.

iii Regulators tighten regulation of and take anti-monopoly measures against internet finance

Chinese regulators launched unprecedented regulatory measures against internet finance giants in 2020.

The Central Economic Working Conference (all members of the Standing Committee of the Political Bureau of the CPC Central Committee attended) was held in Beijing from 16 to 18 December 2020. The conference proposed that the government should strengthen anti-monopoly and prevent disorderly expansion of capital. In fact, regulations have tightened since early 2020.

'Platform anti-monopoly' was the most frequent keyword in the internet finance industry in 2020. In January 2020, the State Administration for Market Regulation (SAMR) issued a draft amendment to the Anti-monopoly Law (Draft for Comment), which would amend the Anti-monopoly Law for the first time in more than 11 years since the law's adoption. On 7 February 2021, SAMR officially released on its website the Anti-monopoly Guidelines for the Platform Economy, issued by the State Council Anti-Monopoly Commission. On December 2020, SAMR launched investigations into suspected monopolistic practices by certain internet giants. Anti-monopoly has proven to be a critical compliance matter for internet finance and other platform companies in China.

VI SECTORAL REGULATION

i Insurance

Insurance companies and insurance asset management companies play different roles in various types of asset management products as follows:

Participant	Role	Asset management product	Regulations
Insurance company	Investor	Private equity fund	• Circular of the China Insurance Regulatory Commission on Promulgation of the Interim Measures on Equity Investments Using Insurance Funds (Bao Jian Fa [2010] No. 79)[*] • Circular of the China Insurance Regulatory Commission on Matters Concerning Investment in Equity and Real Estate with Insurance Funds (Bao Jian Fa [2012] No. 59) • Circular of the China Banking and Insurance Regulatory Commission on Matters Concerning Financial Equity Investment with Insurance Funds (Yin Bao Jian Fa [2020] No. 54)
		Venture capital fund	Circular of the China Insurance Regulatory Commission on Matters relating to the Investment in Venture Capital Funds with Insurance Funds (Bao Jian Fa [2014] No. 101)
• Insurance company • Insurance asset management institution • Subsidiaries of insurance asset management institution	• Manager • Promoter • Investor	Insurance private equity funds	Circular of the China Insurance Regulatory Commission on Matters relating to the Formation of Insurance Private Equity Funds (Bao Jian Fa [2015] No. 89)

Participant	Role	Asset management product	Regulation
Insurance asset management company	Manager	Debt investment plan	Interim Measures for Administration of Insurance Asset Management Products (China Banking and Insurance Regulatory Commission Order [2020] No. 5)
		Equity investment plan	
		Portfolio product	
* This document is partially invalidated by Notice by the China Banking and Insurance Regulatory Commission on Matters Concerning Financial Equity Investment with Insurance Funds issued on 12 November 2020.			

Notably, the CBIRC issued departmental rules unifying as 'insurance asset management products' the regulation of debt investment plans, equity investment plans, portfolio products and other products in the Interim Measures for Administration of Insurance Asset Management Products, which were promulgated on 18 March 2020 and effective on 1 May 2020. These measures put an end to an era where various insurance asset management products lacked unified arrangements.

ii Pensions

Primary laws and regulations

Significant primary laws and regulations are the following:

a Social Insurance Law of the People's Republic of China (2018 Revision);
b Regulations on the National Social Security Fund (State Council Decree No. 667);
c Interim Measures for Administration of National Social Security Fund Investment (Ministry of Finance, Ministry of Labour and Social Security; Decree [2001] No. 12);
d Measures for Administration of Investment of the Basic Old-age Insurance Fund (Guo Fa [2015] No. 48);
e Measures for Administration of Annuities of Enterprises (Ministry of Human Resources and Social Security, Ministry of Finance; Decree No. 36); and
f Measures for Administration of Enterprise Annuity Fund (2015 Revision).

Product classification

Pension funds in China include national social security funds, basic old-age insurance funds, enterprise annuities, and other products.

National Social Security Fund

The National Social Security Fund (NSSF) is composed of funds allocated by the central government, transfer of state-owned capital, fund investment proceeds and funds raised through other means approved by the State Council.

Note the following:

a regulators: the Ministry of Finance and the Ministry of Human Resources and Social Security;
b operation and management: the National Council for Social Security Fund (NCSSF) is responsible for the operation and management of the NSSF;[11] and
c investment scope: the scope of domestic investment includes bank deposits, bonds, trust loans, asset securitisation products, stocks, securities investment funds, equity investments, equity investment funds, etc.; the scope of overseas investment includes

11 Article 6 of Interim Measures for Administration of National Social Security Fund Investment.

bank deposits, banknotes, large transferable deposit certificates and other money market products, bonds, stocks, securities investment funds, derivative financial instruments, etc.

