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I. The Regulations on Supervision and Administration of Private Investment Funds

On July 9, 2023, the Regulations on Supervision and Administration of Private Investment Funds (the "**Regulations**"), the first administrative regulation of China's private equity investment fund industry, was formally announced. The Regulations came into force on September 1, 2023. In this publication, we will introduce the core content and some significant provisions of the Regulations.

1. Scope of application

Article 2 of the Regulations clarifies the scope of application, namely "*Within the territory of People's Republic of China, anyone who raises funds in a non-public manner, to set up an investment fund or to establish a company or partnership in accordance with the law for the purpose of carrying out investment activities, and managed by a private fund manager or a general partner, in order to carry out investment activities for the benefit of investors*" will be subject to the Regulations. For foreign institutions, offshore institutions and businesses, it is worth noting that Article 61 of the Regulations states that overseas institutions can not directly solicit funds from domestic investors to establish private equity funds. However, there are no explicit provisions on the entry requirements for foreign private equity and venture capital fund managers. Hence, whether they can be set up also depends on the control of the local financial administration.

2. Regulatory requirements for private fund managers and private fund custodians

- a. Requirements for partnership fund managers: Article 7 of the Regulations provides that where a private equity fund is established in the form of a partnership and the assets are managed by the general partner, the general partner should be subject to the provisions of the Regulations on private equity fund managers.
- b. Prohibitions on private fund managers: Article 8 of the Regulations specifies the prohibitions against acting as a private fund manager and becoming its controlling shareholder, de facto controller or general partner.
- c. Duties of private equity fund managers: Article 11 of the Regulations specifies the duties to be performed by private equity fund managers, including:
 - raising funds and filing for private equity funds in accordance with the law;
 - managing and keeping separate accounts for different private equity fund properties under management and making investments;
 - managing and investing private equity funds in accordance with the fund contract and establishing an effective risk control system;

- determining the income distribution program of the private fund and distributing the income to the investors in accordance with the fund contract;
 - providing the investors with the information related to the business activities of the private fund management in accordance with the fund contract;
 - keeping the records, books, statements and other relevant information of the business activities of the management of the property of the private fund;
 - carrying out other duties as stipulated by the securities regulatory authorities under the State Council and as agreed in the fund contract.
- d. Exit: Article 14 of the Regulation provides for 6 scenarios for private fund managers to be deregistered:
- applying for deregistration on its own;
 - being dissolved, revoked or declared bankrupt according to law;
 - being held legally liable for illegal fund-raising, illegal business operation and other major violations of the law;
 - failing to file the first private equity fund within 12 months from the date of registration;
 - failing to file a new private equity fund within 12 months from the date of the completion of the liquidation after all the private equity funds under management have been liquidated; and
 - Other circumstances stipulated by the securities regulatory authority of the State Council.

Before the registration and filing organization cancels the registration of the private fund manager, it shall notify the private fund manager to liquidate the private fund property or transfer the private fund management responsibility to other registered private fund managers according to the law.

3. Liabilities

Compared to the maximum fine of 30,000 RMB in the past, the fine in the Regulations rises to a maximum of 1 million RMB, with directly responsible supervisors and other responsible persons liable for fines of up to 300,000 RMB, and some of the acts may also be subject to fines of more than one and less than five times the amount of illegal income.

4. Conclusion

The private fund industry will enter a new era of compliance, when private fund managers and private funds will face higher entry thresholds, stricter regulatory requirements and more serious penalties. To meet the challenges of the new rules,

private fund managers and private funds should take the initiative to ensure compliance with the Regulations.

II. The Notice Regarding the Implementation of Several Measures to Promote Institutionalized Opening-Up of Qualified Free Trade Pilot Zones and Free Trade Ports in accordance with International High Standards

On June 29, 2023, the State Council published a Notice on Several Measures for Promoting System-based Opening Up in Qualified Pilot Free Trade Zones and Free Trade Ports (“**Notice**”). With this Notice, China plans to pilot international high standards and promote institutional opening-up of some eligible free trade zones and Hainan Free Trade Port.

Free Trade Opening Zones (“**FTZ**”) and Ports (“**FTP**”) (together as “**Pilot Regions**”) are regions that serve as experimental grounds for testing and implementing innovative policies and reforms to promote international trade and investment. Currently, China has twenty-one FTZs and FTPs, whereas the Notice only addresses six: Shanghai FTZ, Guangdong FTZ, Tianjin FTZ, Fujian FTZ, Beijing FTZ. The most notable changes as stipulated in the Notice are:

1. Encourage the growth of trade in goods

- This Notice seeks to facilitate the importation of remanufactured products of high quality while assuring adherence to applicable laws and national technical standards.
- In addition, aeroplanes, ships and their components and parts brought into the Pilot Regions from abroad after temporary repairs are exempted from customs, with or without added value.
- Customs in the Pilot Regions should release goods that have arrived and provide the necessary information for customs clearance within 48 hours, provided they comply with the relevant laws and regulations and complete the required quarantine procedures.

2. Trade in services should be liberalised and made easier

- Measures will be taken to facilitate trade in services, including allowing foreign financial institutions in the Pilot Regions to provide services similar to those provided by their Chinese peers, except for certain new financial services. With this action, local and foreign financial institutions operating in the Pilot Regions will have comparable opportunities and equal chances.
- Individuals and businesses residing in these Pilot Regions can now legally access and purchase financial services from abroad. This initiative aims to promote global connectivity and streamline cross-border transactions within

the FTZs and FTPs.

- To improve efficiency and streamline processes, financial regulatory authorities have established specific timeframes for deciding on applications from overseas financial institutions and cross-border service providers. The decision should be made within a specified timeframe of 120 days and applicants should receive prompt notification of the decision outcomes.

3. Business environment

- The Notice provides various business facilitation and enhanced protections to foreign investors. The protection of IP rights will be strengthened by local courts providing prompt IP-related remedies upon receiving requests for protection from businesses. This allows businesses to protect their IP rights and pursue efficient legal solutions promptly.
- The Notice also highlights the task of enhancing and improving the risk prevention and control system. It is emphasised that FTZs and FTPs should create an all-inclusive system to detect considerable risks and avoid systemic risks. Effective evaluation, monitoring, and early warning of various risks require close coordination between the Ministry of Commerce and relevant departments.

4. Professional personnel and their accompanying family members can easily enter and stay in the country

The Notice will facilitate the entry of professional personnel on a temporary basis. For experts who are transferred to foreign-invested enterprises in the Pilot Regions, their spouses and other family members could enjoy the same entry and temporary stay period as the experts.

In conclusion, the initiatives under the newly implemented Notice aim to promote global connectivity and streamline cross-border transactions within the FTZs and FTPs. The financial regulatory authorities will determine the specific categories of overseas financial services that can be accessed across borders, considering the changing requirements of both businesses and individuals.

In China's pursuit of economic recovery, growth and global integration, the content of the Notice is expected to play a crucial role. Foreign investors are acknowledged to be important contributors to China's economic development, and encouraging them to invest is a priority at all levels of government. The introduction of the Notice is one of the latest efforts in this regard, which aims to create a more favourable environment for foreign companies, to streamline trade procedures and to reduce barriers.

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