



## Newsletter

Update

April 20, 2023

- **Guangdong Unveils 20 Measures to Promote High-quality Development of Foreign Investment**
- **Shenzhen Encourages Multinational Companies to Set up Headquarters in the City**
- **SSE Releases Two Trading Practice Guidelines Including Margin Trading and Securities Lending**
- **Shanghai Releases Two New Policy Documents to Boost Foreign Trade and Foreign Investment**
- **China and France Signed a Joint Statement to Promote Fair Competition in Several Areas**
- **Beijing Unveils 6.0 Version of Business Environment Optimization Plan**
- **CAC to Release New Regulations on AI-generated Content**
- **CSRC Consults Public on Measures for the Management of Independent Directors of Listed Companies**

Article(s)

- **Interpretation and Supporting Guidelines of the Measures for the Registration and Filing of Private Investment Funds**

## Update

### **Guangdong Unveils 20 Measures to Promote High-quality Development of Foreign Investment**

On March 19, 2023, Guangdong Government released the Several Measures on Promoting the High-quality Development of Foreign Investment (the “Measures”), which came into effect on the same day.

The document introduced 20 measures in five aspects, calling for enhanced overall coordination of investment promotion work, improving the quality of domestic and foreign investments attracted for the goal of promoting industrial development, creating a branded investment promotion platform, increasing policy support for investment promotion, and further optimizing the business environment. It urged to increase efforts in investment promotion and capital selection, stressing introduction of 20 strategic industrial cluster projects in areas such as new generation of electronic information, semiconductors and integrated circuits, and supporting enterprises with the strengths to establish high-level R&D institutions

such as technology innovation centers. Enterprises that meet conditions may be granted R&D funds, more effort should be made against monopolies and unfair competition, local protection and administrative monopoly should be eliminated, and policy commitments made to foreign investors in accordance with the laws and regulations should be strictly fulfilled.

### **Shenzhen Encourages Multinational Companies to Set up Headquarters in the City**

On March 31, 2023, The Commerce Bureau of Shenzhen Municipality released the *Circular on Soliciting Public Opinions on the Revised Measures of Shenzhen Municipality for Encouraging Multinational Companies to Set up Headquarters in Shenzhen* (Exposure Draft).

The Measures consist of 19 articles, which clarified the headquarters of multinational companies, improved the incentive and support measures, and detailed the facilitation measures for headquarters of multinational companies. Specifically, it (1) added the definition of “Global Business Unit Headquarters of Multinational Companies”, and expanded the recognition scope of headquarters; (2) optimized the conditions for the recognition of regional headquarters and headquarters-based institution, and added the conditions for the recognition of business unit headquarters; (3) further lowered the threshold for financial incentives, stipulating that those with annual actual utilization of foreign capitals exceeding US\$10 million would be eligible for a reward of up to 4 percent, or up to RMB 100 million; and (4) added talent incentive measures with provision of housing and assistance in the school enrollment of their children, as well as measures for the protection of intellectual property rights and customs clearance facilitation, offering to reward up to 1.5 million to executives at headquarters of multinational companies and other personnel that have made outstanding contributions to the development of enterprises and technological innovation.

### **SSE Releases Two Trading Practice Guidelines Including Margin Trading and Securities Lending**

On April 4, 2023, the Shanghai Stock Exchange (“SSE”) released the *Guideline No.9 of the Shanghai Stock Exchange for Securities Trading Business - Margin Trading and Securities Lending*, and the *Guideline No. 10 of the Shanghai Stock Exchange for Securities Trading Business of Shanghai Stock Exchange - Refinancing Securities Lending*.

Both Guidelines will come into force from the first day of listing of the first Main Board stock issued in accordance with the *Measures for the Administration of Registration-based Initial Public Offerings*.

The Guideline No.9 has nine chapters, including an overview of margin trading and securities lending, application for and approval of transactions, and trading procedures. It is clarified that members should be approved by the CSRC to engage in margin trading and securities lending business. Without such approval, no member shall lend funds or securities to its clients or provide any facilitation or service for margin trading activities among its clients or between clients and others.

The Guideline No.10 consists of seven chapters, and it specified that members who provide securities

lending agency services for their clients shall apply to the SSE for trading authority after completing the relevant preparatory work as required by the borrower.

### **Shanghai Releases Two New Policy Documents to Boost Foreign Trade and Foreign Investment**

On April 4, 2023, the Shanghai Municipal People's Government released the *Several Measures of Shanghai Municipality to Attract and Use More Foreign Investment* (the "Measures") and the *Several Policy Measures of Shanghai Municipality to Promote Foreign Trade Stabilization and Quality Improvement*, both of which came into effect on April 6, 2023.

