

## Financial Law

### China's NPL Market – Changes to the Thresholds for Qualified Investors.

Regulators have further moved in the NPL market and the thresholds for qualified investors of NPL license holders have changed in the past few days.

On March 27, 2020, the China Banking and Insurance Regulatory Commission ("**CBIRC**") released a new version of the *Implementation Measures of the China Banking and Insurance Regulatory Commission on Administrative Licensing for Non-bank Financial Institutions* ("**Implementation Measures**"), which updated the thresholds for qualified investors in nationwide financial asset management companies ("**nationwide AMCs**"), the most important NPL license holders in China.

Given that the *China-U.S. Trade Agreement* has paved the way for U.S. financial service suppliers to hold an AMC license in China and the fifth nationwide AMC was approved by CBIRC last month, the changes to the thresholds for investors

of a NPL license holder are worth noting.

This article briefly summarizes the current thresholds for investors of nationwide AMCs, as well as local AMCs and bank-type AMCs, the other two types of licensed players in China's NPL market. In the last part of this article, we will also give a description of the thresholds for foreign investors to participate in the NPL market.

#### **I. Thresholds for Nationwide AMCs**

Nationwide AMCs were established with special background. For a long time, until the issuance of the previous version of the *Implementation Measures* in 2015 ("**2015 Implementation Measures**") by the China Banking Regulatory Commission (the predecessor of CBIRC) ("**CBRC**"), the regulator had not made clear the thresholds for investors in nationwide AMCs. The *2015 Implementation Measures* classified the investors of nationwide AMCs into three types,

namely, domestic financial institutions, domestic non-financial institutions, and overseas financial institutions. It also specified the threshold requirements that shall be satisfied by each type of investor.

The *Implementation Measures* retain the

classification for nationwide AMCs investors in the *2015 Implementation Measures*, although the thresholds applicable to those investors have been adjusted. The table below outlines the changes made under the new *Implementation Measures*.

Investor	Old Thresholds	New Thresholds
<b>Domestic Financial Institution</b>	<p>Article 115</p> <p>A domestic financial institution subscribing capital of a financial asset management company shall satisfy the following criteria:</p> <p>(1) compliance with the key prudential regulatory indicators specified by the regulator;</p> <p>(2) have good corporate governance, and proper and effective internal controls;</p> <p>(3) achieved profits in each of the past two consecutive accounting years;</p> <p>(4) have a good social reputation, and no record of a major case or a major violation of law or irregularity over the past two years;</p> <p>(5) self-owned funds (rather than funds held under trust or loan proceeds) shall be the sole source of funds for capital contribution;</p> <p><b>(6) a commitment not to transfer the equity it holds in the financial asset management company within the next five years (except where ordered by the CBIRC to transfer the equity pursuant to the law); and</b></p> <p>(7) any other regulatory requirements stipulated under the rules of the CBIRC.</p>	<p>Article 116</p> <p>A domestic financial institution subscribing capital of a financial asset management company shall satisfy the following criteria:</p> <p>(1) compliance with the key prudential regulatory indicators specified by the regulator;</p> <p>(2) have good corporate governance, and proper and effective internal controls;</p> <p>(3) with good financial standing, and achieved profits in each of the past two consecutive accounting years;</p> <p>(4) have a good social reputation, and no record of a major case or a major violation of law or irregularity over the past two years, <b>or has been rectified in place and approved by CBIRC;</b></p> <p>(5) self-owned funds (rather than funds held under trust or loan proceeds) shall be the sole source of funds for capital contribution;</p> <p><b>(6) for any investor other than an investment company or a holding company prescribed by the State Council, the total amount of equity investments made by such an investor (including the investment in the nationwide AMC under contemplation) in aggregate shall not exceed 50% of such an investor's net asset value;</b></p> <p>(7) any other regulatory requirements stipulated under the rules of the CBIRC.</p>

