國楓律師事務所
GRANDWAY LAW OFFICES

Newsletter

Update

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Article(s)

Update

AMAC Announced the First Three Private Equity Asset Allocation Managers

On February 11, 2019, the official website of Asset Management Association of China showed that the first three Private Equity Asset Allocation Managers have been officially approved. The Private Equity Asset Allocation Manager, which called “the fourth type of private equity manager”, and its debut will bring new growth points to the private equity management industry with an asset management scale of 12 trillion yuan.

According to the AMAC rules, the Private Equity Asset Allocation Manager is capable of raising fund and investing in private equity funds, mutual funds and other asset management products legally raised.

The approval of the Private Equity Asset Allocation Managers would further enrich the investment strategy in private equity industry, and investors would have more choices when they are investing private equity products. In addition, Private Equity Asset Allocation Managers tend to choose better private equity funds in the segmentation strategy when choosing private equity products. This means more opportunities for private equity funds that are deeply involved in the investment strategy.

Current Requirement for Selecting Clinical Trial Institutions for Medical Devices

Following the Circular on Effectively Working on the Record-filing of Clinical Trial Institutions for Medical Devices, from January 1, 2019, applicants in need of clinical tests over medical devices (including IVD reagents) have to select only those clinical trial institutions for medical devices, which have been filed under record in the Administration Information System for the Record-filing of Clinical Trial Institutions for Medical Devices.

This Circular was promulgated on November 24, 2017, which allows the applicants to select those clinical trial institutions for drugs as certified by the National Medical Products Administration together with the National Health and Family Planning Commission to carry out clinical tests in 2018. As the expiry of the one-year interim period, all the applicants shall strictly comply with selection requirements.

Further Strengthening the Work relating to Purchase and Use Management of Drugs and Medical Devices

Shanghai Municipal Health Commission issued a Notice on Further Strengthening the Work relating to the Purchase and Use Management of Drugs and Medical Devices in February, 2019. It is well to be reminded that rebate is strictly prohibited in Shanghai. The Medical institutions shall purchase drugs and medical devices according to the contract and no “second negotiation” is allowed.

In recent years, the commercial bribe during medicine purchase and sale dominates is known as the key corruption in medical area. In this case, it can be seen that the Shanghai competent authorities are paying close attention to the purchase and sale activities.

China Issued Foreign Investment Law to Consolidate the Existing Three Foreign-Invested Enterprises Law

On March 15, 2019, the National People’s Congress of the People's Republic of China passed the Foreign Investment Law of the People’s Republic of China (hereafter referred to as the "Foreign Investment Law"), which will come into effect on January 1, 2020, repealing simultaneously the existing three foreign-invested enterprises law.

Foreign Investment Law was formulated to improve the openness, transparency and predictability of the foreign investment environment in China, mainly including: (1)the implementation of pre-establish national treatment plus negative list management system in order to guarantee equal treatment of domestic and foreign-funded enterprises; (2)the establishment of a sound foreign investment service system; (3)strengthening the protection on the rights and interests of the foreign investors, especially for protection on the intellectual property; (4)free interstate remittance of RMB and foreign currency of foreign investors, including capital contribution, profit, capital gain, asset disposal income, intellectual property license fee, compensation within the territory of China; (5) foreign-invested enterprises shall be established under the Company Law of the People’s Republic of China, which means existing foreign-invested enterprises may need to transform their corporate structure within five years after the effectiveness of the Foreign Investment Law.

Nevertheless, there are still many vagueness and ambiguities in the aforementioned provisions of Foreign Investment Law, which shall keep a close eye on the upcoming implementation regulations and measures.

CSRC Intends to Amend the Regulation for Public Offering Institutions of Securities Investment Funds

On February 22nd, 2019, CSRC publicly solicited opinions on the *Measures for the Supervision and Administration of Public Offering Institutions of Securities Investment Funds (Consultation Paper)* and related supporting rules.

The main contents of this round amendments include: (i) integrating and optimizing the registration requirements and management for the license of public fund sales, (ii) clarifying the boundaries of public fund sales operations, (iii) expanding the scope of supervision for various financial service entities, and (iv) comprehensively sorting out and improving the business regulations for public fund sales, and enhancing investor protection and investor services.

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Strategies for Foreign CTA to Enter into China

by David Zou/Lea Li

China's futures and derivatives market has developed quickly in recent years. China has a complex regulatory regime regarding futures and derivatives markets and market participants which will impact how a foreign CTA can conduct managed futures business. At present, only a few products in the Chinese commodity futures markets are open to trading by foreign CTA’s directly. The majority of commodity and financial futures can only be traded by domestic Chinese entities or individuals. Therefore, a foreign CTA needs to enter the Chinese market first before it can truly conduct CTA business either as a fund manager or prop trader. Careful selection of appropriate ways of entering China’s futures and derivative market is an essential part of the business planning and market entry strategy. We discuss the relevant issues of market entry and regulatory compliance below.

1. <u>QFII/RQFII Scheme</u>

A qualified foreign institutional investor (“QFII”) and a RMB qualified foreign institutional investor (“RQFII”) can invest in China’s domestic securities and futures market with the permission of the China Securities Regulatory Commission (“CSRC”).

