

THE PRIVATE EQUITY
REVIEW

TWELFTH EDITION

Editor
Stephen L Ritchie

THE LAWREVIEWS

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REVIEW

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PREFACE

The 12th edition of *The Private Equity Review* comes in the wake of a successful – but bumpy – year for dealmakers, which came on the heels of 2021’s record-breaking level of activity. While private equity dealmakers remained active in 2022, with merger and acquisition (M&A) activity at the second-highest level on record (and well above 2020 and pre-pandemic levels), that activity was largely a continuation of 2021’s unprecedented momentum carrying into the first half of 2022 before dropping sharply in the latter part of the year. That drop was due to a confluence of factors, including rising borrowing costs, challenged debt markets, high inflation, fears of a potential recession and declining boardroom confidence. The net result was an overall reduction in deal activity of roughly 40 per cent by value and 15 per cent by deal count from 2021. Large deals were up slightly as a percentage of overall M&A value but down in absolute numbers from 2021 levels, driven by the steep drop in mega-deals in the second half of 2022. Private equity exit activity decreased substantially in 2022, with value down 63 per cent and count down 28 per cent. Consistent with these trends, initial public offering and M&A by special purpose acquisition corporations (SPACs) – one of the biggest drivers of 2021’s record-breaking deal volume – came to a screeching halt in 2022. The number of liquidated SPACs, with SPAC funds being returned to investors without a deal being done, shot up in the fourth quarter of 2022, with more expected as additional SPACs face upcoming expirations. Although 2022 did see a steady increase in announced de-SPAC M&A activity, likely due in part to SPAC sponsors seeking a deal ahead of the significant number of SPACs approaching their expiry dates, these deals were done at much smaller average sizes than peak 2021 levels and amid an overall background of increasing numbers of terminated de-SPAC transactions.

That said, more than US\$1 trillion of global activity in 2022 was attributed to private equity sponsors – at roughly 33 per cent of global deal value, exceeding the prior all-time-high metric set in 2021. Private equity sponsors continued to seek out larger public targets in record number, with overall take-private activity and value surpassing recent levels – the average take-private deal size was US\$3.5 billion in 2022, up significantly from US\$2.6 billion in 2021. With continued confidence in the performance of private equity as an asset class, fundraising activity remained strong as well, with private equity funds raising aggregate capital of over US\$1.2 trillion and continued record amounts of available capital, or dry powder, at, by one estimate, over US\$1.4 trillion.

The year 2022 again demonstrated private equity’s enormous impact and the continuing creativity of private equity dealmakers. Given private equity funds’ success, creativity and available capital, private equity will continue to play a major role in the global economy, not

only in North America and Western Europe, but also in developing and emerging markets in Asia, South America, the Middle East and Africa, notwithstanding ongoing and potential additional political, regulatory and economic challenges.

Private equity professionals need practical and informed guidance from local practitioners about how to raise money and close deals in multiple jurisdictions. We intend for *The Private Equity Review* to help address this need. It contains contributions from leading private equity practitioners in 14 different countries, with observations and advice on private equity dealmaking and fundraising in their respective jurisdictions.

As private equity has grown, it has faced increasing regulatory scrutiny throughout the world. Adding to this complexity is the fact that regulation of private equity is not uniform from country to country. As a result, the following chapters also summarise these various regulatory regimes.

I want to thank everyone who contributed their time and labour to making this 12th edition of *The Private Equity Review* possible. Each of these contributors is a leader in their respective markets, so I appreciate that they have used their valuable and scarce time to share their expertise.