Among them, the Measures put forward 20 measures, calling for intensifying financial and tax support for the landing of foreign investment projects; and implementing the policy of temporary exempting income tax withholding for foreign investors' direct investments using distributed profits, optimizing the handling process and making preferential policies more accessible to foreign-invested enterprises. All districts may, in light of their specific situations and within their statutory powers, reward foreign-invested enterprises, newly added investment projects and profit reinvestment projects that are in with the industrial development directions of Shanghai according to their overall local economic and social contributions.

### **China and France Signed a Joint Statement to Promote Fair Competition in Several Areas**

On April 7, 2023, Xinhua News released the full text of the Joint Statement between the People's Republic of China and the Republic of France.

The Joint Statement highlighted 51 points in five aspects including Sino-French mutual political trust, global security, economic communication and cooperation, people-to-people and cultural exchanges, and responding to global challenges. It noted that China and France agreed to provide fair and non-discriminatory competition conditions for businesses, particularly in the areas of cosmetics, agriculture and agri-food products, air traffic management, finance (banking, insurance and asset manager), healthcare (medical supplies, vaccines), energy, investment and sustainable development. In the digital economy, including in the area of 5G, the French side vowed to continue processing applications for licenses from Chinese companies in a fair and non-discriminatory manner.

### **Beijing Unveils 6.0 Version of Business Environment Optimization Plan**

On April 7, 2023, the Beijing Municipal People's Government released the *Action Plan of Beijing Municipality on Improving the Business Environment across the Board to Boost Enterprises for High-quality Development*, proposing 31 major tasks in five aspects.

Focusing on fair competition, protection of rights and interests, optimization of investment and trade environment, improvement of government services, and integration of Beijing, Tianjin and Hebei, the Plan vows to facilitate handling of corporate business covering the whole life cycle, promote fair market competition, remove the filing system for foreign trade operators, allow more foreign-funded enterprises to be registered online, promote the reform of "one integrated license for one industry", and advance

“handling of one thing at one time”. It also stressed efforts to boost construction of smart taxation, explore to set up inclusive financing risk compensation funds, expand sharing of data between government, banks and enterprises, and allow replacement of the administrative compliance certification with reports of corporate credit information in selected areas.

### **CAC to Release New Regulations on AI-generated Content**

On April 11, 2023, the Cyberspace Administration of China (“CAC”) released the *Circular of the Cyberspace Administration of China on Soliciting Public Opinions on the Measures for the Administration of Artificial Intelligence Generated Content* (“AI-generated content” or “AIGC”) (Exposure Draft), which is open for public comment until May 10, 2023.

The Measures consist of 21 articles, which apply to the entities that provide AI-generated content to the public in China, underscoring the restrictions on ideologies, intellectual property rights, information security and fair competition. Under the Measures, AIGC providers are responsible for the content they generated using AI technology. Where personal information is involved, the statutory responsibilities of the personal information processors shall also be assumed. Before providing the services, they are required to apply for security assessment with the national cyberspace authorities, and perform the procedures for the filing, change and cancellation of algorithm. According to the Measures, AIGC providers are prohibited from illegally retaining any input from that can infer the user’s identity, profiling a user based on his input information and usage or providing a user’s input information to others, or generating discriminatory content based a user’s race, country, gender and other information.

### **CSRC Consults Public on Measures for the Management of Independent Directors of Listed Companies**

On April 14, 2023, the China Securities Regulatory Commission (“CSRC”) released the *Measures for the Management of Independent Directors of Listed Companies* (Exposure Draft). The Draft is open for public comments until May 14, 2023, for the purpose of implementing the *Guidelines of the General Offices of the State Council on the Reform of the System for Independent Directors of Listed Companies*.

The Measures consist of 47 articles in six chapters, the main contents are as follows: selection, appointment and removal of independent directors, duties and performance methods of independent directors, guarantees for performance of the duties, supervision and administration and legal liability. In terms of matters subject to the supervision and administration, it highlighted the potential conflicts of interest between a listed company and its controlling shareholders, actual controllers, directors, and senior officers. The Measures also clarified the methods for performance of duties, and established and improved the mechanism for listed companies to set up their special committees for the board of directors and hold the special meetings of independent directors, for which it has provided a one-year transition period. Listed companies should revise their articles of association and relevant internal systems in accordance with the requirements of the Measures.

