

Interim Provisions on the Administration of Private Investment Funds of the PRC

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

Article 1 — These Provisions are formulated in accordance with the Securities Investment Fund Law of the People's Republic of China, the Company Law of the People's Republic of China, the Partnership Enterprise Law of the People's Republic of China, and other laws and administrative regulations, for the purpose of regulating the activities of private investment funds, protecting the lawful rights and interests of investors and parties concerned, and promoting the sound development of the private investment fund industry.

Article 2 — The term "private investment funds" (hereinafter referred to as "private funds") as used in these Provisions refers to investment funds that are established within the territory of the People's Republic of China by way of non-public offering to raise funds from investors.

Article 3 — Private fund managers, private fund trustees, and private fund distributors shall perform their duties with due diligence and fulfill their obligations of good faith, prudence, and diligence. Private fund investors shall ensure that the source of their investment funds is lawful and shall not unlawfully pool the funds of others to invest in private funds.

Article 4 — The China Securities Regulatory Commission (CSRC) and its dispatched offices shall, in accordance with the law, supervise and administer private fund business activities such as the registration of private fund managers, private fund filing, fund raising, and investment operations.

Article 5 — The Asset Management Association of China (AMAC) shall exercise self-regulatory management over private fund managers, private fund trustees, private fund distributors, and other private fund service institutions in accordance with law and the authorization of the CSRC.

Chapter II — Registration and Filing

Article 6 — Private fund managers shall, in accordance with the provisions of the AMAC, apply to the AMAC for registration and submit the following basic information:

- (1) industrial and commercial registration and business license;
- (2) articles of association or partnership agreement;
- (3) list of major shareholders or partners;
- (4) basic information on senior management personnel; and
- (5) other information required by the AMAC.

Article 7 — The AMAC shall, within 20 working days from the date of receipt of the registration application materials, handle the registration formalities by means of public announcement on its website for private fund managers that have submitted complete application materials. The published registration information of private fund managers shall include basic information such as the name of the private fund manager, its date of establishment, and its registered capital.

Article 8 — After the completion of fund raising by a private fund, the private fund manager shall complete the filing of the private fund with the AMAC and submit the following information:

- (1) basic information on the main investment direction and fund category;
- (2) the fund contract, articles of association, or partnership agreement;
- (3) a fund raising promotion brochure;
- (4) the type, name, and amount of capital contribution of each investor;
- (5) a copy of the letter of undertaking for qualified investors signed by each investor;
- (6) a copy of the asset certification document provided by each investor;

- (7) a custody agreement or a letter of guarantee for the security of the fund property; and
- (8) other information required by the AMAC.

Article 9 — Where there is a material change in the registration information of a private fund manager, the private fund manager shall, within 10 working days after the occurrence of such change, apply to the AMAC for modification of the registration. Where there is a material change in the filing information of a private fund, the private fund manager shall, within 5 working days after the occurrence of such change, apply to the AMAC for modification of the filing.

Article 10 — Where a private fund manager is dissolved, liquidated, or its registration is revoked in accordance with law, the AMAC shall cancel its registration and make an announcement on the AMAC website.

Chapter III — Qualified Investors

Article 11 — A private fund shall be offered to qualified investors. Where the total number of qualified investors in a single private fund exceeds the limit prescribed by law, a public offering of securities investment funds shall be initiated.

Article 12 — The term "qualified investor" as used in these Provisions refers to a unit or individual that meets the relevant standards, has the corresponding capacity for risk identification and risk assumption, and the amount of investment in a single private fund is not less than 1 million yuan.

Article 13 — The following investors are deemed to be qualified investors:

- (1) social security funds, enterprise annuities, and other pension funds, charitable funds and other social welfare funds;
- (2) investment plans established by law and filed with the AMAC;
- (3) private fund managers and their employees who invest in the private funds they manage; and
- (4) other investors prescribed by the CSRC.

Article 14 — When a private fund manager or private fund distributor offers private fund shares to investors with the capacity for risk identification and risk assumption but whose asset amount is less than the amount prescribed in Article 12, Paragraph 1 or whose annual income is less than the amount prescribed in Article 12, Paragraph 2, the investor shall ensure that the source of the funds used for investment in the private fund is lawful and shall not unlawfully pool the funds of others to invest in private funds.

Chapter IV — Fund Raising

Article 15 — Private fund managers and private fund distributors shall not offer private funds to the general public through public media including newspapers, radio, television, and the internet, or through lectures, reports, seminars, or other means; and shall not offer private funds to investors who do not meet the qualification standards.