Investor	Old Thresholds	New Thresholds
<b>Overseas Financial Institution</b>	<p>Article 116</p> <p>An overseas financial institution acting as a <b>strategic investor</b> in a financial asset management company shall satisfy the following criteria:</p> <p>(1) have total assets of not less than US\$10 billion as at the end of the latest accounting year;</p> <p>(2) have its long-term credit rating assessed at an “investment grade” for the past two years <b>by an international rating organization recognized by the CBIRC;</b></p> <p>(3) achieved profits in each of the past two consecutive accounting years;</p> <p>(4) with respect to any investor which is a commercial bank, with a capital adequacy ratio of no less than the higher of the average capital adequacy ratio of the banking industry at its place of incorporation and 10.5%; and with respect to other investors, the total amount of issued capital shall not be lower than 10% of its total weighted risk assets;</p> <p>(5) have a proper and effective internal control system;</p> <p>(6) have a satisfactory banking regulatory and supervisory regime at its place of incorporation;</p> <p>(7) have satisfactory economic conditions in the country (region) where the investor is located;</p> <p>(8) self-owned funds (rather than funds held under trust or loan proceeds) shall be the sole source of funds for capital contribution;</p> <p><b>(9) a commitment not to transfer the equity it holds in the financial asset management company within the next five years (except where</b></p>	<p>Article 117</p> <p>An overseas financial institution subscribing capital of a financial asset management company shall satisfy the following criteria:</p> <p><b>(1) have total assets of not less than US\$10 billion as at the end of the latest accounting year, or an equivalent freely convertible currency;</b></p> <p>(2) have its long-term credit rating assessed at an “investment grade” for the past two years;</p> <p>(3) <b>have good financial standing</b>, and achieved profits in each of the past two consecutive accounting years;</p> <p><b>(4) with respect to any investor which is a commercial bank, with a capital adequacy ratio of no less than the higher of the average capital adequacy ratio of the banking industry at its place of incorporation and 10.5%; and with respect to other investors, the total amount of issued capital shall not be lower than 10% of its total weighted risk assets;</b></p> <p>(5) have a proper and effective internal control system;</p> <p>(6) have a satisfactory banking regulatory and supervisory regime at its place of incorporation;</p> <p>(7) have satisfactory economic conditions in the country (region) where the investor is located;</p> <p>(8) self-owned funds (rather than funds held under trust or loan proceeds) shall be the sole source of funds for capital contribution;</p> <p><b>(9) the total amount of equity investments made by the investor (including the investment in the nationwide AMC under contemplation) in aggregate shall not exceed 50% of such investor's net asset value;</b> and</p> <p>(10) any other regulatory requirements stipulated under the rules of the CBIRC.</p>

Investor	Old Thresholds	New Thresholds
	<p><b>ordered by the CBIRC to transfer the equity pursuant to the law); and</b></p> <p>(10) any other regulatory requirements stipulated under the rules of the CBIRC.</p>	
<p><b>Domestic Non-financial Institution</b></p>	<p>Article 117</p> <p>A domestic non-financial institution subscribing capital of a financial asset management company shall satisfy the following criteria:</p> <p>(1) be duly incorporated as a separate legal entity;</p> <p>(2) have good corporate governance structures or effective organization management methods;</p> <p>(3) have a positive social reputation, creditworthiness records and tax payment records, and the ability to repay the outstanding principal and interest of the financial institution's loan(s) in the full amount when due;</p> <p>(4) have a long track record of business development and stable business conditions;</p> <p>(5) have a strong business management capacity and funding supports;</p> <p>(6) have a good financial standing, and achieved profits in each of the past two consecutive accounting years;</p> <p><b>(7) have a net asset value of no less than 30% of its total assets (after having taken into account year-end distributions, if any);</b></p> <p>(8) self-owned funds (rather than funds held under trust or loan proceeds) shall be the sole source of funds for capital contribution;</p> <p><b>(9) a commitment not to transfer the equity it holds in the financial asset management company within the next five years (except where</b></p>	<p>Article 118</p> <p>A domestic non-financial institution subscribing capital of a financial asset management company shall satisfy the following criteria:</p> <p>(1) be duly incorporated as a separate legal entity;</p> <p>(2) have good corporate governance structures or effective organization management methods;</p> <p>(3) have a positive social reputation, creditworthiness records and tax payment records, and the ability to repay the outstanding principal and interest of the financial institution's loan(s) in the full amount when due;</p> <p>(4) have a long track record of business development and stable business conditions;</p> <p>(5) have a strong business management capacity and funding supports;</p> <p><b>(6) have a good financial standing, and achieved profits in each of the past two consecutive accounting years. For the controlling shareholder of a financial asset management company, achieve profits in each of the past three consecutive accounting years;</b></p> <p><b>(7) have a net asset value of no less than 30% of its total assets at the end of the most recent fiscal year;</b></p> <p>(8) self-owned funds (rather than funds held under trust or loan proceeds) shall be the sole source of funds for capital contribution;</p> <p><b>(9) for any investor other than an investment company or a holding company prescribed by the State Council, the total amount of equity investments</b></p>