After the qualification is approved by CSRC, A QFII may acquire an investment base quota up to a certain proportion of its AUM by way of record-filing to the State Administration of Foreign Exchange (“SAFE”). If any portion of a proposed investment quota is in excess of the base quota, the excess portion must be approved by SAFE as well. Within the approved quota, a QFII may invest in stocks, bonds, stock index futures, securities investment fund, etc.

However, earlier this year, CSRC released the draft rules for public opinion and consultation from January 31, 2019 to March 2, 2019 (“Draft Rules”) in an effort to combine the QFII and RQFII schemes and expand the permitted investment scope. The Draft Rules eliminate access requirements on operation term and net assets for foreign investors. In addition to the investment scope, the Draft Rules explicitly stipulates that the expanded investment scope shall include stocks listed in the National Equities Exchange and Quotations, bond repurchase, private investment funds and futures (financial futures, commodity future and options).

2. <u>Offshore Access to China’s Futures Exchanges</u>

There are three futures exchanges in China which allow international investors to trade specific commodity futures as summarized below.

First, Shanghai International Energy Exchange started to allow international investors to trade crude oil futures from March 26, 2018 by four routes. The international investors may trade crude oil futures in Shanghai International Energy Exchange (i) as a client of a domestic futures firm member; or (ii) as an overseas special non-brokerage participant; or (iii) as a client of an overseas special brokerage participant; or (iv) by trading through an overseas intermediary.

Second, Dalian Commodity Exchange started to allow international investors to trade iron ore futures from May 4, 2018 by two routes. The international investors may trade iron ore in Dalian Commodity Exchange (i) as a client of a domestic futures firm member; or (ii) as a client of an overseas brokerage firm.

Third, Zhengzhou Commodity Exchange started to allow international investors to trade PTA futures from November 30, 2018 by two routes. The international investors may trade iron ore in Zhengzhou Commodity Exchange (i) as a client of a domestic futures firm member; or (ii) as a client of an overseas brokerage firm.

3. <u>Registration with Asset Management Association of China (“AMAC”)</u>

A foreign invested company can be registered as an AMAC compliant fund manager so as to provide CTA fund management services in China. Such foreign invested company shall satisfy the following requirements: (i) to be incorporated in China;

(ii) the shareholder of the foreign invested company shall be a financial institution duly approved or licensed by the financial regulator of the country or region where it domiciles; (iii) the securities regulatory authority of the country or region where the shareholder of the foreign invested company domiciles shall have entered into Memorandum of Understanding for Securities Regulatory Cooperation ("MOU") with the CSRC or other institutions recognized by the CSRC; and (iv) meeting basic requirements relating to registered capital, office, and qualifications of fund managers and risk control professionals. Generally, it takes a lot of efforts to register as a fund manager with AMAC even assuming the regulatory requirements can be met. It is also quite expensive to set up an AMAC compliant corporate, administrative, and operational structure and maintain the required professional staff. It should be noted that CSRC and AMAC is further deregulating and recently allowed the filing of Fund of Fund. Rules regarding filing by Managers of Managers with AMAC is also under discussion.

4. <u>Establishment of a Consulting Company</u>

A foreign CTA can set up a consulting company to provide technical and consulting services (typically systematic and quantitative programs and strategies) to qualified Chinese fund managers or investment funds or managed account holders in exchange for consulting fees in line with what a CTA does in the U.S. This route will enable a foreign CTA to enter the Chinese market fast by utilizing its back office technical and operational resources and at a low cost as it can avoid the need of upfront AMAC registration at a high cost (at least for the time being per the current regulatory environment).

5. <u>Establishment of a Trading Company</u>

A foreign CTA or proprietary trader can set up a trading company (or other forms of corporate vehicles) to conduct proprietary trading directly using its own capital without the need of raising funds in China, thus skipping the need of AMAC registration as well as the need of a local fund manager as the partner. The prop trader can apply its own trading strategies with the support of back office technical and operational resources. The prop trader only needs to work with a Chinese FCM with respect to trading account opening, settlement, fund transfer, reporting, and other related matters. Such trading company shall be established in the form of wholly foreign-owned enterprise (“WFOE”). The WFOE can open a bank account and a commodity futures trading account after its establishment.

China imposes certain restrictions on the conversion of the registered capital in the form of foreign exchange in the basic capital account into RMB in the operating account of the WFOE. The bank will review the supporting documents for the conversion. The key is to show the capital after conversion will be used for the business as approved and within the scope of business on the Business License of the WFOE. Therefore, the registered capital of the trading WFOE can only be converted and used for trading activities indicated in the approved scope of the business. However, once the registered capital is used for the business operation and resulted in income in RMB, the WFOE has much more freedom in terms of the use of China-sourced RMB funds. Again, quality legal structuring is essential in setting up such a platform.

Past practices by other CTAs so far have generated mixed results. There had been high profile negative cases a few years ago which resulted in tightened control over financial futures trading. There were also cases that have generated discussions in the futures industry but without triggering regulatory consequences.

Given the current environment of further opening up of China’s financial service industry to foreign investors and improved infrastructure of the futures and derivatives industry, coupled with increased awareness of the quantitative trading in China, it is right timing for foreign CTA’s to consider and plan how to enter the Chinese market.

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