

## Financial

### Shanghai to Improve the QFLP Pilot Program – Our Observations Regarding the New QFLP Foreign Exchange Rules

On February 17, 2023, the Shanghai Branch of the State Administration of Foreign Exchange (“SAFE Shanghai Bureau”) released the *Operation Guidelines for the Pilot Foreign Exchange Administration for Qualified Foreign Limited Partnership in Shanghai* (the “New Rules”) on its official website. These New Rules expand the geographical applicability scope of new QFLP pilot policies from the Lin-gang Special Area of the Shanghai FTZ to all other regions in Shanghai. We have summarized below the key points of the New Rules for both domestic and foreign managers.

#### **I. Scope of Application**

The New Rules apply to pilot funds (the “QFLP Fund”) that raise capital from domestic and foreign investors non-publicly, launched and managed by a domestic enterprise (the “QFLP Fund Manager”) recognized by the Shanghai local financial administration department, i.e., the Shanghai Municipal Financial Regulatory Bureau (SFRB). Foreign investors include both foreign natural persons and institutions (i.e., Qualified Foreign Limited Partners) that satisfy the conditions of the SFRB. According to the SAFE Shanghai Bureau, a QFLP Fund may be formed as a corporation, a partnership enterprise, or

formed by contract.

The SAFE Shanghai Bureau will work with the SFRB by participating in the joint conference mechanism established by the SFRB. It will cooperate to establish and improve the relevant QFLP pilot rules, as well as prevent, dissolve and deal with financial risks.

#### **II. Investment Scope of QFLP Funds**

The New Rules clearly state that QFLP Funds’ investments shall abide by national macro-control policies and industrial policies as well as the current special administrative measures for foreign investment access (i.e., the “Negative List”), and be authentic, with fictitious transactions explicitly prohibited. According to the SAFE Shanghai Bureau, the New Rules permit QFLP Funds to invest in industry sectors outside the Negative List through equity investment, debt investment and other permissible investments. The permissible underlying assets include the equity of non-listed companies, non-publicly offered and traded ordinary shares of listed companies (either traded through block trade or transfer by agreement), preference shares, convertible bonds, and share allotments. It should be noted that the SAFE Shanghai Bureau

explicitly stated in its policy interpretation that QFLP Funds may make debt investments in addition to equity investments. We believe this is positive news for foreign US dollar credit funds, infrastructure funds or special opportunities funds and may encourage their investments in China through the QFLP pilot program.

In the policy interpretation of the SAFE Shanghai Bureau, QFLP Funds are explicitly prohibited from investing in real estate enterprises and local government financing platforms. Though this has not been set out in the New Rules, we believe it reflects the current policy and therefore shall be a matter subject to policy restriction determined by authorities from time to time, rather than stipulated explicitly in the New Rules.

### **III. Foreign Exchange Registration and Quota Administration**

After obtaining the pilot qualification and the permissible overseas fundraising scale (i.e., QFLP Quota), a QFLP Fund Manager is required to complete foreign exchange registration with the SAFE local branch where it is registered. These New Rules simplify the required registration materials. The outward and inward remittance of capital shall be made through a QFLP special account.

Under the New Rules, a QFLP Fund Manager may allocate the QFLP Quota among multiple QFLP Funds within the total QFLP Quota granted to the QFLP Fund Manager. Balance management applies to the QFLP Quota, which means the sum of the net inward remittance of capital (excluding dividends, profits, taxes and other current account income items) for launching QFLP Funds by a QFLP Fund Manager must not exceed the total QFLP Quota granted to the QFLP Fund Manager (except for deviations caused by exchange rate fluctuations or other reasonable causes). This means Qualified Foreign Limited Partners may remit capital inward and outward flexibly within the QFLP Quota and

participate in the subscription and redemption of QFLP Funds. After the outward remittance of capital, the used QFLP Quota will be released and can then be re-used.

Based on our observations, QFLP Fund Managers may apply for additional QFLP Quotas after the initial QFLP Quota has been used up, which is not a complicated approval process.

### **IV. Mandatory Custody and Reporting Obligations**

In line with earlier QFLP pilot rules, a QFLP Manager shall appoint a domestic financial institution with custody qualifications as the custodian of the QFLP Funds, and the custodian shall monitor the use of the funds on a real-time basis. The custodian shall report the data on the inward and outward remittance of funds, within 10 working days after the end of each quarter, as well as the purchase and sale of foreign exchange to the relevant SAFE local branch and the SFRB. The custodian shall conduct due diligence reviews and follow-up supervision on the pilot businesses according to the banking business rules. If the custodian discovers any material or abnormal events in the capital flow, it must report to the relevant SAFE local branch in a timely manner. QFLP Fund Managers are also required to report investment information to the relevant SAFE local branch and the SFRB, including the inward and outward remittance of funds, the settlement and purchase of foreign exchange, information about domestic investments such as the investment varieties, QFLP Funds' net-asset-value, investment targets, and overseas funding sources, within 10 working days after the end of each quarter.

