



## Newsletter

Update

December 2, 2022

- **GACC Announced Standards for Customs Advanced Certification Enterprises**
- **GACC Issued Standards for Declaration of Tax-related Elements**
- **GACC Clarifies Filing of Customs Declaration Units**
- **CSRC Issued Five Real Estate Equity Financing Measures**
- **Hainan Further Implements Zero Tariff and Low Tax Rate Policies**
- **New Regulations on Capital Management of Foreign Investors in China's Bond Market**
- **Tianjin Free Trade Zone Implements RCEP Agreement and Supports Financial Opening**
- **CBIRC Tightened Regulation on Banks and Insurers Rated D or Below in Corporate Governance Evaluation**

Article(s)

- **Key Issues of Establishing Private Investment Funds under Current Policies**

## Update

### **GACC Announced Standards for Customs Advanced Certification Enterprises**

On October 28, 2022, the General Administration of Customs (GACC) issued the Announcement on Publishing the *Standards for Advanced Customs Certified Enterprises* (“Standards”).

The Standards includes general standards and individual standards formulated for different types of enterprises and business scopes. The certification result options are divided into “up to standard”, “basically up to standard”, “not up to standard” and “not applicable”. The general standards include internal control standards, financial status standards, law-abiding standards, and trade safety standards, a total of 16 items, and individual standards include processing trade, bonded import and export, health and quarantine, animal and plant quarantine, imported and exported food, imported and exported commodity inspection, agency declaration, express operation, logistics transportation, cross-border e-commerce platform, and foreign trade comprehensive services, a total of 32 standards.

### **GACC Issued Standards for Declaration of Tax-related Elements**

On November 17, 2022, the General Administration of Customs (GACC) issued the *Announcement on Publishing the Standards for the Declaration of Tax-related Elements in the Document of Customs Advanced Certification Enterprise Standard* (“Announcement”). The Announcement defines that the declaration of tax-related elements refers to the fact that consignees and consignors of imported and exported goods fulfill the main responsibilities of compliant self-declaration and self-payment of taxes, and declare the name, specification & model of goods, tax code series, price, country of origin and other tax-related elements in a true, accurate, complete and standardized manner to ensure that taxes should be paid in full. The annex to the Announcement released the *Standards for the Declaration of Tax-related Elements* (“Standards”), which clarifies three situations for determining whether the tax-related elements declaration standards of newly applied advanced certification enterprises meet the standards.

### **GACC Clarifies Filing of Customs Declaration Units**

On November 16, 2022, GACC issued the *Announcement on Further Clarifying Matters Concerning the Filing of Customs Declaration Units* (“Announcement”), which came into force on December 1, 2022. The Announcement clearly stipulates the conditions that should be met by consignees and consignors of import and export goods as well as their branches, the conditions that should be met by customs declaration enterprises and their branches, and the conditions that should be met for temporary filing.

The Announcement clarifies that if the customs declaration unit has one of the following three situations stipulated, the customs will order it to make corrections within 10 working days: (1) The unit does not apply registration for information change such as unit name, type of market entity and entity domicile; (2) The information submitted to the customs conceals the real situation or the unit falsifies documents; (3) The unit refuses to cooperate with the customs supervision and field inspection.

### **CSRC Issued Five Real Estate Equity Financing Measures**

Yi Huiman, Chairman of the China Securities Regulatory Commission (“CSRC”), said that the CSRC has decided to optimize five real estate equity financing measures, according to a source released on the CSRC website on November 28, 2022.

The five measures include: (1) resuming acquisition, reorganization and financing of property-related listed companies; (2) resuming refinancing of listed real estate developers and property-related listed companies; (3) adjusting and improving the policies to facilitate overseas listing of real estate developers; (4) further playing the role of REITs in mobilizing existing assets of real estate developers by encouraging quality real estate developers to issue infrastructure REITs relying on qualified warehousing, logistics, industrial parks and other assets, and (5) leveraging private equity (“PE”) investment funds to conduct pilot programs for PE investment in real estate. Qualified PE fund managers are allowed to set up real estate PE investment funds and attract institutional capitals to invest in existing homes and commercial properties.

