

金融法律热点问题

深圳 QDIE 的最新进展与实践

2022年1月，国家外汇管理局发布了《国家外汇管理局开展跨境贸易投资高水平开放试点》，明确在特定地区进一步提高跨境投融资便利性，并将 QFLP 和 QDLP 作为重点试点内容之一。随后，相关地区的外管局也相继出台了《开展跨境贸易投资高水平开放外汇管理改革试点实施细则》及双 Q 的相关操作指引。

深圳作为改革开放“排头兵”和创新示范区，其特有的 QDIE 制度（合格境内投资者境外投资）也颇为引人关注。深圳的 QDIE 额度于 2020 年底便提升至 100 亿美元，深圳市地方金融监督管理局于 2021 年 4 月颁布了更新后的《深圳市开展合格境内投资者境外投资试点工作的管理办法》（以下简称“《深圳 QDIE 管理办法》”），以有序推进 QDIE 试点工作，以期吸引和培育更多投资者来深聚集投资。据《深圳商报》近期报道，截至 2021 年底，深圳试点同意 QDIE 管理企业 69 家，已出境投资总额度 19.9 亿美元。¹

结合深圳 QDIE 发展的最新情况，本文讨论实操中比较受关注的两个问题。

一、通过 QDIE 开展境外投资是否需要办理发改委 ODI 备案/核准手续

¹深圳商报：《深圳试点同意 QDIE 管理企业 69 家 已出境投资总额度 19.9 亿美元》，http://duchuang.sznews.com/content/2022-02/10/content_24926082.html。

自 QDIE 试点实施以来，部分投资机构认为，通过 QDIE 通道进行境外投资，即无需办理发改部门的 ODI 备案/核准手续。但国家发改委于 2021 年 8 月 26 日在其官网发布问答称：“投资主体通过 QDII、QDLP、QDIE 等途径开展境外投资，有关投资活动属于《企业境外投资管理办法》（以下简称“11 号令”）第二条所称境外投资的，投资主体应当按照 11 号令履行境外投资有关手续。”就上述答复在深圳的执行情况，我们近期向深圳市发改委进行了电话确认，深圳目前执行的口径与国家发改委的问答内容保持一致。

我们理解，这一要求对 QDIE 业务的开展会造成不小影响。一方面，发改部门 ODI 备案程序需要一定的周期，深圳地区实操中往往需要 1-2 个月的时间，这对 QDIE 原本可快速投资境外项目的便捷性会造成冲击。另一方，深圳 QDIE 投资范围较为宽泛，除可投资境外非上市公司股权与上市公司非公开交易的股票外，还可投资境外债权和境外基金。以投资境外基金为例，根据国家发改委的系列规则，“在境外设立无具体实业项目的股权投资基金或投资平台”落入了《境外投资敏感行业目录（2018 年版）》，需要国家发改委的核准，但实操中国家发改委核准较难取得。这对于希望通过 QDIE 投资境外基金的投资人而言，显然会造成实质障碍。

二、申请 QDIE 管理企业资格和额度的具体条件

《深圳 QDIE 管理办法》虽未明确申请境外投资基金管理企业试点资格以及合格境内投资者境外投资试点额度需要满足的具体条件和申请材料，但据我们观察实践中仍会结合申请人的背景资质和投资管理经验做综合判断，并不意味着降低准入门槛。根据我们的实操经验，申请境外投资基金管理企业试点资格时，应当提交境外投资基金管理企业可行性分析报告、管理企业相关资质证明材料和管理企业、股东及实控人的验资报告等，具体材料

