

Financial

Beijing QFLP Pilot Program Sets Sail Again

Beijing, as one of the pioneers of the Qualified Foreign Limited Partnership (QFLP) pilot program, launched its QFLP pilot in 2011. The Beijing Financial Regulatory Bureau (BFRB) and the Beijing Administration for Market Regulation (BAMR) jointly issued the *Interim Measures on the Pilot Program of Qualified Foreign Limited Partner* (“Interim Measures”) and the corresponding policy interpretation on April 28, 2021, which updates and improves the pilot program.

Below we summarize the key contents of the Interim Measures.

I. Qualification Requirements

From its initial launch, the Beijing QFLP pilot program has allowed two QFLP fund management models: a *domestic* QFLP fund manager with foreign-invested QFLP funds or a *foreign-invested* QFLP fund manager with foreign-invested QFLP funds. The Interim Measures explicitly categorize QFLP fund managers into *domestic* QFLP fund managers and *foreign-invested* QFLP fund managers. That said, both qualified domestic private fund managers and foreign institutions may apply for QFLP pilot qualifications and investment quotas in Beijing.

According to the Interim Measures, a QFLP fund

manager shall meet the following requirements:

- (1) Qualification requirement: The controlling shareholder, de factor controller or executive partner of a QFLP fund manager shall either be (i) a financial institution; or (ii) a fund management institution whose assets under management are at least RMB 100 million or the equivalent amount in foreign currency.
- (2) Compliance requirements: The institution itself or its shareholder(s) shall operate normally, have sound governance structures and internal control systems, and have not been subject to any punishment by any judicial authority or relevant regulatory authority.
- (3) Personnel requirement: A QFLP fund manager shall have at least 2 senior management personnel with (i) more than 3 years of experience in equity investment or equity investment management; and (ii) good personal credit records.

II. QFLP Funds

1. Initial Fundraising Scale

A QFLP fund in Beijing can be established as a corporate-type, partnership-type or contractual-type fund. The Interim Measures

require that the initial size of a single QFLP fund shall be, in principle, at least RMB 100 million or its equivalent in foreign currency, and the QFLP fund manager may subscribe to a certain proportion of the fund shares.

A QFLP fund manager may launch more than one QFLP fund and is allowed to allocate and adjust its QFLP investment quota among different QFLP funds.

2. Investment Scope

The Interim Measures expand the investment scope of the QFLP funds. Other than equities of unlisted companies, a QFLP Fund is explicitly allowed to invest in (i) ordinary shares privately issued and traded by listed companies (including acquiring listed shares through block trade, transferring by agreements and private placements, etc.), preferred shares convertible to ordinary shares, debt-to-equity swaps, convertible bonds, and participation as existing shareholders in private placements by listed companies; (ii) mezzanine debts, investments in private bond issuances, and non-performing assets; and (iii) domestic private investment funds.

The Interim Measures underscore the importance of domestic investments by QFLP funds complying with the requirements on special administrative measures on foreign investment access to China. If the China Securities Regulatory Commission and the Asset Management Association of China (AMAC) have special requirements on the domestic investments by QFLP funds, such requirements shall be followed as well. For example, the QFLP funds launched by a QFLP fund manager having registered with the AMAC as a private-equity type fund manager shall comply with the AMAC's requirements on the investment scope of private equity-type funds.

3. Qualification Requirements on Limited Partners (LP)

According to the Interim Measures, an LP of a QFLP fund shall meet the following requirements:

- (1) Institutions or individuals that have corresponding capacity for risk identification and risk bearing capabilities, as well as relevant investment experience.
- (2) Institutional investors shall have sound governance structures and well-developed internal controls and not have been subject to any punishment by national, local judicial authorities or relevant regulatory institutions in the past three years. As for a foreign institutional investor, its net assets shall be no less than USD 5 million or its equivalent, and its single investment in a QFLP fund shall be no less than USD 1 million or its equivalent; as for a domestic institutional investor, its net assets shall be no less than RMB 10 million, and its single investment in a QFLP fund shall be no less than RMB 1 million.
- (3) As for a domestic or foreign individual investor, their financial assets shall be no less than RMB 5 million or its equivalent or they shall have an average annual income of not less than RMB 500,000 over past three years, and their single investment in a QFLP fund shall be no less than RMB 1 million.