# Article(s)

## **Interpretation and Supporting Guidelines of the Measures for the Registration and Filing of Private Investment Funds**

*by Kerry Zhang*

On February 24, 2023, the Asset Management Association of China (the “Association”) officially promulgated the *Measures for the Registration and Filing of Private Investment Funds* (the “Measures”) with 3 supporting guidelines, “Guidelines No.1 for the Registration of Private Equity Investment Managers - Basic Operational Requirements” (the “Guidelines No.1”), “Guidelines No.2 for the Registration of Private Investment Fund Managers - Shareholders, Partners, and Actual Controllers” (the “Guidelines No.2”) and “Guidelines No.3 for the Registration of Private Investment Fund Managers - Legal Representatives, Senior Managers, Executive Partners and Their Appointed Representatives” (the “Guidelines No.3”). The Measures fully draw on past practical experience and further raises the industry threshold in light of the current situation. This article will sort out the key contents of the Measures for reference by fund practitioners.

### **A. Registration of Private Investment Fund Managers**

#### **1. Classified Management, Supporting the Excellent and Limiting the Inferior**

Article 7 of the Measures clearly stipulates that the Association will implement differentiated self-discipline management and industry services for private investment fund managers and private investment funds in accordance with the principles of classified management, supporting the excellent and limiting the inferior.

#### **2. Paid-in Capital Contributions**

Item 1, Paragraph 1, Article 8 of the Measures requires that the paid-in monetary capital of a private investment fund manager shall not be less than RMB 10 million.

In addition to meeting the daily operational needs of managers, the requirements for contributed capital is actually to raise the threshold for obtaining manager qualifications. Due to the “non-retroactivity” policy, existing institutions do not need to make special adjustments except that they need to meet this requirement because of changes in actual controllers.

#### **3. Capital Contribution from Key Personnel**

Item 3, Paragraph 1, Article 8 of the Measures stipulates that the legal representatives, executive partners or their appointed representatives, and senior managers in charge of investment management are required to directly or indirectly hold a certain proportion of the equity or property share of private investment fund managers.

Article 6 of Guidelines No.1 stipulates that “directly or indirectly holding a certain proportion of equity or property shares of private investment fund managers” refers to the legal representatives, the executive partners or their appointed representatives, and the senior managers in charge of investment management all directly or indirectly hold a certain proportion of the equity or property shares of the private investment fund manager, and the total contributed capital is not less than 20% of the paid-in capital of the private equity fund manager, or not less than 20% of the minimum paid-in capital of the private investment fund manager, which is 2 million, as stipulated in Article 8, Paragraph 1, Item 1 of the Measures.

Financial institutions, the government and its authorized agencies, and private equity investment managers controlled by institutions supervised by overseas financial regulatory authorities are exempted.

#### 4. The Actual Controller

##### (1) The Identification Rules

Article 11 of the Guidelines No.2 stipulates the order in which private investment fund managers identify actual controllers, which are:

- (i) individuals or entities holding more than 50% of the shares;
- (ii) individuals or entities that actually exercise more than half of the shareholders’ voting rights through concerted action agreements;
- (iii) individuals or entities that can determine the election of more than half of the board members of directors or the executive director by exercising voting rights.

Where the actual controller is identified through concerted action agreement arrangement, there shall be no term arrangement in the agreement.

When there is no actual controller, the investor who accounts for the largest proportion of the capital contribution shall assume the actual controller responsibility, or all the investors shall jointly designate one or more investors to assume the actual controller responsibility.

##### (2) Transfer Restrictions

Article 20 of the Measures stipulates that the equity, property share or actual control held by the controlling shareholder, actual controller, and general partner of a private investment fund manager shall not be transferred within 3 years from the date of registration or change registration.

Article 17 of the Guidelines No. 2 stipulates that shareholders, partners, and actual controllers of private investment fund managers shall not transfer actual control of private investment fund managers in a disguised manner through pledging of equity or capital contributions, or entrusting a third party to exercise voting rights, etc.

##### (3) Qualifications for Actual Controllers

Paragraph 2 of Article 9 of the Measures stipulates that if the actual controller of a private investment fund manager is a natural person, he or she shall serve as a director, supervisor, senior manager, or executive partner or his or her appointment representative of the private investment fund manager, unless otherwise specified.

#### (4) The Change Requirement of the Actual Control

In accordance with Article 48 of the Measures and Article 16 of Guidelines No.1, if the actual control of a private investment fund manager changes, the average monthly management scale of the 12 months before the change date shall not be less than RMB 30 million.

#### (5) Requirements for Foreign-funded Managers

Article 14 of the Measures stipulates the requirements for managers with an ownership ratio of foreign investors not less than 25% to conduct private securities fund business in China:

- (i) The private securities fund manager is a company established in China;
- (ii) The overseas shareholder is a financial institution approved or licensed by the financial regulatory authority of the country or region where it is located, and the securities regulatory authority of the country or region where it is located has signed a memorandum of understanding on securities regulatory cooperation with the China Securities Regulatory Commission (“CSRC”) or other institutions recognized by the CSRC;
- (iii) Private securities fund managers and their overseas shareholders have not been severely punished by regulatory authorities and judicial authorities in the past three years;
- (iv) The use of capital funds and RMB funds obtained from foreign exchange settlements shall comply with the relevant regulations of the state foreign exchange management department;
- (v) To engage in securities and futures trading in China, the managers shall make investment decisions independently, and shall not issue trading orders through overseas institutions or overseas systems, unless otherwise stipulated by the CSRC.