The NSSF had not made new investments in private equity funds in the past few years. We observed in practice that the NSSF resumed investing in private equity funds in 2019 and continue its investment in 2020.

Basic old-age insurance funds[12]

Basic old-age insurance funds are composed of the contributions of individuals and their employers.

Note the following:

a regulators: the Ministry of Finance and the Ministry of Human Resources and Social Security, the PBC, the CBIRC and the CSRC;

b operation and management: the provincial people's governments entrust the NCSSF as the entrusted institution, and qualified managers are engaged to provide specific investment management services; and

c investment scope: bank deposits, central bank notes, interbank certificates of deposit; bonds, asset-backed securities, and bond repurchase; pension products, securities investment funds, stocks, equities, stock index futures, and treasury bond futures.

Supplemental old-age insurance funding – enterprise annuity funds

The enterprise annuity is a non-compulsory type of old-age insurance that supplements basic old-age insurance and is jointly paid by an enterprise and its employees. Enterprise annuity funds refer to funds raised by an enterprise in accordance with its enterprise annuity plan and the investment proceeds therefrom. Management of enterprise annuity funds is to be entrusted to a qualified pension management company or the enterprise's annuity council.

Note the following:

a regulators: the Ministry of Finance, Ministry of Human Resources and Social Security, the CBIRC and the CSRC;

b operation and management: qualified pension management company or the enterprise's annuity council; and

c investment scope: limited to domestic investment. The scope of investment includes bank deposits, bonds, central bank notes, universal insurance products, investment-linked insurance products, securities investment funds, stocks, short-term financing instruments and medium-term instruments, as well as wealth management products of commercial banks, trust products, infrastructure debt investment plans, specific asset management plans and stock index futures.[13]

iii Real property

The main asset management products in the real estate sector are as follows.

12 Measures for Administration of Investment of the Basic Old-age Insurance Fund (Guo Fa [2015] No.48).

13 Article 1 of Circular on Expanding the Investment Scope of Enterprise Annuity Funds.

Real estate asset-backed securitisation

Asset-backed securitisation (ABS) business refers to business activities involving the issuance of asset-backed securities by securities companies, fund management subsidiaries and other relevant entities through the setting up of special-purpose vehicles or through other structured financing methods. ABS products are created for purposes of credit enhancement, and income is derived from the cash flow generated from the underlying assets. Real estate ABS products in China mainly include supply chain ABS, securities backed by receivables from property sales, property management fee ABS, commercial real-estate mortgage-backed securities and quasi-REITs.

Real estate investment trusts

REITs are a type of contractual or corporate fund. When an investor invests in a REIT, the investor's money is pooled together in a collective scheme that invests in a portfolio of income-generating real estate assets such as shopping malls, infrastructures, offices, hotels or serviced apartments. These assets are professionally managed by REIT managers and property managers who charge a fee in exchange for their services; revenues generated from assets (primarily rental income) are normally distributed at regular intervals to REIT holders, after accounting for fees, such as REIT management fees and property management fees.

REITs can be internally or externally managed. Internally managed REITs employ their own personnel to manage the trust's assets and real estate. Externally managed REITs employ a third party to act as the manager, this third-party manager can manage assets, real estate or both.

Previously, there were no standardised REITs in China, and all quasi-REIT products were offered privately. On 30 April 2020, the CSRC and the NDRC jointly released the Circular on Work Related to Advancing the Pilot Program of Real Estate Investment Trusts for the Infrastructure Sector. At present, China's publicly offered infrastructure REITs adopt the external management model of 'public offering fund plus ABS'. These REITs invest in infrastructure, rather than traditional commercial real estate such as real estate, hotels, etc. Under the current legal framework in China, publicly offered funds cannot directly invest in real estate project companies. In the 'publicly offered fund plus ABS' model, publicly offered infrastructure REITs hold the entire equity of the project company by holding the infrastructure ABS, thus indirectly acquiring full ownership or franchise rights in the underlying infrastructure projects.