Article 16 — Private fund managers that offer private fund shares by themselves shall adopt methods such as questionnaire surveys to evaluate the risk identification capacity and risk assumption capacity of investors, and the investors shall make a written undertaking. No entity or individual may offer private fund shares to investors whose risk identification capacity and risk assumption capacity do not match the risk level of the private fund.

Article 17 — Private fund managers that offer private fund shares by themselves or private fund distributors shall make specific disclosures to investors on matters such as the fund contract, the rights and obligations of the parties, the fund investment risks, the fund fees, and other matters, and shall fully remind investors of the risks in the promotion brochure. No entity or individual may offer private fund shares by means of falsely

promising a guaranteed principal or guaranteed returns, exaggerating or fabricating past performance, or using other deceptive or misleading methods.

Article 18 — When concluding a fund contract, a private fund manager shall agree with the investors on the method of information provision, the content, frequency, and method of information disclosure, and the allocation of liability. Information disclosure shall be truthful, accurate, and complete.

Article 19 — When raising a private fund, the promoter shall complete the following formalities for the confirmation of investors before signing the fund contract:

- (1) requiring the investors to sign a letter of undertaking for qualified investors;
- (2) verifying and confirming the financial status of the investors; and
- (3) evaluating the risk tolerance of the investors.

Chapter V — Operation of Funds

Article 20 — Private fund managers shall, in accordance with the fund contract, manage and operate the fund property. No entity or individual may misappropriate or embezzle fund property.

Article 21 — Unless otherwise agreed in the fund contract, private fund managers shall not assign or delegate all or part of their management responsibilities under the fund contract to a third party. Where the fund contract provides that a private fund manager may assign or delegate management responsibilities, the private fund manager shall bear corresponding liability for the acts of the third party.

Article 22 — A private fund manager shall establish and improve internal control systems including mechanisms for firewalls between proprietary business and fund management business and mechanisms for the prevention of insider trading and conflicts of interest.

Article 23 — A private fund manager shall not commit any of the following acts:

- (1) mixing its proprietary property or the property of others with the fund property for investment activities;
- (2) treating the fund property it manages inequitably;
- (3) using the fund property or its position for the purpose of seeking benefits for itself or others other than the fund or engaging in insider trading, market manipulation, or other improper affiliated transactions;
- (4) providing loans or guarantees to others using fund property, unless otherwise provided by the fund contract;
- (5) engaging in investment activities that exceed the scope of the fund contract;
- (6) occupying or misappropriating fund property;
- (7) divulging undisclosed information obtained through the use of the fund property or using such information to engage in or expressly or implicitly advise others to engage in related trading activities;
- (8) engaging in investments that may create unfair competition with the fund or damage the interests of the fund;
- (9) engaging in investment activities that damage the lawful rights and interests of the fund or fund share holders; or
- (10) other acts prohibited by laws, administrative regulations, and the provisions of the CSRC.

Article 24 — A private fund trustee shall perform its duties in accordance with law, strictly separate the private fund assets under its custody from its proprietary assets and other assets, maintain independent accounts for each private fund under its custody, and ensure the integrity and independence of the fund assets.

Article 25 — The number of investors in a private fund shall comply with the provisions of laws and administrative regulations. The aggregate number of investors in a private fund shall not exceed the statutory limit. Where funds are pooled by means of partnerships, contracts, or other means to invest in a private fund, the private fund manager or private fund distributor shall verify the ultimate investors thoroughly and the aggregate number of investors shall be calculated on a consolidated basis.

Chapter VI — Industry Self-Regulation

Article 26 — The AMAC shall, under the guidance of the CSRC, establish and improve self-regulatory rules for private funds, implement differentiated industry self-regulation for private fund managers and private funds, and strengthen the self-regulatory management of private fund business activities.

Article 27 — The AMAC shall establish a private fund information reporting system and require private fund managers to submit information on the operations of private funds on an ongoing basis. Private fund managers shall, in accordance with the provisions of the AMAC, complete the reporting of private fund business information, and the private fund managers shall be responsible for the truthfulness, accuracy, and completeness of the information reported.

Article 28 — The AMAC shall establish management systems such as the file management, credit management, and integrity management of private fund managers and their employees, and publicize relevant information on its website.