For a private securities fund manager with an overseas actual controller, the overseas actual controller shall meet the requirements of items 2 and 3 of the preceding paragraph.

#### (6) Asset Management Products

Article 5 of Guidelines No.2 stipulates that the actual controller of a private investment fund manager shall not be an asset management product. Asset management products shall not serve as the main investor of a private investment fund manager, and the total proportion of direct or indirect investment in a private investment fund manager shall not exceed 25%. Except for private investment fund managers funded and established by governments above the provincial level and their authorized institutions.

#### (7) Time of Registration

Article 2 of the Guidelines No.1 stipulates that companies and partnerships that apply for registration as private investment fund managers should be established for the purpose of conducting private equity fund management business, and apply for registration as private investment fund managers within 12 months from the date of the industry and commerce registration of market entities.

Article 21 of the Measures stipulates that before the first private investment fund completes the filing procedures, the private investment fund manager shall not replace the legal representative, executive partner or its designated representative, principal person in charge of operation and management, or senior manager and head of risk control in charge of investment management.

#### (8) Restrictions on Acting as an Investment Adviser

Paragraph 3 of Article 4 of Guidelines No.1 stipulates that the business scope of private investment fund managers shall not contain consulting words such as “investment consulting”, but does not set the same restrictions on equity and venture capital fund managers.

#### (9) Business Premises

Article 8 of Guidelines No.1 stipulates that private investment fund managers shall have independent and fixed business premises, and shall not use unfixed places of business, such as shared spaces, as business premises; if the business premises are obtained from leasing, the remaining lease period shall not be less than 12 months from the date of submitting the application for registration; if the registration place of the private investment fund manager is separated from the place of operation, it shall be reasonable and the reasons shall be explained.

### **B. Filing of Private Investment Funds**

#### 1. Paid-in Capital Contribution

Article 33 of the Measures stipulates that the initial paid-in capital scale of a private investment fund shall meet the following requirements unless otherwise specified:

- (1) The private securities fund is not less than RMB 10 million;
- (2) The private equity fund is not less than RMB 10 million, of which the initial paid-in capital of venture capital funds shall not be less than RMB 5 million when filing, but the fund contract shall stipulate that the paid-in capital contribution that meets the above-mentioned minimum requirements for the initial paid-in capital scale shall be completed within 6 months after filing;
- (3) The private investment fund invested in a single object shall not be less than RMB 20 million.

Paragraph 2 of Article 39 of the Measures stipulates that unless otherwise specified, the initial paid-in capital of a single investor shall not be lower than the minimum capital contribution requirement of a qualified investor, which is RMB 1 million.

#### 2. Managers and Executive Partners

Article 34 of the Measures stipulates that when a private investment fund manager establishes a partnership fund, it shall act as an executive partner, or have a controlling relationship with the executive partner or be controlled by the same controlling shareholder or actual controller, and shall not circumvent the relevant provisions of the Measures on private investment fund managers by entrusting other private investment fund managers, etc.

### **C. Implementation of the Measures and Arrangements for the Transition Period**

The Measures and the three Guidelines will come into force on May 1, 2023. The Measures for the Registration of Management Institutions of Privately Investment Funds and the Recordation of Funds (for Trial Implementation), the Registration Instructions for Privately Investment Fund Managers, and



Questions and Answers Regarding Private Investment Fund Registration and Recordation (IV, XIII, XIV) shall be abolished at the same time. The transition arrangements between the old and new rules are as follows:

1. The registration, filing and information change business that has been submitted for handling before the implementation of the Measures shall be handled by the association in accordance with the original rules; the registration, filing and information change business submitted for handling after the implementation of the Measures shall be handled by the association in accordance with the Measures.
2. If a registered private investment fund manager submits a change in the registration and filing information, other than the actual control right, after the implementation of the Measures, the relevant changes shall comply with the provisions of the Measures (the old regulations still apply to the unchanged items); where a change of actual control is submitted, the changed private investment fund manager shall fully comply with the registration requirements of the Measures.
3. From May 1, 2023, the association shall handle the registration, filing and information changes that have been submitted before the implementation of the Measures but have not yet been completed.

#### **D. Conclusion**

On the whole, the Measures and supporting guidelines systematically and completely stipulate the regulatory requirements for the establishment, modification, operation, and fund raising, investment, management and exit of private investment funds, having a direct guiding role for private investment fund managers on the application for registration, fund filing, and compliance operations.

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