Stephen L Ritchie

Kirkland & Ellis LLP

Chicago, Illinois

March 2023

Part I

FUNDRAISING

CHINA

*Lu Ran and Pei Zhao*¹

I GENERAL OVERVIEW

The past 10 years have been a decade of vigorous development of the investment fund sector in China, and domestic private equity (PE) and venture capital (VC) firms and yuan-denominated funds have witnessed dramatic developments. By the end of October 2022, a total of 23,967 private fund managers (PFMs) managing 140,988 private investment funds (PIFs) had been registered with the Asset Management Association of China (AMAC), the self-regulatory organisation of the fund industry in China, with total assets under management of 20 trillion yuan.²

Due to the geopolitical volatilities and disruptions caused by the covid-19 pandemic, the PE/VC market had ups and downs in the past three years. Five main features of the domestic PE/VC market have appeared in recent years. First, state-guided funds (SGFs) and government-guided funds (GGFs) are major sources of capital for PE/VC funds. Second, fundraising periods have become relatively longer. For example, in 2016, a PE/VC fund took approximately three months to complete its first closing, on average (in fact, a number of PE/VC funds completed their first closings within one month), and took an additional three to nine months to reach its final closing. However, in the past three years, it has been quite common for PE/VC funds' first closings to take six to 12 months and an additional 12 months to reach their final closings. Third, fund structures have become more complicated to accommodate fundraising needs compared with the market practice in past years. PE/VC funds have commonly utilised parallel fund structures, multi-parallel fund structures, connecting fund structures, umbrella fund structures and combinations of such structures. Fourth, it is obvious that only certain 'top-quartile performance' funds have successfully launched with smooth fundraising. Many PE/VC firms 'in the middle' are still under great pressure in their fundraising activities. Fifth, there are fewer new PE/VC firms coming to the market compared with previous years. Due to the internal and external environments, there is a significant decrease in the generation of new market players in China's PE/VC market.

It is a primary trend that the investment fund practice will continue to maintain its 'blue ocean' status. However, laws and regulations governing the investment fund sector will be further strengthened, which will cause the PE/VC industry to be developed in a more standardised and robust way, particularly with the Regulations on Supervision and Administration of Private Investment Funds having been included in the State Council's

1 Lu Ran and Pei Zhao are partners at Han Kun Law Offices. The authors acknowledge the assistance of partners Shiye Yuan and Xiaoming Deng in the preparation of this chapter.

2 See Overview Report of PFM and PIF Registration (2022) released by AMAC, available at www.amac.org.cn/researchstatistics/report/zgsmjjhysjbg/ (accessed on 18 October 2022).

2021 Legislative Work Plan. Meanwhile, with those first-generation PE/VC funds set up around 2010 entering their exit period, it is a significant task to arrange orderly liquidation of such funds. The value of secondary funds and secondary transactions to the liquidity and continuity of the PE/VC market becomes more notable. Additionally, the investment fund sector will enter a new era of cross-border capital allocation with the liberalisation of qualified foreign institutional investor, qualified foreign limited partner (QFLP), qualified domestic limited partner (QDLP), qualified domestic investment enterprise (QDIE) and qualified domestic institutional investor (QDII) policies and quotas with the growing importance of allocating capital to the China market.

II LEGAL FRAMEWORK FOR FUNDRAISING

i Legal forms and jurisdiction of PE/VC funds

There are three main legal forms adopted by PIFs in the China market: limited partnership, limited company and contractual-type funds. In August 2006, the Standing Committee of the National People's Congress adopted the newly amended Law on Partnership Enterprises and introduced the concept of 'limited partnership', which quickly emerged as the primary form of PE/VC fund in the market. The legal form of a limited company is widely used by SGFs and GGFs, as the sponsors of SFGs and GGFs are almost state-owned enterprises (SOEs) and SOEs are expressly prohibited from acting as the general partner (GP) under the Law on Partnership Enterprises. In August 2014, the China Securities Regulatory Commission (CSRC) promulgated the Interim Measures for the Supervision and Administration of Private Investment Funds (the PIF Interim Measures), which established the registration system of PIFs and the record-filing system of PIFs. In addition, the legal form of contractual-type funds was first officially recognised under the PIF Interim Measures. Contractual-type funds are the most popular form for private securities investment funds and comparatively for a small group of PE/VC funds due to the loose relationship among parties.