Investor	Old Thresholds	New Thresholds
	<p><b>ordered by the CBIRC to transfer the equity pursuant to the law); and</b></p> <p>(10) any other regulatory requirements stipulated under the rules of the CBIRC.</p>	<p><b>made by such an investor (including the investment in the nationwide AMC under contemplation) in aggregate shall not exceed 50%, or 40% if the investor is the controlling investor, of such an investor's net asset value; and</b></p> <p>(10) any other regulatory requirements stipulated under the rules of the CBIRC.</p>
<b>Negative List</b>	<p>Article 118</p> <p>An enterprise with any of the following circumstances shall not be allowed to subscribe for capital of a financial asset management company:</p> <p>(1) have manifest defects in its corporate governance structures and mechanisms;</p> <p>(2) have a large number of connected entities, a complicated and opaque shareholding structure, or frequent unusual connected-party transactions;</p> <p>(3) have a wide scope of business involving multiple industries without a core business;</p> <p>(4) be subject to volatile cash flow fluctuations according to economic conditions;</p> <p>(5) have a debt-to-asset ratio or a financial leverage ratio of a level higher than the industry average;</p> <p>(6) have equity in the financial asset management company held on trust for any other party; or</p> <p>(7) have any other circumstances which have a significant adverse impact on a financial asset management company.</p>	<p>Article 119</p> <p>An enterprise with any of the following circumstances shall not be allowed to subscribe for capital of a financial asset management company:</p> <p>(1) have manifest defects in its corporate governance structures and mechanisms;</p> <p>(2) have a large number of connected entities, a complicated and opaque shareholding structure, or frequent unusual connected-party transactions;</p> <p>(3) have a wide scope of business involving multiple industries without a core business;</p> <p>(4) be subject to volatile cash flow fluctuations according to economic conditions;</p> <p>(5) have a debt-to-asset ratio or a financial leverage ratio of a level higher than the industry average;</p> <p>(6) have equity in the financial asset management company held on trust for any other party;</p> <p><b>(7) be subject to joint sanctions by relevant authorities for failure to discharge overdue liabilities;</b></p> <p><b>(8) have records of attempts to evade overdue bank debts;</b></p> <p><b>(9) have records of providing false materials or making misleading statements;</b></p> <p><b>(10) be subject to investigation or punishment by competent financial supervisors or government authorities as</b></p>

Investor	Old Thresholds	New Thresholds
		<p><b>a result of material violation of laws or regulations; or</b></p> <p>(11) any other circumstances which have a significant adverse impact on a financial asset management company.</p>

**To conclude, the material changes made under the new *Implementation Measures* include: (1) the release of the restriction that an investor shall not transfer its equity interest within five years; and (2) the imposition of a new restriction setting out the maximum ratio the total amount of equity investments made by such an investor (including the investment in the nationwide AMC under contemplation) in aggregate vis-a-vis such an investor's net asset value.**

In addition, to reflect regulatory practice, the *Implementation Measures* specify that NO investor (either by itself or together with its controlling shareholder, actual controller, controlling subsidiary, persons acting in concert, and other enterprises that are controlled or jointly controlled by its actual controller) shall (i) **hold capital in more than two non-banking financial institutions (“NBFIs”), or (ii) retain control of more than one NBFIs of the same type (such as AMCs).**

## **II. Thresholds for Local AMCs**

Local AMCs refer to the asset management companies established with the approval of the people's government at the provincial level, which

are allowed to acquire NPLs in bulk within the provincial territory of its place of incorporation. Since 2012, the regulatory system of local AMCs has been gradually established. During the early stages, each provincial government was allowed to establish or authorize only one local AMC<sup>1</sup>, and this quota requirement has been released afterwards<sup>2</sup>. As of the date of this article, according to publicly available information, 61 local AMCs have been established in China.

**Currently, there are no nationwide statutory provisions specifying the thresholds with respect to investors of local AMCs,** as the *Implementation Measures* apply only to nationwide AMCs, but not to local AMCs. That said, taking into account the business nature of local AMCs and nationwide AMCs, it is possible that, in practice, local authorities may make reference to the *Implementation Measures* in determining whether an investor is qualified to

<sup>1</sup> In accordance with the *Administrative Measures for Batch Transfer of Non-performing Assets by Financial Enterprises* promulgated by the Ministry of Finance and the CBRC on January 18<sup>th</sup>, 2012, any people's government at the provincial level shall only, in principle, establish or authorize one asset management or operating company.

<sup>2</sup> In accordance with the Letter of the CBRC's General Office on the Appropriate Adjustment of Relevant Policies of Local Asset Management Companies promulgated by the former CBRC on January 18<sup>th</sup>, 2012, people's governments at the provincial level are allowed to establish one more local AMC.

invest in a local AMC or not.

Except for Jiangxi province, none of the local authorities has issued any local regulations setting out the thresholds for investors of local AMCs.

### III. Thresholds for Bank-type AMCs

Bank-type AMCs refer to non-bank financial institutions approved by the banking regulatory authority of the State Council of the PRC to mainly engage in the business of bank debt-to-equity swaps and other supporting businesses. Bank-type AMCs have a short history. The five existing bank-type AMCs were all established in 2017, by each of the five big state-owned banks, respectively.

At present, the main regulation for bank-type AMCs is the *Trial Administrative Measures on Financial Asset Investment Companies* ("**Bank-type AMCs Measures**"). According to the *Bank-type AMCs Measures*, a bank-type AMC shall be sponsored by a commercial bank registered in China, which shall act as the major shareholder of the sponsored bank-type AMC. In addition, the *Bank-type AMCs Measures* classify the shareholders of bank-type AMCs into two categories, namely "commercial banks as the major shareholders" and "other domestic and foreign legal entities as shareholders" and establishes the different thresholds for these two types of shareholders respectively.