### **Hainan Further Implements Zero Tariff and Low Tax Rate Policies**

On November 22, 2022, the website of the Hainan Provincial People's Government released the *Implementation Opinions on Further Optimizing the Business Environment and Reducing the Institutional Transaction Costs of Market Entities* ("Opinions"), which requires making good use of the preferential tax policies of the Hainan Free Trade Port.

The Opinion emphasizes to make sufficient preparation for the closed customs operations, implement zero tariff and low tax rate policies on a larger scale, and advance the policy of Simple Tax to ensure the smooth operation of closed customs. It shall guide and support enterprises to make full use of three lists of Zero Tariff Policy and "two 15%" of Preferential Tax Policy. It also supports the enterprise within comprehensive bonded zone to choose to apply selective taxes for domestic sales based on its production and operation needs, as well as supports the promotion of the pilot program of general VAT taxpayer qualifications.

### **New Regulations on Capital Management of Foreign Investors in China's Bond Market**

On November 10, 2022, People's Bank of China ("PBOC") and State Administration of Foreign Exchange ("SAFE") jointly issued the *Regulations on Capital Management for Foreign Institutional Investors Investing in China's Bond Market* ("Regulations"), which will come into effect on January 1, 2022.

The Regulations clarifies the capital management requirements for the foreign institutional investors investing in China's Bond Market, such as the capital shall be subject to the registration administration of the SAFE. The China's Bond Market in the Regulations includes China's domestic inter-bank bond market and exchange-traded bond market. The promulgation of the Regulations is conducive to further facilitating foreign institutional investors to invest in China's bond market, as well as enhance the attractiveness of China's bond market to foreign institutional investors.

### **Tianjin Free Trade Zone Implements RCEP Agreement and Supports Financial Opening**

On November 10, 2022, Tianjin Free Trade Zone Administration issued *High-quality Implementation of the Regional Comprehensive Economic Partnership (RCEP) Action Plan* ("Plan").

The Plan emphasizes it is necessary to enhance the international service capabilities of the local financial industry, which encourages the credit-enhancing function of credit insurance in financing and optimizes financing services for foreign trade enterprises, and supports the improvement of the facilitation level of foreign exchange receipts and payments for new forms and models of cross-border trade such as authentic and compliant offshore resale transactions. The Plan also: (1) supports the further opening of the financial industry; (2) encourages investors from RCEP member countries to establish banks, securities companies, insurance companies and other financial institutions in accordance with the law; (3) supports financial institutions in RCEP member countries to provide financial services to domestic entities in the form of cross-border delivery; and (4) supports foreign-funded financial institutions with the background of RCEP member countries to develop business in accordance with the law and compete fairly with Chinese-funded financial institutions.

## **CBIRC Tightened Regulation on Banks and Insurers Rated D or Below in Corporate Governance Evaluation**

On November 30, 2022, the China Banking and Insurance Regulatory Commission (“CBIRC”) released the *Measures for the Evaluation of Corporate Governance of Banking and Insurance Institutions* (“Measures”), with effect on November 28, 2022.

The Measures has 33 articles in five chapters, which includes general provisions, contents and methods of evaluation, evaluation procedures and work division, evaluation results and the application, as well as the supplementary provisions. It improves the provisions on the scope of banks and insurers subject to the evaluation, the evaluation mechanism, the evaluation indicators, and application of the evaluation results, expanding the coverage of banks and insurers subject to the evaluation to include financial asset management companies, financial leasing companies, enterprise group financial companies, and auto financial companies. It also enhances the application of the evaluation results, calling for regulators to place banks and insurers rated as D or below in the corporate governance evaluation under tightened regulation.

### Article(s)

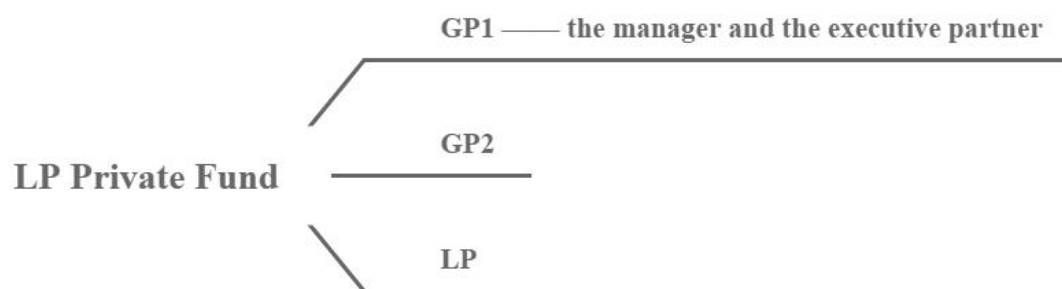
#### **Key Issues of Establishing Private Investment Funds under Current Policies**

by Kerry Zhang

##### **1. The Structure of Private Fund in Dual General Partners Mode (“GPs”)**

As the regulator, the Asset Management Association of China (“AMAC”) allows the establishment of private fund in dual GPs mode, which has four applicable types under current policies:

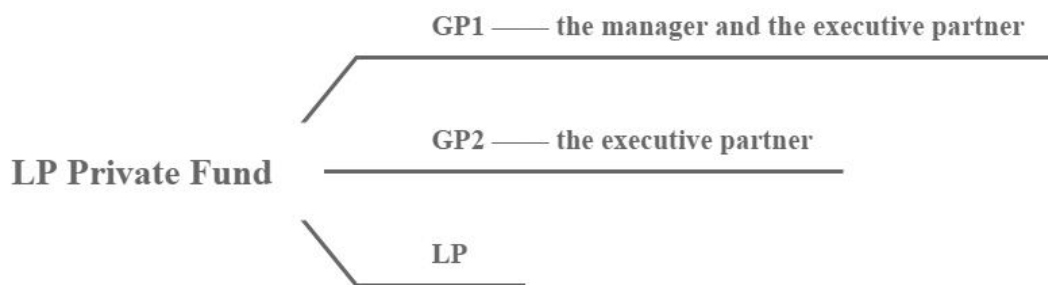
1) The GP1 with private fund manager license acts as the fund manager as well as the executive partner of private fund.



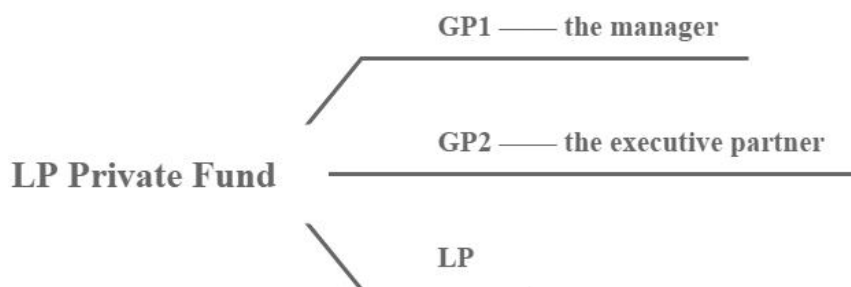
In this mode, the GP2 may not have a PE manager license as long as it meets the qualifications of an institutional investor.

2) Both dual partners act as executive partners of private fund. The GP1 with private fund manager license acts as an executive partner and is mainly responsible for fund management such as fundraising, investment, management and withdrawal. The GP2, acting as an executive partner but not a registered

fund manager, is responsible for some daily administrative affairs.



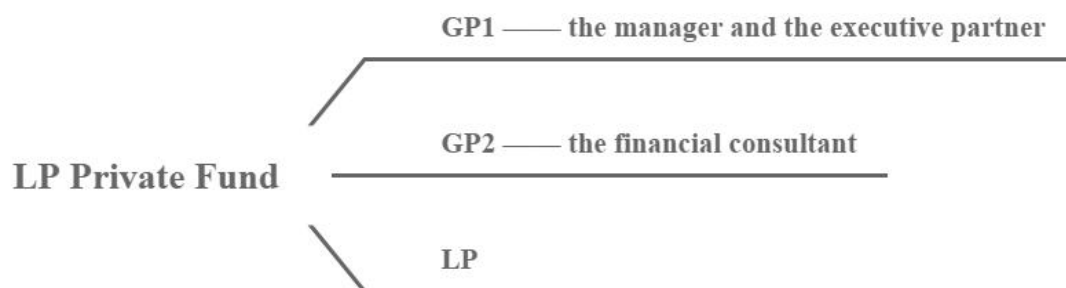
3) The GP1 with private fund manager license acts as the manager, and the GP2 acts as the executive partner.



According to the reply of AMAC, in this mode, the GP2 does not need to obtain private fund manager license.

4) The GP1 with a private fund manager license acts as the manager as well as the executive partner of private fund, and the GP2 only acts as a financial consultant.