Limited partnerships and limited companies are required to be registered with the local Administration of Regulation. For entities to be operated and managed in the long term, efficiency is the key factor for PE/VC firms to determine PE/VC funds' locations. However, most of the GGFs may designate the location of the PE/VC funds they invest in, typically choosing the same location of such GGFs.

ii Key legal terms of PE/VC funds

The fund documents of PIFs (such as the limited partnership agreement and articles of association) usually contain a series of key terms in respect of the PIFs' management and operation. The determination of such key terms will depend on the negotiation between fund management team and investors, which to some extent reflects their relationship and balance in negotiation based on the bargaining power on each side. In particular, the track record of the fund management team of a PIF and the situation of the fundraising market will usually be considered by the parties.

The key terms of PE/VC funds usually consist of two primary categories, financial terms and non-financial terms, no matter which legal form a PIF is established in. The financial terms of a PIF customarily cover (1) the management fee, subscription fee or other similar types of fees to be borne by investors as primary source to support the fund management team's daily operation; (2) allocation of PIFs' expenses and costs; and (3) a distribution principle stipulating the allocation mechanism of the PIFs' profits and incomes

among the fund management team and investors. For example, two types of distribution waterfall are relatively more popular for PIFs in the form of a limited partnership in practice, a European-style distribution waterfall and an American-style distribution waterfall, and a GP clawback mechanism might be requested by investors to ensure that no excess carried interests are distributed to GPs.

Beyond financial terms, the fund documents of PIFs will also include certain non-financial terms in respect of management of PIFs, requirements on the fund management team in performance of its managerial liabilities and obligations, and certain compliance requirements on PIFs. For example, in terms of a PIF in the form of a limited partnership, as a corollary to the GPs' desire to expand fundraising activities, investors seem to be focusing more on non-financial terms in recent years that ensure smooth operation of the PIFs and provide more protections to investors, such as key man provisions, a GP removal mechanism with fault or without fault, greater transparency in fund reporting and a stronger role for the advisory committee. In addition, most financial institutions, such as securities firms and insurance companies, may have their respective requirements on fund terms from a compliance perspective pursuant to applicable People's Republic of China (PRC) laws and regulations, including requirements on fund size, types of underlying investments and investment industries, custodians of fund assets and a seat on the advisory committee for participating and monitoring PIFs' material matters, etc.

SGFs and GGFs may have certain specific requests on fund terms due to their respective risk tolerance and internal policies. For example, a European-style distribution waterfall might be preferred by SGFs and GGFs when they invest in a PIF in the form of a limited partnership to ensure that all invested capital of investors and the agreed preferred return will be fully returned and distributed to the investors prior to any generation and distribution of carried interests to GPs.

iii Key terms for disclosure

As AMAC has promulgated several regulations regarding information disclosure by PFMs and PIFs, PE/VC funds shall comply with those disclosure requirements. Under Regulatory Measures of Information Disclosure for Private Investment Funds and No. 2 Guideline for Information Disclosure for PE/VC Funds, PFMs are required to update periodically or at each time when a material change occurs both their own registration information with AMAC and the information filed for the PIFs under their management via an online system. In addition, PFMs are also required to disclose to investors the information in relation to PIFs under their management according to fund documents. Of course, some investors, such as SGFs, GGFs and insurance companies, may have their own requests on the information disclosure, which PIFs will usually make efforts to satisfy for fundraising purposes.

iv Common methods of solicitation of investors and limitations on solicitation

As there are strict rules on solicitation of investors, methods used for solicitation shall be taken only in a private way, such as a one-to-one offering on a targeted and limited basis to potential investors not exceeding 200 persons. Personnel carrying out PIF private placement shall have a PIF professional qualification recognised by AMAC. In addition to qualification on fundraising practitioners, specific rules and restrictions in fundraising are also stipulated under the Measures for Administration of Fundraising of Private Investment Funds (the PIF Fundraising Measures). First, interests in a PIF may be offered only to investors classified as 'qualified investors' by PFM or its offering agent based on supporting materials and

risk tolerance ability questionnaires provided by such investors.³ Second, after completing verification procedures on qualified investors, PFMs or their agents may offer interests in a PIF and circulate relevant offering documents and fund contracts to such qualified investors only on a non-public basis. Placement through published materials, outdoor advertisements, posters, newspaper, radio, TV, internet and such other public media or speeches, seminars and similar meetings is explicitly prohibited by the PIF Fundraising Measures.

v PFMs' fiduciary duties

In China, it is generally understood that the fiduciary duty of PFMs includes the duty of loyalty and the duty of diligence.