Chapter VII — Supervision and Administration

Article 29 — The CSRC and its dispatched offices shall, in accordance with law, supervise and inspect the compliance of private fund managers, private fund trustees, private fund distributors, and other private fund service institutions in their private fund business activities. The measures for supervision and inspection shall include the following:

- (1) entering the place of business of the entity under inspection to conduct investigations;
- (2) questioning the entity under inspection and requiring it to provide explanations on matters under investigation;
- (3) consulting and duplicating the registration and filing information, financial and accounting information, and other relevant documents and materials of the entity under inspection; and
- (4) other measures prescribed by laws and administrative regulations.

Article 30 — The CSRC shall include private fund managers, private fund trustees, private fund distributors, and other private fund service institutions and their employees in the credit records, and in accordance with law, publicize information on their integrity and trustworthiness.

Article 31 — Where a private fund is under any of the following circumstances, the CSRC and its dispatched offices may, as needed, order the private fund manager to rectify within a prescribed time limit, and may, as the circumstances warrant, take administrative regulatory measures such as ordering a correction and issuing a warning letter:

- (1) failure to complete the registration or filing formalities with the AMAC in accordance with the provisions of these Provisions;
- (2) engaging in fund raising activities that do not comply with the provisions of these Provisions; or
- (3) conducting investment operations that do not comply with the provisions of these Provisions.

Article 32 — The CSRC shall strengthen communication and coordination with the relevant departments of the State Council and local governments regarding the supervision of private funds, establish a working mechanism such as information sharing, risk monitoring, and risk disposal, and effectively prevent, control,

and resolve systemic and regional risks in the private fund industry.

Chapter VIII — Special Provisions on Venture Capital Funds

Article 33 — The term "venture capital funds" as used in these Provisions refers to private equity funds that mainly invest in the equity of unlisted start-up enterprises.

Article 34 — The AMAC shall implement differentiated industry self-regulation and services for venture capital funds in terms of registration and filing, information reporting, and other aspects.

Article 35 — For venture capital funds, the CSRC shall implement differentiated supervision and management in terms of the methods of fund raising, restrictions on investments, and information disclosure standards, and shall optimize the raising and investment environment for venture capital funds.

Chapter IX — Legal Liability

Article 36 — Where a private fund manager, private fund trustee, or private fund distributor violates the provisions of these Provisions, the CSRC and its dispatched offices shall, in accordance with law, impose administrative penalties. Where a crime is constituted, criminal liability shall be pursued in accordance with law.

Article 37 — Where a private fund manager, private fund trustee, private fund distributor, or other private fund service institution and its employees violate the provisions of these Provisions, the CSRC and its dispatched offices may, in accordance with law, take administrative regulatory measures such as ordering a correction, holding a regulatory talk, issuing a warning letter, and other measures.

Article 38 — Where a private fund manager, private fund trustee, private fund distributor, or other private fund service institution commits any of the following acts, the CSRC and its dispatched offices shall, in accordance with law, impose administrative penalties; where the case is serious, the CSRC may, in accordance with law, revoke the relevant business license of the relevant personnel or take measures such as banning them from the securities market:

- (1) failing to complete registration with the AMAC or to continue operations after the registration has been canceled, and using the words "fund" or "fund management" or approximately similar names in the business name to conduct private fund business activities;
- (2) making a public offering of private funds without authorization;
- (3) engaging in fraudulent activities during the fund raising process; or
- (4) other violations of laws, administrative regulations, or the provisions of the CSRC.

Chapter X — Supplementary Provisions

Article 39 — The term "private fund manager" as used in these Provisions includes private fund managers established within the territory of the People's Republic of China as companies or partnerships. Private fund managers shall have the corresponding professional capacity. The CSRC may, based on the principle of prudential regulation, formulate specific provisions on the qualification requirements for senior management personnel and other practitioners of private fund managers.

Article 40 — Where a private fund manager applies to engage in the public offering of securities investment fund management business, it shall meet the qualification requirements for public offering fund management business in terms of the governance structure, internal control system, compliance management, risk management, and other aspects.

Article 41 — These Provisions shall come into force on the date of promulgation.

Disclaimer: This English translation is provided for reference purposes only. While every effort has been made to ensure accuracy, the original Chinese text of the Interim Provisions on the Administration of Private Investment Funds (CSRC Order No. 105, 2014) shall prevail in all legal matters. For matters requiring legal interpretation or application, readers are advised to consult the official Chinese text and seek professional legal advice. Dan Young Business Consultancy makes no warranty as to the accuracy or completeness of this translation and accepts no liability for any reliance placed upon it.