Currently, the AMAC does not prohibit a non-licensed GP from serving as a financial consultant to a private fund, while there are qualification requirements for investment consultants of private securities investment funds.



In addition, under the aforesaid second and third modes, applicants usually are required to explain the rationality of a non-manager GP acting as the executive partner when making filing for the fund. If the explanation is unclear or unreasonable, it may be deemed as an act of “borrowing channels” and the filing application will be rejected by AMAC.

## 2. Requirements for Qualified Dual GPs

According to the cases as well as *Interim Measures for the Supervision and Administration of Privately*

*Offered Investment Funds* (“Measures”) issued by AMAC in 2014, a licensed manager can be regarded as a qualified institutional investor directly. The amount invested in a single private fund under management by the licensed manager can be less than one million CNY. However, a non-licensed GP is not a qualified investor because neither does it belong to the category of “managers investing the private funds managed by themselves” stipulated in Measures, nor does it meet other relevant requirements of “qualified investor”.

### **3. The Organizational Formation of a Non-Licensed GP**

The AMAC currently has no special requirements for the organizational formation of a GP, which can be in the form of a company or a partnership. If it is a partnership, all pass-through verification on members of the GP need to meet standards of qualified investors.

### **4. Division of GPs’ Responsibilities**

Due to lack of manager license, a non-licensed GP cannot participate in affairs related to fundraising, investment, management and withdrawal, which can only be undertaken by a licensed manager GP. As for the assignment of other affairs, AMAC does not have clear requirements.

### **5. Distribution of Fund Profits**

1) Remuneration for execution of partnership affairs. In accordance with *Partnership Enterprise Law* (2006 Revision), an executive partner may receive the corresponding remuneration for the execution of affairs as agreed in the partnership agreement. In practice, the executive partner usually receives management fee rather than remuneration when it acts as the fund manager. The partnership agreement may stipulate the available remuneration of each executive partner when a private fund has multiple executive partners.

2) Management Fee (including performance fee). In accordance with *No. 3 Guidelines for Contracts of Private Investment Funds* issued in 2016 and *Guiding Opinions on Regulating the Asset Management Business of Financial Institutions* (Yinfa [2018] No.106) issued in 2018 as well as filing practices of AMAC, the party collecting the management fee (including performance fee) shall be the fund manager. However, GPs and executive partners who are not fund managers cannot charge relevant fees in the name of “management fees”.

3) Investment Advisory Fee. Only investment advisory institutions can charge investment advisory fees. As for whether a GP can act as an investment advisor for a partnership fund, as mentioned above, there are currently no relevant restrictive or prohibitive regulations, and it is mostly based on the agreement of all partners. However, the GPs who have already served as executive partners and fund managers in partnership funds can no longer act as investment consultants, and investment consulting institutions should charge investment consulting fees on the premise that they actually provide corresponding investment consulting services.

4) Carried Interest. Currently, there is no mandatory requirement for the distribution of carried interest of a fund under laws, regulations and policies, thus, it can be allocated flexibly. In practice, a specific allocation mechanism can be formulated based on the partners’ demands and consents, such as all GPs and

all limited partners (LPs) allocating according to a certain ratio, and then each GP and each LP make a further allocation of the aforementioned allocation. In addition, whether a GP as the fund manager participates in the distribution of the remaining Carried Interest after receiving the performance fee can also be freely arranged by partners' consents.

## **6. Appointment of Investment Decision Committee Members**

It is a common practice for private funds to set up investment decision committees in the industry. The AMAC does not have clear regulations and restrictions on the appointment of investment decision committee members. Some practical cases indicate that a LP may appoint members and even have veto power. Combined with the filing cases published by AMAC, partners other than the fund manager can appoint members of investment decision committee, but they cannot actually exercise the investment discretion of the fund through agreements, and cannot occupy a majority of seats in the committee. In addition, it is not recommended that partners have veto power.

In general, a private fund needs to follow two principles when designing the structure and the terms of the fund agreement: (a) abiding by mandatory requirements stipulated by AMAC; (b) reasonably dividing responsibilities and arranging fees for all parties in a private fund, to avoid arrangements that may be deemed as "borrowing channels" by AMAC. If there are questions when following the second principle, it is recommended to consult AMAC and make adjustments according to its advice.

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