A Commercial Bank as the Major Shareholder	Other Domestic and Foreign Legal Entities as Shareholders
<p><b>Article 8</b></p> <p>(1) have good corporate governance mechanisms, internal control systems and proper risk management systems;</p> <p>(2) the key prudential regulatory indicators satisfy the regulatory requirements of the regulatory authorities where it was incorporated;</p> <p>(3) have good financial standing, and achieved profits in each of the past three consecutive accounting years;</p> <p>(4) being assessed at an "investment grade", and with no record of a major violation or irregularity in the past two years;</p> <p>(5) with specific development strategies and clear profit models for the financial asset investment company;</p> <p>(6) self-owned funds (rather than funds held under trust or loan proceeds) shall be the sole source of funds for capital contribution;</p> <p>(7) a commitment not to transfer the equity it holds in the financial asset investment company within the next five years, and not to pledge or create a trust on the equity, and state the same in the articles of association of the</p>	<p><b>Article 9</b></p> <p>(1) have good corporate governance mechanisms;</p> <p>(2) have a positive social reputation, creditworthiness records and tax payment records;</p> <p>(3) if the investor is a financial institution, its total assets at the end of the preceding year shall not be less than RMB 5 billion or the equivalent value of a freely-convertible currency, and its net assets at the end of the preceding year shall not be less than 30% of the total assets;</p> <p>(4) if the investor is a non-financial institution, the total amount of equity investments made by such shall not exceed 50% of its net assets (by consolidated accounting statements);</p> <p>(5) with a good financial standing, and achieved profits in each of the past two consecutive accounting years;</p> <p>(6) have good business management, and no record of major violations or irregularities over the past two years;</p> <p>(7) self-owned funds (rather than funds held under</p>

A Commercial Bank as the Major Shareholder	Other Domestic and Foreign Legal Entities as Shareholders
<p>financial asset investment company; and  <b>(8) any other regulatory requirements stipulated under the rules of the banking regulatory department of the State Council.</b></p> <p><b>The commercial bank shall, being a shareholder of the financial asset investment company, satisfy the requirements stipulated in items (1), (2), (3), (4), (6), (7) and (8) of the preceding paragraph.</b></p>	<p>trust or loan proceeds) shall be the sole source of funds for capital contribution;</p> <p>(8) a commitment not to transfer the equity it holds in the financial asset investment company within the next five years, and not to pledge or create a trust on the shareholding, and state the same in the articles of association of the financial asset investment company; and</p> <p>(9) any other regulatory requirements stipulated under the rules of the banking regulatory department of the State Council.</p> <p>If the investor is a financial institution, it shall also satisfy the regulatory requirements stipulated under the relevant laws and regulations of where it is incorporated.</p>

Furthermore, *Bank-type AMC Measures* also provide that an enterprise shall not become an investor/shareholder of a bank-type AMC if it has any of the following circumstances: (1) have manifest defects in its corporate governance structures and mechanisms; (2) have a complicated and opaque shareholding structure, or unusual connected-party transactions; (3) have a wide scope of business involving multiple industries without a core business; (4) be subject to volatile cash flow fluctuations according to economic conditions; (5) have a debt-to-asset ratio or a financial leverage ratio at a level higher than the industry average; (6) have equity in the financial asset investment company held on trust for any other party; or (7) any other circumstances which have a significant adverse impact on a financial asset investment company.

#### **IV. Thresholds for Foreign Investors**

As of the date of this article, China has not issued specific regulations applicable to foreign investments in entities licensed to participate in China's NPL market. In practice, there were only two market precedents in which foreign investors were allowed to invest in nationwide AMCs as

strategic investors<sup>3</sup>.

**For nationwide AMCs**, as mentioned previously, the *Implementation Measures* have classified the investors of nationwide AMCs into domestic financial institutions, domestic non-financial institutions, and overseas financial institutions. For foreign investors, only financial institutions were allowed to invest in nationwide AMCs. Moreover, compared with the *2015 Implementation Measures*, the new *Implementation Measures* no longer require that a foreign investor shall be a strategic investor. Thus, a foreign investor may invest as a financial investor in the future pursuant to the *Implementation Measures*. For the thresholds applicable to an overseas financial institution, please refer to Part I of this article.

**For local AMCs**, the thresholds for foreign investors of local AMCs are not clear under the law. Also, there is no market precedent of a foreign investor directly holding equity in a local AMC. However, taking into account that the

<sup>3</sup> UBS Group and Standard Chartered invested in China Cinda as strategic investors in 2012; Warburg Pincus, Malaysia Treasury Holdings Limited and Goldman Sachs invested in China Huarong as strategic investors in 2014.

*China-U.S. Trade Agreement* has allowed U.S. investors to hold NPL licenses for local AMCs, we expect that specific guidelines for foreign investments in local AMCs may be introduced in the near future.

**For bank-type AMCs**, only five bank-type AMCs have been established in China so far, and each of them is wholly-owned by a domestic commercial bank. However, considering that *Bank-type AMCs Measures* classify the shareholders of bank-type AMCs into "commercial banks as the major shareholders" and "other domestic and foreign legal entities shareholders",

we understand that foreign investors are not excluded from investing in bank-type AMCs. For the thresholds of foreign investors, please refer to Part III of this article.