PFMs apply corresponding laws and regulations according to their different identities in terms of the fiduciary duties, such as Article 147 of the Company Law and Articles 32, 35, 96 and 99 of the Law on Partnership Enterprises. In addition, provisions in the Law on Securities Investment Funds and Civil Code regarding the responsibilities of managers and trustees may also apply. On this basis, administrative regulatory rules and contractual agreements are the refinement and supplement of legal fiduciary duties, especially the duty of diligence. Fund contracts may also reduce or eliminate certain fiduciary duties. However, at present, China's laws and judicial practice have no consensus on the extent to which the parties can agree to exempt from the fiduciary duties of PFMs.

In practice, the standard for Chinese judges to determine whether a PFM violates its fiduciary duties is relatively high. Generally, a PFM is deemed to be at fault only when it obviously violates laws and regulations or contractual agreements or has obvious subjective malice – for example, if a PFM misappropriates fund assets or obviously violates the agreed scope of investment. In addition, there is no evidence disclosure system in China, and few witnesses appear in court to testify in civil proceedings, which increases difficulties for the plaintiff in proving the fact.

It appears that the Supreme People's Court will be issuing a judgment guidance on private funds disputes, which puts forward higher requirements for PFMs' performance of fiduciary duties than before.

3 According to Article 12 of the PIF Interim Measures, 'qualified investor' refers to an investor satisfying the following requirements: (1) having risk identification and tolerance ability matching the PIF product such investor is intending to invest in; (2) making a commitment no less than 1 million yuan to the PIF product; and (3) if an entity, with net assets no less than 10 million yuan, or if a natural person, with individual financial assets (including, without limitation, bank deposits, securities, bonds and trust, etc.) no less than 3 million yuan or an average individual annual income no less than 0.5 million yuan for the past three years. The PFM or its fundraising agent, or both, is required to collect materials and risk tolerance ability questionnaires provided by investors to identify whether such investors satisfy the qualified investor requirements before targeting placement interests in PIFs managed by it to such investors, unless an investor is a 'deemed qualified investor' specified by Article 13 of the PIF Interim Measures and Article 32 of the PIF Fundraising Measures, including: (1) social security funds, enterprise annuity schemes and other pension funds, charitable funds and other commonwealth funds; (2) PIFs registered with AMAC; (3) financial products supervised by financial regulatory authorities; (4) a PIF's fund manager or its employees; and (5) other investors prescribed by the CSRC and AMAC.

vi Cross-border pilot programmes

QDLP

Current PRC laws and regulations are silent on the regulation of fundraising activities within China or towards Chinese investors by foreign PE/VC firms. As such, there could be legal and compliance concerns if an offshore PE/VC fund directly admits PRC investors.

Furthermore, even if marketing and fundraising activities are carried out strictly in compliance with applicable PRC laws and regulations, outbound investment restrictions on each of the prospective PRC investors may lead to burdensome procedures and increase uncertainties about the admission of PRC investors.

Alternatively, more and more offshore PE/VC fund managers consider an approach that is expressly permitted under PRC laws and regulations: the QDLP.

A QDLP fund is a type of yuan-denominated fund established pursuant to special pilot programmes promulgated in certain provinces or cities in China that pool PRC-qualified investors with investment objectives targeting offshore financial products. QDLP pilot programmes usually differ from place to place in respect of specific access and regulatory requirements, among which pilot programmes in certain places permit QDLP funds to invest in offshore PE/VC funds. The QDLP approach has already been considered and taken by many well-known institutions, including BlackRock, Oaktree Capital, Morgan Stanley and KKR.