Private real estate funds

Prior to the introduction of certain AMAC restrictions on private funds' debt investments, real estate funds mainly focused on debt-related investments. Following these restrictions, real estate private funds have increasingly focused on equity-related investments. According to AMAC statistics, 266 new real estate funds were formed and filed with AMAC in 2020, with a total amount committed of more than 200 billion yuan. Compared with 2019, the number of new funds decreased, while the scale increased significantly.[14]

iv Hedge funds

Public securities funds

Compared with regulations for other asset management products, the regulation of public funds is more consistent with the principles of the New AMR, and public funds are thus less affected by the New AMR. According to AMAC statistics, the AUM of public fund management institutions increased by 2.002 trillion yuan in 2020. In China, public funds are mainly structured in the form of contractual arrangements and managed by qualified public fund management companies.

In October 2019, the CSRC issued the Circular on Effectively Implementing the Pilot Program of Investment Advisory Business for Publicly Offered Securities Investment Funds (the Circular), which marked the establishment of a pilot programme for investment advisory in publicly offered funds. In April 2020, the CRSC followed up with an exposure draft of the Measures for the Administration of Investment Advisory Business (Draft for Comment), which would further specify details of advisory business supervision.

On 20 July 2019, the General Office of the Financial Stability and Development Commission issued the Relevant Measures on Further Opening-up of the Financial Industry, advancing from 2021 to 2020 the lifting of restrictions on foreign shareholding ratios in securities companies, fund management companies and futures companies. On 11 October 2019, the CSRC announced that, from 1 April 2020, the restrictions on the shareholding ratio of foreign investors in fund management companies would be lifted nationally and that, from 1 December 2020, the restrictions on the shareholding ratio of foreign investors in securities companies would also be lifted nationally, which the CSRC later also advanced to 1 April 2020. On 21 August 2020, the CSRC approved the establishment of BlackRock Fund Management Co, Ltd, making it the first wholly foreign-owned public fund management institution in China.

Private securities funds

Private securities funds are privately offered to qualified investors, managed by institutions licensed as private securities fund managers, and mainly invest in stocks, bonds, futures and other securities.

Notably, private securities fund management business has opened up to foreign investors much earlier than public fund management. Eligible foreign-invested private securities fund managers may carry out fund management business within China in the form of a joint venture or wholly foreign-owned entity (WFOE), according to the Answers to Questions No. 10 concerning the Registration and Record-filing of Privately Offered Funds, issued

14 Data comes from 2020 RMB Real Estate Fund Research Report released by Hengyu Investment Consulting Co., Ltd.

by AMAC on 30 June 2016. In 2020, another nine wholly foreign-owned private securities fund managers (WFOE PFMs) registered with AMAC. As of December 2020, a total of 32 WFOE PFMs had registered with AMAC.[15]

v Private equity

The market in China does not recognise clear differences between private equity funds (PE funds) and venture capital funds; thus, unless otherwise specified, references to PE funds in this chapter include venture capital funds.

Depending on their organisational form, PE funds may be divided into corporate funds, partnership funds and contractual funds, and the first two types of funds are registered as legal entities in accordance with the Company Law of the People's Republic of China (2018 Revision) (Presidential Order No.15) and the Law of the People's Republic of China on Partnership Enterprises (2006 Revision) (Presidential Order [2006] No. 55), respectively.

AMAC is a self-regulatory organisation for the fund industry that supervises the fund industry under the authorisation and guidance of the CSRC. AMAC's responsibilities include formulating and implementing industry self-regulatory rules, processing registrations of private fund managers, record-filing of private funds, management of professional qualifications and practitioners, information disclosure, and the performance of other functions in accordance with the relevant laws and regulations. While awaiting higher-level administrative regulations, the CSRC issued on 30 December 2020 departmental rules that reiterate oversight of privately offered investment funds, the Several Provisions on Tightening the Regulation of Privately Offered Investment Funds.

With respect to foreign investment, overseas investors can sponsor or manage yuan-denominated funds in PRC pilot cities as QFLPs (qualified foreign limited partners) or make fund investments directly through foreign-invested enterprises. By the end of 2020, there were 13 pilot cities, including Hainan[16] and Xiamen, which were added to the city list in 2020. On 24 July 2020, Suzhou renewed the QFLP regulations and policies for its pilot in Suzhou Industrial Park, which has been a pilot city since the year of 2015, facilitating the promotion of QFLP policies and the optimisation of cross-border transactions. [17]

The past few years have witnessed a growing number of private equity investors paying attention to ESG investing (or more broadly to green investing). ESG investing takes non-financial factors into consideration when screening potential investments so that investors can receive a more sustainable and long-term return. ESG investing in China mainly takes place in the public market, especially in funds issued by managers. Among the public funds, the number of green financial products has increased rapidly: as of the end of 2020, China issued 1.2 trillion yuan of green securities, ranking second in the world. According to AMAC, as of the beginning of 2021, more than 30 institutions had carried

15 Data comes from AMAC Privately Offered Fund Manager Comprehensive Inquiry Platform, please see http://gs.amac.org.cn/amac-infodisc/res/pof/manager/index.html.