## V. Summary

The current laws specify the thresholds for qualified investors to the nationwide AMCs and bank AMCs. However, the thresholds for the qualified investors to local AMCs remain unclear. Since the *China-U.S. Trade Agreement* has allowed U.S. investors to hold NPL licenses for local AMCs, we will keep our eyes on how this Trade Agreement will be implemented.

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## 金融法律热点问题

### 不良资产行业要闻 —— AMC 投资人准入门槛发生调整

#### 引言

近日，中国银行保险监督管理委员会（以下简称“银保监会”）发布新规，对金融资产管理公司的投资者准入门槛进行调整。

2020年3月27日，银保监会发布《中国银保监会非银行金融机构行政许可事项实施办法》（2020年第6号，以下简称“《实施办法》”）。作为非银行业金融机构的重要类型之一，金融资产管理公司的相关要求在《实施办法》中占据较大篇幅。特别地，针对金融资产管理公司的投资人应具备的条件，《实施办法》在原有监管要求的基础上再次予以明确并进行更新。在中美贸易协定允许对外资放开金融资产管理公司牌照、且第五家全国性金融资产管理公司已经获批的特殊背景之下，《实施办法》对金融资产管理公司投资人准入条件的调整值得行业关注。

本文以此为契机，对全国性金融资产管理公司（共五家，以下统称“全国性AMC”）、以及不良资产行业内另外两类持牌主体：地方资产管理公司（以下简称“地方AMC”）及金融资产投资公司

（以下简称“银行系AMC”）的投资者准入门槛进行简要梳理总结。

文章最后，我们特别总结了截至目前外国投资者投资各类AMC的门槛要求，以回应中美贸易协定放开美国投资者投资地方AMC甚至全国性AMC后，国内政策的落地现状。

#### 一、全国性AMC的投资者准入门槛

全国性AMC因其设立过程具有特殊背景，在历史上很长一段时间内，监管层面并未对其投资者准入门槛作出明确规定，直至原中国银监会于2015年出台《中国银保监会非银行金融机构行政许可事项实施办法》（即《实施办法》的前身，以下简称“《2015年实施办法》”）。《2015年实施办法》将全国性AMC的投资人区分为境内金融机构、境内非金融机构及境外金融机构三种类型，分别对三种类型的投资人应具备的条件予以明确，并同时明确了不得作为全国性AMC投资人的情形（即负面清单）。

《实施办法》保留了《2015年实施办法》中对全国性AMC投资人准入门槛的基本体例，并在此基础上对投资人准入门槛予以明确及更新。

以下是《实施办法》与《2015年实施办法》<sup>1</sup>中关于对全国性 AMC 的投资人的准入门槛对比：

出资人类型	《2015年实施办法》	《实施办法》
境内金融机构	<p>第一百一十五条 境内金融机构作为金融资产管理公司的出资人，应当具备以下条件：</p> <p>（一）主要审慎监管指标符合监管要求；</p> <p>（二）公司治理良好，内部控制健全有效；</p> <p>（三）最近 2 个会计年度连续盈利；</p> <p>（四）社会声誉良好，最近 2 年无严重违法违规行为和重大案件；</p> <p>（五）入股资金为自有资金，不得以委托资金、债务资金等非自有资金入股；</p> <p>（六）<b>承诺 5 年内不转让所持有的金融资产管理公司股权（银保监会依法责令转让的除外）；</b></p> <p>（七）银保监会规章规定的其他审慎性条件。</p>	<p>第一百一十六条 境内金融机构作为金融资产管理公司的出资人，应当具备以下条件：</p> <p>（一）主要审慎监管指标符合监管要求；</p> <p>（二）公司治理良好，内部控制健全有效；</p> <p>（三）财务状况良好，最近 2 个会计年度连续盈利；</p> <p>（四）社会声誉良好，最近 2 年无严重违法违规行为和重大案件，<b>或者已整改到位并经银保监会认可；</b></p> <p>（五）入股资金为自有资金，不得以委托资金、债务资金等非自有资金入股；</p> <p>（六）<b>权益性投资余额原则上不得超过本企业净资产的 50%（含本次投资金额），国务院规定的投资公司和控股公司除外；</b></p> <p>（七）银保监会规章规定的其他审慎性条件。</p>
境外金融机构	<p>第一百一十六条 境外金融机构作为金融资产管理公司的<b>战略投资者</b>，应当具备以下条件：</p> <p>（一）最近 1 个会计年度末总资产原则上不少于 100 亿美元；</p> <p>（二）<b>银保监会认可的国际评级机构</b>最近 2 年对其长期信用评级为良好；</p> <p>（三）最近 2 个会计年度连续盈利；</p> <p>（四）商业银行资本充足率应当达到其注册地银行业资本充足率平均水平且不低于 10.5%；非银行金融机构资本总额不低于加权风险资产总额的 10%；</p> <p>（五）内部控制健全有效；</p> <p>（六）注册地金融机构监督管理制度完善；</p> <p>（七）所在国（地区）经济状况良好；</p> <p>（八）入股资金为自有资金，不得以委托资金、债务资金等非自有资金入股；</p> <p>（九）<b>承诺 5 年内不转让所持有的金融资产管理公司股权（银保监会依法责令转让的除外）；</b></p>	<p>第一百一十七条 境外金融机构作为金融资产管理公司的<b>出资人</b>，应当具备以下条件：</p> <p>（一）<b>最近 1 个会计年度末总资产原则上不少于 100 亿美元或等值的可自由兑换货币。</b></p> <p>（二）最近 2 年长期信用评级为良好。</p> <p>（三）<b>财务状况良好</b>，最近 2 个会计年度连续盈利。</p> <p>（四）<b>商业银行资本充足率应当达到其注册地银行业资本充足率平均水平且不低于 10.5%；非银行金融机构资本总额不低于加权风险资产总额的 10%。</b></p> <p>（五）内部控制健全有效。</p> <p>（六）注册地金融机构监督管理制度完善。</p> <p>（七）所在国（地区）经济状况良好。</p> <p>（八）入股资金为自有资金，不得以委托资金、债务资金等非自有资金入股。</p> <p>（九）<b>权益性投资余额原则上不得超过本企业净资产的 50%（含本次投资金额）。</b></p> <p>（十）银保监会规章规定的其他审慎性条件。</p>