It is noteworthy that the qualification requirements for an investor of a QFLP fund (i.e., LP) are higher than the requirements for a qualified investor of a domestic private fund.

III. Whether A QFLP Fund Manager Shall Be Registered As A Private Fund Manager

The Interim Measures do not require a QFLP fund manager to register with the AMAC as a private fund manager (PFM). Instead, the Interim Measures provide that a QFLP fund manager shall register with the AMAC as a PFM if the relevant laws and regulations require so. Hence, we understand that a QFLP fund manager incorporated in Beijing is not required to be registered as a PFM with the AMAC if it does not raise funds onshore. Notably, if a QFLP fund manager hopes to raise a RMB fund in China, it is mandatory to register itself with the AMAC as a PFM before conducting fundraising activities in accordance with the relevant regulations governing private funds, and file the RMB fund with the AMAC.

IV. Application Procedures

The application procedures of the Beijing QFLP pilot program are similar to those in Shanghai, i.e., submitting the application documents to competent authorities, obtaining the QFLP pilot qualification after being reviewed and approved by the competent authorities, setting-up the QFLP fund manager (if applicable), handling PFM

registration (if applicable) and finally launching QFLP funds.

The updates in the Beijing QFLP pilot program further simplified the QFLP application procedures. Beijing adopts a “one-stop shop” model, providing direct one-on-one personal service from the QFLP qualification application to PFM registration. With respect to the application review, similar to other QFLP pilot cities like Shanghai, Beijing adopts the joint review mechanism, meaning regulatory authorities such as the BFRB, the BAMR and the State Administration of Foreign Exchange Beijing Branch will jointly review the QFLP application. The Joint Review Office will issue a written approval for the QFLP pilot and grant an investment quota to the applicant once approved.

We believe that the facilitation of the application procedures and the expansion of the investment scope may increase the functionality of Beijing’s QFLP pilot program, and help Beijing attract high-quality domestic and foreign asset management associations. Nonetheless, details such as tax policies remain to be clarified through future practice.

We will continue to pay close attention and keep our clients apprised of any important developments.

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金融法律热点问题

北京 QFLP 试点再起航

作为最早启动合格境外有限合伙人(简称“QFLP”)试点机制的城市之一,北京于 2011 年即启动了 QFLP 试点。2021 年 4 月 28 日,北京市地方金融监管局(以下简称“北京金融局”)、北京市市场监督管理局(以下简称“北京市场监管局”)联合发布了《关于开展合格境外有限合伙人试点的暂行办法》(以下简称“《暂行办法》”)及其政策解读,对 QFLP 试点机制进行了更新与完善。

下面我们总结了《暂行办法》的主要内容。

一、申请资质

北京 QFLP 试点机制自设立时即允许“内资管外资”和“外资管外资”两种模式。《暂行办法》明确将 QFLP 管理人分为内资 QFLP 管理人和外资 QFLP 管理人,也即,符合条件的内资私募基金管理人或外资机构均可在北京申请 QFLP 试点资质及额度。

根据《暂行办法》,QFLP 管理人需满足以下条件:

- (1) 资质要求: QFLP 管理人的控股股东、实际控制人或执行事务合伙人必须为(i)金融机构;或(ii)基金管理规模不低于 1 亿元人民币或等值外币的基金管理企业。
- (2) 合规要求: 机构本身或其股东运作规范,具有健全的治理结构和完善的内控制度,近三年内未受到司法机关和相关监管机构的处罚。