16 See Master Plan for the Construction of Hainan Free Trade Port, issued by CCCPC and the State Council.

17 See official website of Suzhou Industrial Park Administrative Committee, please see: http://www.sipac.gov.cn/szgyyq/gfxwjgl/202010/a7474e3ce86b41d6be90bbcd9e8cc705.shtml.

out green investment research; and seven publicly offered fund managers with more than 100 billion yuan of AUM, accounting for 23 per cent of the managers with such scale, had incorporated the concept of green investment as part of their corporate strategy.[18]

vi Other sectors

Qualified domestic limited partner

The qualified domestic limited partner (QDLP) pilot programme originated in Shanghai in 2012, and Chongqing, Tianjin, Qingdao and other regions have since promulgated relevant regulations for the launch of their own pilot programmes. The QDLP programme allows qualified foreign investment managers (QDLP managers) to raise capital from qualified domestic investors to set up overseas investment funds (QDLP funds) in China for outbound investment. At present, QDLP funds can be organised in the form of a limited partnership fund or contractual fund, and their investment scope is also extended to all overseas investments (including making investments through fund of funds entities). In December 2020, SAFE officially announced that the quota for QDLPs in Shanghai would be increased to US$10 billion.

According to the AMAC rules, QDLP managers that carry out private investment fund business in China must be registered with AMAC as private fund managers.[19]

It is noteworthy that Beijing launched its QDLP pilot programme in 2020, which simplifies the application process, lifts the quota limitation and expands the investment scope, and aims to increase Beijing's attractiveness to international asset management institutions.

Qualified domestic investment enterprise

Qingdao and Shenzhen promulgated rules laying the groundwork for the qualified domestic investment enterprise (QDIE) programme in August 2014 and December 2014, respectively. Compared with QDLP, QDIE has been more relaxed and flexible in terms of fund organisation form and investment scope since its implementation. QDIE funds can be established in various forms, such as company, partnership, contract and special account, and their investment scope shall cover all overseas investments.

Qualified domestic institutional investors

The qualified domestic institutional investor (QDII) programme is an arrangement for domestic institutions to invest offshore in stocks and bonds and engage in other securities investment business in overseas capital markets. According to SAFE data, the approved quota for QDIIs has reached US$147.319 billion as of 2 June 2021.[20]

18 ESG practice report of China's equity investment market in 2021 issued by 36 Krypton Venture Capital Research Institute.

19 According to the Special Statement on the Registration of Qualified Domestic Limited Partners (QDLP) as Managers released by AMAC on the WeChat platform on 19 June 2018, a management body of a QDLP that intends to carry out private equity investment fund business within the territory of China must be registered with AMAC as a privately offered fund manager, and the current QDLP management body can be registered as other privately offered fund manager.

20 Form for the Examination and Approval of Investment Quota of QDII released by SAFE.

Qualified foreign institutional investors and RMB qualified foreign institutional investors

Pursuant to applicable regulations, qualified foreign institutional investors (QFIIs) and RMB qualified foreign institutional investors (RQFIIs) may invest in domestic securities investment funds.

On 25 September 2020, the CSRC and other authorities issued the Administrative Measures for Domestic Securities and Futures Investment by Qualified Foreign Institutional Investors and Renminbi Qualified Foreign Institutional Investors (the QFII and RQFII Measures), to be implemented from 1 November 2020. Revisions to the QFII and RQFII Measures and supporting rules mainly involve the following aspects: (1) the QFII and RQFII qualifications and rules were combined into one, relaxing access conditions; (2) expanding the scope of investment in a steady and orderly manner: the QFII and RQFII Measures allows QFII and RQFII to invest in National Equities Exchange and Quotations (NEEQ)-listed securities, private investment funds, financial futures, commodity futures, options, etc.; and (3) strengthening continuous regulation.

VII TAX LAW

i Taxation of asset management products and investors

Public funds are currently not subject to enterprise income tax with respect to investment proceeds obtained in securities markets, including net gains on the sale of shares and debentures, equity dividends and bonuses, interest and other income.[21] PRC-sourced income derived by QFIIs and RQFIIs from the transfer of equity investments, such as shares, and from bond interest in domestic bond market, are temporarily exempt from enterprise income tax.[22]

Investors may also be entitled to tax incentives with respect to certain distribution proceeds received from asset management products. For example, no income tax is imposed on interest from treasury bonds or savings deposit interest, and net proceeds obtained by enterprise investors from the sale of publicly traded securities, are not subject to income tax.