### **V. Outward Remittance of Capital**

QFLP Funds may handle the foreign exchange settlement directly via the relevant bank provided that the use of funds has been truthfully reported and complies with the relevant investment scope.

The relevant bank may handle cross-border capital remittances for the QFLP Funds with a statement issued by the QFLP Fund Manager regarding the funding source and the use of funds and an undertaking letter provided by the investors that they have fully paid the relevant taxes in accordance with the relevant PRC tax laws and regulations.

## Review & Outlook

To date, a total of 86 institutions in Shanghai have obtained QFLP pilot qualifications, including many globally renowned institutions. Those QFLP Funds have primarily invested in sectors such as biomedicine, infrastructure and environmental protection, internet and information technology, and high-end manufacturing. Shanghai has created many national precedents, including the first case of a QFLP Fund investing in private placements, FOF, the private placement of convertible bonds of unlisted companies, and logistics infrastructures, as well as the first case of dual-currency QFLP Fund (in both RMB and USD). The New Rules state that SAFE will determine the pilot cities for foreign exchange administration based on the situation of international payments and local conditions. We expect that Shanghai will continue to promote the QFLP pilot program, lead and gather experience in the pilot work and steadily promote high-level opening-up.

We will follow SFRB's amendments to the relevant implementing measures of the Shanghai

QFLP pilot program following the promulgation of the New Rules. We expect that Shanghai will further strengthen the QFLP pilot program and guide high-level opening-up. As far as we know, Shanghai may, in the proposed amendments to the QFLP rules, remove the minimum registered capital requirements for QFLP Fund Managers. For those QFLP Fund Managers that are not required to register with the Asset Management Association of China, the focus may be on whether their paid-in capital can meet their business operation needs. Shanghai may propose to lower certain application thresholds in terms of the net assets and AUM of foreign institutional investors and clarify the qualification requirements for domestic managers managing QFLP funds. With respect to investment orientation, Shanghai encourages investments in ESG and national key strategic emerging industries and encourages cooperation between QFLP funds and various domestic funds in different ways, and will expand the exit channels of QFLP Funds, for example, exit by way of transfer of private fund shares.

Overall, we believe that QFLP pilot programs have a bright prospect to become a permanent and important mechanism in introducing foreign capital, i.e., attracting US dollar capital to land on and expand investments in China, promoting China's further opening-up to foreign investors.

Natasha XIE Partner Tel: 86 21 2208 6238  
Austin ZHANG Partner Tel: 86 21 2208 6177  
Danchen LUO Associate Tel: 86 21 2283 8320

Email: xieq@junhe.com  
Email: zhangchi\_Austin@junhe.com  
Email: luodch@junhe.com

---

This document is provided for and only for the purposes of information sharing. Nothing contained in this document constitutes any legal advice or opinion of Jun He Law Offices. For more information, please visit our official website at [www.junhe.com](http://www.junhe.com) or our WeChat public account “君合法律评论”/WeChat account “JUNHE\_LegalUpdates”.



## 金融法律热点问题

### 上海 QFLP 新政再突破——评外管新规

2023年2月17日，国家外汇管理局上海分局在其官网公布《上海市合格境外有限合伙人试点外汇管理操作指引》(以下简称“《新规》”)，该指引将原适用于自由贸易试验区临港新片区的 QFLP 政策扩大适用到上海全辖。结合国家外汇管理局上海分局的相关政策解读，以下我们为境内外管理人整理了新规的重点条款以供参考。

#### 一、适用范围

新规适用于由上海地方金融工作管理部门(即上海市地方金融监督管理局)认定的境内企业(“QFLP 基金管理人”)发起成立并受托管理的以非公开方式向境内投资者和境外投资者募资的试点基金(“QFLP 基金”)。此处的境外投资者是指符合地方金融工作管理部门条件的境外自然人或机构(即合格境外有限合伙人)。根据国家外汇管理局上海分局的解读，公司型、合伙型或契约型均可作为 QFLP 基金的组织形式。

国家外汇管理局上海分局在 QFLP 管理方面的主要角色是参与由上海市地方金融监督管理局建立的联合工作机制，协助建立健全 QFLP 试点相关管理制度，以及防范、化解、处置相关金融风险。