In order to set up a QDLP fund to pool investors in China, the foreign fund manager or any of its affiliates shall first set up a QDLP fund manager, which should be registered with AMAC as a Type 3 fund manager, and obtain a QDLP quota with the local government in the intended registration place of such QDLP fund. Then, the QDLP fund manager may raise one or more QDLP funds within its QDLP quota as approved by the local government. After completing PIF record-filing with AMAC and outbound investment registration (which will be completed at the level of the QDLP funds, instead of by each of the PRC investors separately), QDLP funds may then legitimately invest capital from PRC-qualified investors in offshore PE/VC funds and other financial products.

QFLP

In addition to the QDLP pilot programme, the State Administration of Industry and Commerce promulgated the Administrative Regulations on the Registration of Foreign-Invested Partnership Enterprises in 2010, and Shanghai released trial regulations on its QFLP pilot programme in January 2011, which opened the door for foreign sponsors to set up onshore funds in China in the form of limited partnerships.

If any fund focuses on making onshore investments in China, a QFLP fund is a convenient channel with three main advantages: (1) it simplifies the investment procedure, as, within a QFLP fund's quota the QFLP fund's investment procedure is almost the same as with an onshore fund; (2) it helps to hedge the fluctuation of the yuan exchange rate, as, within a QFLP fund's quota, the fund manager has the power to determine the amount of capital to be injected into the portfolio companies and the timing of conversion of foreign currency to yuan; and (3) a QFLP fund's loss can be used to offset profit to decrease taxable incomes.

The QFLP pilot programme, in its nature, is a programme with a foreign exchange exception. An offshore fund usually has to go through a time-consuming approval process with the State Administration of Foreign Exchange (SAFE) for each of its investments in China, and each portfolio company that would receive capital in foreign currency from the offshore fund must seek approval from SAFE for foreign exchange settlement on each

occasion on which it needs to use such capital. In contrast, once SAFE approval for a QFLP fund is obtained at the time of the fund formation, the capital, in foreign currency, may be converted into yuan directly in a prompt manner (typically close to one week) by the fund manager, thus avoiding the lengthy SAFE approval process for each investment and saving the portfolio company the trouble of having to seek SAFE approval on a foreign exchange settlement.

As the QFLP pilot programme is a city-level programme, different cities may issue different requirements, but most of them follow Shanghai's programme with intention to attract world-famous PE firms to set up QFLP funds in their location. In general, the following requirements have to be satisfied for the applicant of a QFLP licence in different cities:

- a* requirement on the local fund manager: the foreign applicant needs to incorporate a local company in the target city, which shall apply for a licence to launch a QFLP fund; and
- b* requirements on foreign investors: typically, most of the QFLP pilot programmes will require assets of foreign investors or assets under such foreign investors' management to meet a certain minimum amount, and each single foreign investor needs to invest a minimum amount in the QFLP fund consistent with applicable laws and regulations.

III REGULATORY DEVELOPMENTS

PIFs in China are required to comply with various operational requirements. Before engaging in any fundraising activity, PFMs established in China (including PFMs with direct or indirect foreign shareholders) must register with AMAC in accordance with the regulations formulated by AMAC. After the completion of fundraising, PFMs must register the PIFs managed by them with AMAC under such PFMs' names.

i PFM registration

Certain conditions must be satisfied to complete the PFM registration. Since February 2016, AMAC has required any PFM applying for registration to engage Chinese lawyers to conduct due diligence investigations in the PFM, to confirm its compliance in all aspects and to issue a legal opinion. A PFM will not be qualified to be registered unless the legal opinion and other application materials are accepted by AMAC. In November 2017, AMAC clearly defined the circumstances under which PFMs will be denied registration in Q&As Related to the Registration and Filing of Private Investment Funds (Q&A No. 14) for the first time, including illegal fundraising, false statement, engagement in conflicting business, being listed as enterprises with serious illegal and dishonest acts or discredit of senior executives. In December 2018, AMAC restated the circumstances under which PFMs will be denied registration via a PFM Registration Notice, in which AMAC also listed the main requirements for PFM registration. Basic information about registered PFMs is publicised by AMAC on its official website.