Private funds commonly adopt the limited partnership form, which is considered fiscally transparent and thus not a taxpayer for enterprise income tax purposes. Rather, the partners themselves are considered to realise taxable income from the partnership's investment activities. Differences existed in the past between official rules and practices with respect to whether the 20 per cent income tax rate applicable to fund distributions applies to income that investors derive from venture capital fund distributions. A tax circular issued in January 2019 provides a clearer, uniform basis for taxation, allowing venture capital funds to elect for

21 Article 2 (1) of Circular of Ministry of Finance and State Administration of Taxation on Enterprise Income Tax Incentive Policies (Cai Shui [2008] No.1).

22 Circular on Temporary Exemption of Enterprise Income Tax on Income from Transfer of Equity Investment Assets Including Shares Within China by QFII and RQFII (Cai Shui [2014] No.79).

their individual investors a flat 20 per cent rate or graduated rates of 5 per cent to 35 per cent, the Circular on Issues concerning Income Tax Policies for Individual Partners of Venture Capital Enterprises (Cai Shui [2019] No. 8).

ii Taxation of asset management product managers

Asset management product managers, as value-added tax taxpayers, are subject to a 3 per cent VAT on their taxable activities deriving from asset management product business (including private investment funds), including loan services, direct financial service fees, insurance services and transfers of financial products.[23] There remains an ongoing debate whether VAT is assessable on carried interests, which are often received by general partners of limited partnership private equity funds.

VIII OUTLOOK

With the continuous expansion and rapid development of China's asset management industry, we expect that China's regulators will promulgate more detailed implementation rules within their respective scopes of authority under the guiding principles of the New AMR and strive to strengthen the regulation and rectification of the asset management industry. We will continue to observe China's asset management industry as it becomes more standardised and market-oriented following the end of the transition period of the New AMR. With the opening-up of China's financial markets, the number and proportion of foreign asset management institutions participating in China in the forms of sole proprietorships and joint ventures will further increase. Domestic and foreign asset management institutions will jointly compete and coexist.

23 Article 1 of Circular on Issues Relating to VAT on Fund management Products (Cai Shui [2017] No. 56).

Appendix 1

ABOUT THE AUTHORS

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With over 10 years of experience in fund formation and investment management-related practice areas, Ms Qi concentrates her practice on the formation and operation of domestic and international investment funds, including venture capital funds, M&A funds and buyout funds, funds of funds, hedge funds, real estate funds and other types of investment funds and alternative investment vehicles. She also has substantial experience in representing institutional investors (including insurance companies, funds of funds, public companies, family offices and asset/wealth management firms) in structuring and negotiating their investments in investment funds. Ms Qi has been deeply involved in, and is familiar with, internal performance incentives and governance arrangements at the GP/management company level and other arrangements related to sponsored funds. In addition, she has experience in venture capital and private equity financings, M&A related to investment management firms and general corporate matters.

Prior to joining Han Kun, Ms Qi worked at two leading international law firms, Simpson Thacher & Bartlett LLP (New York and Hong Kong) and Cooley LLP (San Francisco and Shanghai).

Ms Qi has been recognised as a leading individual in the area of fund establishment by various global authoritative legal rating agencies and publications, including *IFLR1000*, Chambers and Partners, *The Legal 500 United States* and *The Legal 500 China*.

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With over 10 years of experience in fund formation and asset management-related practice areas, Ms Zhou has focused her practice on the formation and operations of various types of funds and other asset management products, including the structuring and the formation of venture capital funds, private equity funds, film and entertainment funds, sports funds, infrastructure funds, real estate funds, securities funds and other investment funds and asset management products. She has assisted in designing different fund structures, including master-feeder funds, alternative investment vehicles, parallel funds, co-investment funds and other multilevel structure arrangements, together with various organisational forms such as corporate funds, partnership funds, and contractual funds.

Ms Zhou has represented a number of managers in the asset management industry, including financial institutions, top reputable private equity fund managers and sponsors in the market.

Ms Zhou has a deep understanding of the laws, regulations and regulatory policies relating to the asset management industry and has been actively involved as a representative of lawyers in the communication and policy discussions on laws, regulations and implementing measures in the asset management industry with regulatory authorities such as the CSRC and the AMAC.

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