清单见后附表格一。申请合格境内投资者境外投资试点额度时，应当提交拟设或已设境外投资主体的可行性分析、储备项目可行性分析等资料，具体材料清单见后附表格二。

随着其他地区 QDLP 制度便利化的不断提升，我们相信和期待深圳亦将不断推进人民币资本项下的跨境合作和创新开放，QDIE 制度也会随之迸发出更强的生命力。

表格一：申请境外投资基金管理企业试点资格材料清单

序号	材料名称
1	境外投资基金管理企业申请表
2	境外投资基金管理企业可行性分析报告
3	境外投资基金管理企业高管人员简历(法人、董事、监事等)
4	境外投资基金管理企业高管人员身份证复印件
5	境外投资基金管理企业相关资质证明材料(外资需第三方翻译、公证)
6	境外投资基金管理企业/股东/实控人验资报告(外资需第三方翻译、公证)
7	商事主体名称证明书(如新设, 需提供)
8	公司章程(合伙协议)
9	关于材料真实性的承诺函
10	高管人员无犯罪证明
11	要求的其他材料

表格二：申请合格境内投资者境外投资试点额度材料清单

序号	材料名称
1	拟设/已设境外投资主体基本情况表
2	拟设/已设境外投资主体的可行性分析
3	储备项目可行性分析
4	境外投资基金管理企业资格核准文件
5	境外投资基金管理企业切实履行投资者适当性管理职责的承诺函
6	拟选资金托管人确认函
7	关于材料真实性的承诺函
8	商事主体名称证明书(如以公司、有限合伙形式新设基金, 需提供)
9	高管/管理团队人员简历、无犯罪证明
10	其他材料

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Financial

The QDIE Pilot Program: The Latest Developments and Practice

In January 2022, the State Administration of Foreign Exchange (“SAFE”) issued the *Implementation of the Pilot Program for the High-Level Opening Up of Cross-border Trade and Investment*, aiming to further facilitate cross-border investment and financing activities in certain regions. The QFLP (Qualified Foreign Limited Partnership) and QDLP (Qualified Domestic Limited Partner) were highlighted as two key pilot programs. Following this, the local bureaus of SAFE in the relevant regions issued the *Detailed Implementation Rules for the Launching of Pilot Program for the Reform of Foreign Exchange Administration on High-Level Opening Up of Cross-border Trade and Investment* as well as other relevant operational guidelines for the QFLP and QDLP pilot programs.

Shenzhen, as a pioneer of China’s reform and opening-up and a model city of innovation, has sponsored a unique QDIE pilot program (Qualified Domestic Investment Enterprise) that enables qualified domestic investors to invest in foreign markets within permitted quotas, garnering a lot of market attention. At the end of 2020, the total quota for the QDIE pilot program was raised to USD 10 billion. In April 2021, the Shenzhen Financial Regulatory Bureau amended the *Administrative Measures of Shenzhen for the Implementation of the Pilot Program for Overseas*

Investment by Qualified Domestic Investors (“Shenzhen QDIE Measures”) to promote the implementation of the QDIE pilot program in an orderly manner and attract more investment in Shenzhen. It was reported that by the end of 2021, Shenzhen had approved a total of 69 QDIE management enterprises for pilot qualification, with a total amount of overseas investment of USD 1.99 billion.¹

In the context of the latest development of the QDIE pilot program, we discuss below two of the major issues in practice concerning market participants.

I. Is ODI filing/approval with the Development and Reform Commission required for overseas investment through the QDIE pilot program?

When the QDIE pilot program was first implemented, some investors believed that there was no requirement to go through the Outward Direct Investment (“ODI”) filing/approval formalities with the Development and Reform Commission for

¹ Shenzhen Economic Daily: “69 QDIE management enterprises have been approved for pilot, with a total quota of USD 1.99 billion approved for overseas investment (http://duchuang.sznews.com/content/2022-02/10/content_24926082.html).

overseas investment. However, on August 26, 2021, the National Development and Reform Commission (“NDRC”) released a Q&A on its official website, clarifying that if overseas investment activities conducted by an investor through the QDII (i.e. Qualified Domestic Institutional Investor), the QDLP, the QDIE, or other pilot programs fall into the scope of overseas investment activities as stipulated in Article 2 of the *Administrative Measures for the Overseas Investment by Enterprises* (the “Decree No.11”) released by the NDRC, then the investor shall go through the relevant formalities for overseas investment in accordance with this Decree No.11. According to our recent verbal consultation with the Shenzhen Development and Reform Commission, Shenzhen is currently implementing the requirements as specified in the Q&A of the NDRC.