<sup>1</sup> 《2015年实施办法》第 117 条于 2018 年被《中国银保监会关于废止和修改部分规章的决定》废止，本文引用内容不涉及该废止条款。

出资人类型	《2015年实施办法》	《实施办法》
境内非金融机构	<p>(十)银保监会规章规定的其他审慎性条件。</p> <p>第一百一十七条 境内非金融机构作为金融资产管理公司的出资人,应当符合以下条件:</p> <p>(一)依法设立,具有法人资格;</p> <p>(二)具有良好的公司治理结构或有效的组织管理方式;</p> <p>(三)具有良好的社会声誉、诚信记录和纳税记录,能按期足额偿还金融机构的贷款本金和利息;</p> <p>(四)具有较长的发展期和稳定的经营状况;</p> <p>(五)具有较强的经营管理能力和资金实力;</p> <p>(六)财务状况良好,最近2个会计年度连续盈利;</p> <p>(七)年终分配后,净资产达到全部资产的30%;</p> <p>(八)入股资金为自有资金,不得以委托资金、债务资金等非自有资金入股;</p> <p>(九)承诺5年内不转让所持有的金融资产管理公司股权(银保监会依法责令转让的除外);</p> <p>(十)银保监会规章规定的其他审慎性条件。</p>	<p>第一百一十八条 境内非金融机构作为金融资产管理公司的出资人,应当符合以下条件:</p> <p>(一)依法设立,具有法人资格。</p> <p>(二)具有良好的公司治理结构或有效的组织管理方式。</p> <p>(三)具有良好的社会声誉、诚信记录和纳税记录,能按期足额偿还金融机构的贷款本金和利息。</p> <p>(四)具有较长的发展期和稳定的经营状况。</p> <p>(五)具有较强的经营管理能力和资金实力。</p> <p><b>(六)财务状况良好,最近2个会计年度连续盈利;作为金融资产管理公司控股股东的,最近3个会计年度连续盈利。</b></p> <p><b>(七)最近1个会计年度末净资产不低于总资产的30%。</b></p> <p>(八)入股资金为自有资金,不得以委托资金、债务资金等非自有资金入股。</p> <p><b>(九)权益性投资余额原则上不得超过本企业净资产的50%(含本次投资金额);作为金融资产管理公司控股股东的,权益性投资余额原则上不得超过本企业净资产的40%(含本次投资金额);国务院规定的投资公司和控股公司除外。</b></p> <p>(十)银保监会规章规定的其他审慎性条件。</p>
禁止性规定	<p>第一百一十八条 存在以下情形之一的企业不得作为金融资产管理公司的出资人:</p> <p>(一)公司治理结构与机制存在明显缺陷;</p> <p>(二)关联企业众多、股权关系复杂且不透明、关联交易频繁且异常;</p> <p>(三)核心主业不突出且其经营范围涉及行业过多;</p> <p>(四)现金流量波动受经济景气影响较大;</p> <p>(五)资产负债率、财务杠杆率高于行业</p>	<p>第一百一十九条 存在以下情形之一的企业不得作为金融资产管理公司的出资人:</p> <p>(一)公司治理结构与机制存在明显缺陷;</p> <p>(二)关联企业众多、股权关系复杂且不透明、关联交易频繁且异常;</p> <p>(三)核心主业不突出且其经营范围涉及行业过多;</p> <p>(四)现金流量波动受经济景气影响较大;</p> <p>(五)资产负债率、财务杠杆率高于行业平均水平;</p> <p>(六)代他人持有金融资产管理公司股权;</p>

出资人类型	《2015年实施办法》	《实施办法》
	平均水平； (六)代他人持有金融资产管理公司股权； (七)其他对金融资产管理公司产生重大不利影响的情况。	(七)被列为相关部门失信联合惩戒对象； (八)存在严重逃废银行债务行为； (九)提供虚假材料或者作不实声明； (十)因违法违规行为被金融监管部门或政府有关部门查处，造成恶劣影响； (十一)其他对金融资产管理公司产生重大不利影响的情况。