In 2020, AMAC promulgated the Circular on Issues Concerning Facilitating Application for Registration of PFMs in February and the Circular on Issuing List of Application Materials for Record-Filing of PIFs in March, listing the materials necessary for the registration of PFMs and record-filing of PIFs, which represents AMAC's effort in enhancing service efficiency and improving the certainty of compliance expectation for related applications. The latest version of the List of Application Materials for Record-Filing of PIFs was issued in September 2022.

ii Regulations on fundraising

In respect of fundraising activities of PIFs, the key regulations on fundraising include the PIF Fundraising Measures promulgated by AMAC on 15 April 2016, the Measures for Administration of Suitability of Securities and Futures Investors (the Suitability Measures) promulgated by CSRC on 12 December 2016, and the Guidelines for Implementation of Appropriateness Management of Fundraising Institutional Investors promulgated by AMAC on 28 June 2017 (collectively with the Suitability Measures the New Suitability Management Regulations). According to the PIF Fundraising Measures, only (1) registered PFM and (2) entities that have obtained a fund distribution licence from CSRC and a membership of AMAC authorised by PFM are permitted to engage in private placement of interests in PIFs. The PIF Fundraising Measures also stipulate specific rules and restrictions in fundraising, such as the guidelines on advertisement and promotion and fundraising offline or via the internet. The New Suitability Management Regulations require managers to formulate a uniform standard to classify investors, design a hierarchical risk control mechanism, regulate the internal management of sales organisations of fund managers and elaborate specific procedures.

iii PIF registration

PFMs must file the record of the PIFs under their management with AMAC within 20 business days of completion of fundraising. Before completion of record-filing with AMAC, the PIFs must not make any investments. When filing a PIF, AMAC will examine whether the PFM's fundraising procedures are in compliance with relevant rules issued by AMAC through paperwork and information submitted by the PFM, including whether the PFM has adopted suitable measures to make sure that the interests in such a PIF are offered to qualified investors.

The Registration and Filing of Private Investment Funds (2019 PIF Registration Notice) issued by AMAC in December 2019 further embodies the terms under the asset management guidance regarding the operation of PIFs, restating that PIFs' primary business shall not cover borrowing or lending activities. According to the 2019 PIF Registration Notice, any PIF conducting private lending activities as its regular business or setting up valuation adjustment mechanisms to engage in disguised loan activities (which separate the PIF's income from the profits from the invested companies) will not be permitted for PIF registration. AMAC also requires a newly registered PFM to complete the record-filing of its first PIF within six months of its registration; otherwise, the relevant PFM will be disqualified by AMAC.⁴ In order to support the newly registered PFM to conduct business during the period of prevention and control of covid-19, the filing period for a newly registered PFM to complete the record-filing of its first PIF was extended from six to 12 months by AMAC. For the PFM that has completed its registration within 12 months of the announcement of the

⁴ According to Article 13 of the Interim Regulations for the Supervision and Administration of Private Investment Funds (Draft for Comments), AMAC will also cancel the registration of any PFM that fails to complete the record-filing procedure within 12 months of the liquidation of all PIFs under its management. If the Interim Regulations come into effect in the future, AMAC will also cancel the registration of shell or 'zombie' PFMs that fail to maintain continuous fundraising activities.

2019 PIF Registration Notice, such 12-month period can be further extended to 18 months.⁵ To facilitate the record-filing process, AMAC published relevant guidance on record-filing for PIFs to elaborate checking points in June 2022.

iv Controlling person disclosure

When a PFM applies for AMAC registration, it shall disclose its controlling person. After completion of AMAC registration, such controlling person will be disclosed to the public, and this information is accessible on AMAC's website. Pursuant to relevant AMAC guidelines, 'controlling person' refers to the controlling shareholder (including the shareholder who has the power to designate a majority of directors of the PFM and the shareholders who have agreement on concerted action between each other) or the natural person, legal person or other organisation that can control the activities of the PFM. The 'look-through' rule will apply to track the ultimate natural person, SOE, collective enterprise, listed company or overseas institution under the supervision of foreign financial regulatory authorities for the purpose of identifying whether any of them is a controlling person.