This may have significant implications on the business operations of QDIE management enterprises. On the one hand, ODI filing is time-consuming. It usually takes 1 to 2 months to complete the ODI filing in Shenzhen, which may adversely impact the efficiency of overseas investment through the QDIE pilot program. On the other hand, the permissible investment scope under the QDIE pilot program is relatively broad. The QDIE management enterprises are allowed to invest not only the equity interest of foreign non-listed companies and non-publicly traded shares of foreign listed companies, but also foreign debts and foreign funds. Taking foreign funds as an example, in accordance with the rules issued by the NDRC, establishing equity investment funds or investment platforms overseas without targeting specific industrial projects shall fall under the *List of Sensitive Sectors for Overseas Investment (2018 Version)* and therefore shall be subject to the approval of the NDRC. However, in practice the NDRC’s

approval is difficult to obtain, which is a substantial obstacle for those who intend to invest in foreign funds through the QDIE pilot program.

II. Qualification Requirements and Pilot Quotas for the QDIE Pilot Program

Although the Shenzhen QDIE Measures do not specify the detailed conditions and application documents required to apply for the pilot qualification of QDIE management enterprises and the relevant pilot quota, it does not mean that the threshold for the QDIE pilot program has been lowered. Rather, based on our observations, the regulator may comprehensively review an applicant’s background and investment management experience to decide whether to grant a pilot qualification. According to our experience, when applying for the pilot qualification of the QDIE management enterprise, an applicant is required to submit items such as a report on the feasibility of the QDIE management enterprise, the qualification certificates of the QDIE management enterprise, and the capital verification reports of the QDIE management enterprise, its shareholders and its de facto controller (see Form I for the full list of application documents). When applying for the pilot quota for the QDIE pilot program, an applicant is required to submit, among other things, a report on the feasibility of the overseas investment vehicle (i.e., the QDIE fund) that is launched or proposed to be launched and a report on the feasibility of the proposed projects (see Form II for the full list of application documents).

With the improvement of the facilitation of QDLP pilot programs in other regions, we believe that Shenzhen will commit to promoting cross-border cooperation and innovation, against the backdrop of the liberalization of the Renminbi capital account,

which is expected to bring greater vitality to the QDIE pilot program.

Form I Application Documents for the Pilot Qualification of QDIE Management Enterprise

No.	Documents
1	Application form for the QDIE management enterprise
2	Report on the feasibility of the QDIE management enterprise
3	CVs of senior management personnel (including the legal representatives, directors, supervisors etc.) of the QDIE management enterprise
4	Identification certificates (photocopied) of senior management personnel of the QDIE management enterprise
5	Qualification certificates of the QDIE management enterprise (English versions to be translated into Chinese and notarized by a third party.)
6	Capital verification reports of the QDIE management enterprise, its shareholders, and its de facto controller (English versions to be translated into Chinese and notarized by a third party.)
7	Certificate of enterprise name(which is required if the QDIE management enterprise is newly established.)
8	Articles of Association/Partnership Agreements
9	Commitment letter on the authenticity of the documents submitted
10	Certificate of no criminal record of senior management personnel
11	Other materials as required

Form II Application Documents for the Pilot Quota

No.	Documents
1	Basic information on the proposed/established overseas investment vehicles
2	Report on the feasibility of the proposed/established overseas investment vehicles
3	Report on the feasibility of the proposed projects
4	Approval documents of the QDIE management enterprise
5	Commitment letter issued by the QDIE management enterprise on fulfilling the obligations regarding investor suitability
6	Confirmation letter on the proposed fund custodian
7	Commitment letter on the authenticity of the documents submitted
8	Certificate of enterprise name (which is required if the QDIE fund is newly established in the form of a company or a limited partnership enterprise.)
9	CVs and certificates of no criminal record of senior management personnel/management team members
10	Other materials as required

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