根据前述对比,《实施办法》相较于原有规定的重要变化在于:(1)取消了投资人5年内不得转让股权的限制;(2)对于投资人权益性投资余额占投资人净资产的比例作出限制。

另外,结合监管实践,《实施办法》明确同一出资人及其控股股东、实际控制人、控股子公司、一致行动人、实际控制人控制或共同控制的其他企业作为主要股东入股非银行金融机构的家数原则上不得超过2家,其中对同一类型非银行金融机构控股不得超过1家或参股不得超过2家。国务院规定的投资公司和控股公司、根据国务院授权持有非银行金融机构股权的投资主体入股非银行金融机构的、投资人经银保监会批准入股或并购重组高风险非银行金融机构的,不受前述限制。

## 二、地方 AMC 的投资者准入门槛

地方 AMC 是指由省级人民政府批准成立、可在本省(区、市)范围内开展金融不良资产批量收购业务的资产管理公司。地方 AMC 的监管体系自2012年开始逐步建立,各省级政府早期只可设立或授权一家地方 AMC<sup>5</sup>,而后地方 AMC 的设置数量被逐渐放开<sup>6</sup>。截至本文发出之日,根据公开信息,我

国已设立61家地方 AMC。

关于地方 AMC 的投资者准入门槛,目前国家层面的现行法规并无明确约定。《实施办法》明确适用的是“经银保监会批准设立的金融资产管理公司”(即全国性 AMC),但并未明确表明亦可适用于地方 AMC,因此,《实施办法》中对于全国性 AMC 投资者准入门槛的规定并不能当然地直接适用于地方 AMC。尽管如此,考虑到地方 AMC 与全国性 AMC 在业务属性上的同质化,对于全国性 AMC 的监管要求在一定程度上可能成为地方 AMC 监管的方向和趋势,且不排除地方 AMC 的监管机构将比照《实施办法》对地方 AMC 进行监管的可能性。因此,我们理解,在地方 AMC 投资者准入门槛并未另行立法说明的情况下,《实施办法》中的相关条件一定程度上可作为投资地方 AMC 的准入门槛的参考依据。

目前,我国个别省份已出台地方性规定对地方 AMC 的投资人设置门槛,2017年出台的《江西省地方资产管理公司监管试行办法》<sup>7</sup>对江西省内的地方 AMC 投资人条件规定如下:

办公厅关于适当调整地方资产管理公司有关政策的函》(银监办便函(2016)1738号),突破“各省级人民政府原则上只可设立一家地方金融资产管理公司”的限制,允许确有意愿的省级人民政府增设一家地方 AMC。

<sup>7</sup> 截至本文发出之日,除江西省以外,我国其他省区市暂未针对地方 AMC 出台类似专项监管规定。

<sup>5</sup> 财政部及原中国银监会于2012年1月18日发布《金融企业不良资产批量转让管理办法》(财金[2012]6号),要求各省级人民政府只可设立或授权一家资产管理或经营公司。

<sup>6</sup> 原中国银监会于2016年10月14日发布《中国银行业监督管理委员会

■ 地方资产管理公司发起人原则上应满足以下条件：（1）具有较强的可持续出资能力，发起时资产负债率不超过 70%。其中主发起人出资额不高于净资产的 50%，其他发起人出资额不高于净资产的 70%；（2）经营业绩良好，主发起人最近三个会计年度连续盈利，其他发起人最近一个会计年度盈利；（3）入股资金来源真实合法，且必须是自有货币资金，不得以债务资金或他人委托资金入股；（4）资质信用良好，近三年内无重大违法违规和其他不良记录；（5）信誉良好，在所属行业内处于领先地位。地方资产管理公司成立后拟加入的新股东，其资质条件按照本条执行。

■ 单个股东出资或者持股比例不得超过地方资产管理公司注册资本总额的 40%，股东之间不得有关联关系。同一企业法人不得持有两家或两家以上地方资产管理公司的股份或股权。

### 三、银行系 AMC 的投资者准入门槛

银行系 AMC 是由商业银行作为主要股东发起设立、经国务院银行业监督管理机构批准主要从事银行债权转股权及配套支持业务的非银行金融机构。银行系 AMC 的发展历史不长，目前存续的 5 家银行系 AMC 均成立于 2017 年，分别由国有五大银行设立。

目前，银行系 AMC 的主要监管法规为《金融资产投资公司管理办法（试行）》（2018 年第 4 号，以下简称“4 号文”）。根据 4 号文的规定，银行系 AMC 应当由在中国境内注册成立的商业银行作为主要股东发起设立。另外，4 号文将银行系 AMC 的股东分为“作为主要股东的商业银行”和“其他境内外法人机构股东”两类，并分别提出不同的要求：

