

## Further Relaxation of Chinas Rules for Foreign Asset Managers

The Asset Management Association of China (AMAC) published today the June 2018 version of the “Guidelines for the Filing and Registration of Wholly Foreign Owned and Joint Venture Private Securities Investment Fund” (the Guidelines). The Guidelines further liberalise the PFM WFOE regime by providing certain concessions in relation to, among other things, requirements for the parent company and ultimate controller of a foreign-invested applicant.

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[A Chinese version of the Guidelines can be accessed here.](#)

The key points from the Guidelines for foreign asset managers are:

### Status requirements for controllers of PFMs

Previously, AMAC rules stated that the ultimate foreign controller of an applicant institution must itself be a licensed financial institution in its country of domicile (being a jurisdiction which has signed a memorandum of understanding with the China Securities Regulatory Commission (“CSRC”) or other accredited institutions). In other words, the actual controller of the applicant was not permitted to be an individual or unlicensed entity.

Although the Guidelines continue to require a regulated owner, the Guidelines now confirm that, in practice, control will only be considered at the direct controller level – effectively requiring the immediate overseas parent entity to be regulated by an approved foreign financial regulatory authority. It is therefore permissible for the ultimate controller to be an individual or unlicensed institution so long as the direct controller of the applicant is duly licensed.

### Business separation

The Guidelines reiterate that foreign asset managers with both a PFM operation and other established overseas investment management businesses in China (i.e. QDLP participants) must properly isolate their overseas fund management activities from their PFM fund management activities. This would include taking appropriate measures to segregate the assets of different fund products to prevent potential conflicts of interest.

Although the Guidelines do not explicitly require setting up separate entities to undertake QDLP and PFM businesses to achieve the required separation, that is the most common practice for foreign asset managers who plan to operate in both areas.

## Business scope

The main business of a PFM applicant must be private securities investment fund management. An applicant must not engage in any business which may potentially conflict with this purpose or with the interests of its clients or engage in other non-financial activities. It therefore seems to be the case that other types of investment management or advisory businesses, for example providing investment advisory services to the foreign asset manager's overseas affiliates, PE fund management or retail fund management, would likely be prohibited under this rule.

Although most of the revisions are aimed at clarifying previous rules, some of the changes (especially regarding the status of controlling entities) are significant relaxations and may provide significant encouragement for foreign asset managers currently considering launching PFM funds in China, but who were previously restricted by their corporate structures. We believe that, as a result of these measures and other recent reforms, the PFM market is now well placed to receive a surge of new business from foreign hedge fund managers. We expect to see a livelier competitive environment for foreign asset managers in China and, consequently, significantly faster development of the Chinese fund market.

Simmons & Simmons Beijing Representative Office has assisted in two successful fund launches by one of the earliest foreign-owned PFMs, and we are currently working closely with a number of global asset managers in setting up PFM structures and QDLP feeder funds in China. Melody Yang, in particular, has been appointed to the QDLP "Expert Review Committee" of the Shanghai Financial Services Office and Advisory Board of International Partners' Committee of AMAC and is heavily involved in shaping those programmes' development and direction. If you have any questions or are interested in the opportunities associated with the PFM or QDLP schemes, please feel free to contact Melody Yang at [Melody.Yang@Simmons-Simmons.com](mailto:Melody.Yang@Simmons-Simmons.com).

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