- (3) 人员要求: 具备至少 2 名具有三年以上从事股权投资或股权投资管理业务经历,且个人信用记录良好的高级管理人员。

二、QFLP 基金

1、初始成立规模

在北京设立的 QFLP 基金可为公司型、合伙型或契约型。《暂行办法》要求单只 QFLP 基金的规模原则上不低于 1 亿元人民币或等值外币, QFLP 管理人可以认缴一定比例的基金份额。

QFLP 基金管理人可设立多只 QFLP 基金,并在不同的基金之间调配额度。

2、投资范围

《暂行办法》扩大了 QFLP 基金的投资范围,除非上市公司股权外,明确允许 QFLP 基金投资(i)上市公司非公开发行和交易的普通股,含定向发行新股、大宗交易、协议转让等,可转换为普通股的优先股,债转股和可转债,可作为上市公司原股东参与配股; (ii)夹层投资、私募债、不良资产; (iii) 境内私募投资基金。

《暂行办法》强调, QFLP 基金境内投资应符合外商投资准入特别管理措施的要求,并在中国证券监督管理委员会和中国证券投资基金业协会(以下简称“基金业协会”)有特别要求的情况下,遵循该等要求。例如,登记为私募股权类基金管理人的 QFLP 管理人所发行的 QFLP 基金还应当遵循基

金业协会对于私募股权基金投资范围的要求。

3、 有限合伙人(LP)资质要求

根据《暂行办法》，QFLP 基金的 LP 应当满足下列要求：

- (1) 具备相应的风险识别能力、风险承担能力的机构或个人，具有相关的投资经历。
- (2) 机构投资者需具有健全的治理结构和完善的内控制度，近三年内未受到所在国家、地区司法机关和相关监管机构的处罚；境外机构投资者净资产不低于 500 万美元等值货币，单笔投资金额不低于 100 万美元等值货币；境内机构投资者净资产不低于 1000 万元人民币，单笔投资金额不低于 100 万元人民币。
- (3) 境内外个人投资者金融净资产不低于 300 万元人民币且金融资产不低于 500 万元人民币或近三年年均收入不低于 50 万元人民币，单笔投资金额不低于 100 万元人民币。

值得注意的是，前述对于 QFLP 基金投资者(即 LP)的要求是高于境内私募基金合格投资者的门槛要求的。

三、QFLP 管理人是否需要登记为私募基金管理人

《暂行办法》并未强制要求 QFLP 管理人在基金业协会登记为私募基金管理人，而是规定根据现行相关规定需在基金业协会登记的，则应当登记。我们理解，设立在北京的 QFLP 基金管理人如无任

何中国境内募资行为，则无需在基金业协会办理私募基金管理人登记，而如果 QFLP 基金管理人拟在中国境内募集设立人民币基金的，则需根据现行私募基金相关规定在基金业协会登记成为私募基金管理人后方可进行募资活动，并就该人民币基金在基金业协会办理私募基金备案。

四、 申请流程

北京 QFLP 试点申请流程与上海类似，即向有关审批部门递交申请材料，经审核后获得 QFLP 试点资质，而后进行 QFLP 管理人设立(如需)、基金管理人登记(如需)，最后发起设立 QFLP 基金。

本次北京 QFLP 试点机制的更新进一步便利了 QFLP 试点资质申请流程。北京采取“一站式受理”方式，由北京金融局提供从资质申请到基金业协会管理人登记的一对一专人服务。就资质审核而言，与上海等其他 QFLP 试点地区类似，采取试点联审工作机制，北京金融局、北京市市场监督管理局、外汇管理局北京分局等机构将联合进行审核，经审核符合试点要求的，由试点工作联审办公室向申请人出具同意开展试点、给予试点额度的书面意见。

我们认为，申请流程的便利化以及投资范围的扩大将提高北京 QFLP 试点机制的竞争力，有助于北京吸引高质量的境内外资产管理机构，但诸如税收政策等细节仍有待在实践中进一步明确。

我们将持续关注并及时与我们的客户分享最新的进展。

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