作为主要股东的商业银行	其他境内外法人机构股东
<p><b>第八条</b></p> <p>（一）具有良好的公司治理机制、内部控制体系和健全的风险管理制度；</p> <p>（二）主要审慎监管指标符合所在地监管机构的监管要求；</p> <p>（三）财务状况良好，最近 3 个会计年度连续盈利；</p> <p>（四）监管评级良好，最近 2 年内无重大违法违规行为；</p> <p>（五）为金融资产投资公司确定了明确的发展战略和清晰的盈利模式；</p> <p>（六）入股资金为自有资金，不得以债务资金和委托资金等非自有资金入股；</p> <p>（七）承诺 5 年内不转让所持有的股权，不将所持有的股权进行质押或设立信托，并在金融资产投资公司章程中载明；</p> <p>（八）国务院银行业监督管理机构规定的其他审慎性条件。</p> <p>商业银行作为金融资产投资公司股东应当符合前款第（一）、（二）、（三）、（四）、（六）、（七）、（八）项规定要求。</p>	<p><b>第九条</b></p> <p>（一）具有良好的公司治理机制；</p> <p>（二）有良好的社会声誉、诚信记录和纳税记录；</p> <p>（三）其他境内外法人机构为非金融机构的，最近 1 年年末总资产不低于 50 亿元人民币或等值自由兑换货币，最近 1 年年末净资产不得低于总资产的 30%；</p> <p>（四）其他境内外法人机构为非金融机构的，权益性投资余额原则上不超过其净资产的 50%（合并会计报表口径）；</p> <p>（五）财务状况良好，最近 2 个会计年度连续盈利；</p> <p>（六）经营管理良好，最近 2 年内无重大违法违规经营记录；</p> <p>（七）入股资金为自有资金，不得以债务资金和委托资金等非自有资金入股；</p> <p>（八）承诺 5 年内不转让所持有的股权，不将所持有的股权进行质押或设立信托，并在金融资产投资公司章程中载明；</p> <p>（九）国务院银行业监督管理机构规定的其他审慎性条件。</p> <p>其他境内外法人机构为金融机构的，应当同时符合所在地有关法律、法规和监管规定要求。</p>

另外，4 号文还对银行系 AMC 的投资人作出禁止性规定（即负面清单），明确若有下列任何情形不

得成为银行系 AMC 的投资者：（1）公司治理结构与机制存在明显缺陷；（2）股权关系复杂且不透明、

关联交易异常；(3) 核心主业不突出且其经营范围涉及行业过多；(4) 现金流量波动受经济景气程度影响较大；(5) 资产负债率、财务杠杆率明显高于行业平均水平；(6) 代他人持有金融资产投资公司股权；(7) 其他可能对金融资产投资公司产生重大不利影响的情形。

#### 四、外国投资者的准入条件

截至目前，我国并未针对外商投资不良资产行业持牌主体出台专项规定。实践中，仅有中国信达及中国华融两家全国性 AMC 存在引入外资战略投资者的先例<sup>8</sup>。

**对于全国性 AMC**，如前文所述，《实施办法》将全国性 AMC 的投资人区分为境内金融机构、境内非金融机构及境外金融机构三种类型。可见，目前可投资全国性 AMC 的外国投资者限于“境外金融机构”。相较于《2015 年实施办法》，《实施办法》允许境外金融机构以一般投资者的身份投资全国性 AMC，不再限定于战略投资者。关于“境外金融机构”应符合的条件详见前述第二部分内容。

**对于地方 AMC**，我国现行监管体系中均无针对外国投资者入股地方 AMC 的专门规定，实践中亦暂无外国投资者直接持股地方 AMC 的先例。考虑到中美贸易协定允许美国投资者从地方 AMC 开始进入不良资产持牌运营行列，不排除监管层面针对外商投资地方 AMC 的方式及条件出台更加明确的指引。另外，中美贸易协定仅明确对美国投资者开放牌照申请，监管层面未来是否将对其他国家的投资者一视同仁，也值得行业关注。

**对于银行系 AMC**，目前仅有的 5 家银行系

AMC 均为境内商业银行全资持股。但是，考虑到 4 号文将银行系 AMC 的投资者分为“作为主要股东的商业银行”和“其他境内外法人机构股东”两类，因此，法规层面并未排斥外国投资者参股银行系 AMC 的可能性。相关准入条件详见前述第三部分内容。

#### 五、结语

本文对全国性 AMC、地方 AMC 及银行系 AMC 的投资者准入门槛进行了简要梳理，并对外国投资者的准入条件与实践情况进行简要总结。总体而言，全国性 AMC 及银行系 AMC 的投资人准入门槛已经较为明确。对于地方 AMC，参照全国性 AMC 的要求，投资人的准入门槛在很多省份可能已经形成监管实践，但现阶段仍未有较为明确的、统一的监管规定。对于外国投资者而言，最受关注的投资地方 AMC 的条件和流程等，尚未有明确的监管规定。

对于不良资产行业的发展动态，我们将予以持续关注。

<sup>8</sup> 中国信达于 2012 年引入外资战略投资者瑞银集团和渣打银行；中国华融于 2014 年引入外资战略投资者美国华平集团、马来西亚国库控股有限公司、美国高盛集团。

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