v Taxation

For PIFs, there is no specific set of taxation rules in China. Rather, PIFs are mainly taxed in accordance with their legal forms. For PIFs in the form of a limited partnership, the layer of partnership is look-through from a tax perspective. Corporate limited partners (LPs) will be taxed at the LP level at a tax rate of 25 per cent on taxable gains from a PRC corporate income tax perspective. Individual LPs will be taxed at the layer of partnership at a tax rate of 5 to 35 per cent on taxable gains from a PRC individual income tax perspective. Specifically, individual LPs will be taxed at a reduced tax rate of 20 per cent for dividend and interest income. For various reasons, the taxation of individual LPs in limited partnership in China is far from mature; thus uncertainties arise from time to time. For PIFs in the form of limited companies, their tax position is almost the same as corporate LPs of limited partnership (i.e., 25 per cent corporate income tax charged on taxable income). For a contractual-type fund, its investors are responsible to file and settle their income tax liability on their side (i.e., 25 per cent corporate income tax for corporate investors and 20 per cent individual income tax for individual investors). In the meantime, some tax incentives are available for PIFs. For example, individual LPs of a qualified limited partnership may enjoy a reduced 20 per cent individual income tax rate on investment gains.

QFLP and offshore funds have more complicated PRC tax implications as a result of transactions being cross-border. Basically, QFLP and offshore funds are charged with 10 per cent PRC withholding income tax on disposal of investments in China. If a QFLP is considered as having a permanent establishment in China, the applicable tax rate rises to 25 per cent.

For PFMs, there are no specific tax rules either. PFMs in the form of a limited company are subject to a 25 per cent corporate income tax rate, and PFMs in the form of a limited partnership are subject to taxation at LP level. Qualified corporate PFMs in certain areas (i.e., Hainan Province) may enjoy a reduced 15 per cent corporate income tax rate.

5 See Notice on the Work Arrangement Concerning Registration and Filing of Private Funds During the Period of Prevention and Control of COVID-19, available at www.amac.org.cn/aboutassociation/gyxh_xhdt/xhdt_xhtz/202002/t20200201_6561.html.

IV OUTLOOK

With the rapid development of China's PE/VC market in the past decade, China has attracted the interest of both domestic and international investors and other market participants, and the capital under management in the China market has largely increased. Such tremendous growth in the PE industry in China has also helped many Chinese companies in technology and other sectors to start and expand their businesses in both China and the overseas market.

Facing such development in PE and asset management industries in China, PRC regulators have promulgated numerous laws and regulations in recent years to develop and tighten regulations in relevant areas with the aim of mitigating financial risks and providing more protections to investors. It is also expected that PRC regulators will also make more efforts to strengthen scrutiny of the fund managers and other market participants in various respects and to further complete the whole regulatory system of the PE/VC market to cater to such development and changes in the China market.

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Lu Ran joined Han Kun in 2011. Ms Ran advises local and overseas clients in a variety of private equity-related transactions, including the formation, management and operation of various types of fund entities and fund management entities. Her comprehensive legal services include the formation and operation of yuan and USD funds, QFLPs, QDIIs, QDLPs and QDIEs, investment of insurance funds and management team incentive plans, etc. Ms Ran's clients include reputable VC/PE firms, financial institutions, state-owned enterprises, government guidance funds, family offices, Fortune Global 500 companies and other well-known enterprises. Ms Ran is well known for her solid professional skills, creative thinking and unique insights. As a young pioneer in the industry, Ms Ran has expertise in handling complicated fundraising structures, cross-border transactions and internal incentive mechanism.

PEI ZHAO

Han Kun Law Offices

Pei Zhao has over 14 years of experience in the investment fund and private equity field and represents a wide range of fund sponsors in China and throughout Asia in fund formation. She regularly advises clients on structuring, formation, restructuring and operation of various types of private equity funds, venture capital funds, co-investment funds, project funds and funds of funds. Ms Zhao also represents a variety of investors in their global investments in the fund products and fund structures and additionally advises fund sponsors and managers on regulatory and compliance issues. Ms Zhao also has extensive experience in equity financing and cross-border transactions. Prior to working for Han Kun, Ms Zhao worked at an international law firm in Beijing and Hong Kong.

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