#### 二、QFLP 基金的投向

新规明确 QFLP 基金的投向应当符合国家宏观调控政策、产业政策及现行外商投资准入特别管理

措施(即负面清单)，且应具有真实的交易基础，不得虚构交易。根据国家外汇管理局上海分局的解读，新规允许 QFLP 基金通过股权、债权等形式在境内开展负面清单以外的各类投资活动，例如非上市公司的股权，上市公司非公开发行和交易的普通股(含大宗交易、协议转让等)，优先股、可转债、配股等。我们也注意到国家外汇管理局上海分局明确允许除股权投资外 QFLP 基金可进行债权投资这一表态，我们有理由相信这一表态可能利好境外美元信贷基金、基建基金或特殊机会基金通过 QFLP 机制进一步布局和投资中国。

我们也注意到，本次国家外汇管理局上海分局对 QFLP 基金的投向进行解读时明确排除了房地产企业和地方政府融资平台。我们理解由于这一点是基于现行政策的要求，因此并未在新规中体现，而是在实践中予以掌握。

#### 三、外汇登记及额度管理

QFLP 基金管理人需要在取得试点资格以及募集境外资金规模(“QFLP 额度”)后到所在地外汇局办理外汇登记。相关的登记材料也有所精简。QFLP 基金的资金汇出、汇入均应通过 QFLP 专用账户完成。

同一管理人管理的不同 QFLP 基金之间可灵活调剂使用 QFLP 额度，但各基金的 QFLP 额度之和

不得超过该管理人获得的 QFLP 试点总额度。此外，QFLP 额度实行余额管理，也即管理人发起成立的所有 QFLP 基金募集境外资金的净汇入(不含股息、红利、利润、税费等经常项目收支)之和不得超过该管理人获得的 QFLP 试点总额度(因汇率变动等合理原因导致的差异除外)。这意味着，境外有限合伙人可以在 QFLP 基金的额度内自由汇入汇出本金，参与 QFLP 基金的申购和赎回。在投资本金汇出后额度将释放出来，可以循环使用。

根据我们在实践中的观察，QFLP 管理人可以申请增加 QFLP 试点额度，且审批流程并不繁复。

#### 四、强制托管及报告义务

新规一如既往地要求 QFLP 管理人必须委托境内具有托管资质的金融机构作为试点基金的托管人，且托管人有义务实时监控资金使用情况。QFLP 托管人有义务于每季度结束后 10 个工作日内向相关外汇局及上海市地方金融监督管理局报告试点基金资金汇出入、结购汇数据。QFLP 托管人还有义务按照银行展业原则，对试点业务进行尽职审查和事后监督，如 QFLP 托管人发现试点业务资金运作存在重大或异常事项的，必须及时向相关外汇局报告。此外，QFLP 管理人也需要于每季度结束后 10 个工作日内向相关外汇局及地方金融工作管理部门报告投资信息，包括资金汇入汇出及结汇购汇情况以及境内项目情况，即投资品种、基金净值、资金投向、境外募集资金来源等信息。

#### 五、资金汇出

在如实申报资金用途并符合相关投资范围的前提下，试点基金可直接在银行办理外汇资金结汇。银行可凭 QFLP 管理人出具的有关资金来源和用途的说明及投资者出具的按照中国境内相关税

务法律法规足额缴纳税费的承诺函等为试点基金直接办理相关跨境收支业务。

#### 回顾和展望

据统计，目前上海共有 86 家机构获得了 QFLP 的试点资质，集聚了一批全球知名的投资机构。目前 QFLP 的主要投向包括生物医药、基础设施及环保业、互联网与信息技术、高端制造业等。而上海也领先落地了全国首单 QFLP 投向定向增发、FOF、未上市公司私募可转债、物流基础设施，成立美元人民币双币种基金。新规也提到国家外汇管理局将根据国际收支形势和区域发展等情况确定 QFLP 的外汇管理试点地区。我们预期上海将继续发挥先行先试、示范带动的功能作用，继续积累经验引领 QFLP 试点工作，稳步推进高水平对外开放。

下一步，我们将聚焦上海市地方金融监督管理局对 QFLP 试点实施办法的修订工作，期待上海能进一步深化 QFLP 试点机制，引领高水平对外开放。据了解，上海计划取消对 QFLP 管理人的最低注册资本金要求，对于无需登记为私募基金管理人的 QFLP 管理人，主要关注其出资是否能实际符合展业需求，同时适度降低 QFLP 的申请门槛，例如境外机构投资者的净资产、AUM 等，并明确内资管理人管理 QFLP 基金相关管理人资质要求。在投资导向方面，上海将鼓励在 ESG、国家重点战略性新兴产业等领域的投资，鼓励 QFLP 基金与境内各类基金开展多种合作，并丰富退出渠道，例如通过私募基金份额转让方式退出等。

总体而言，我们十分看好 QFLP 试点机制的前景，QFLP 试点有望成为中国引进外资，推动进一步对外开放的一项长期且重要的机制，吸引美元资本落地中国，进一步布局其在华投资。

谢青 合伙人 电话：86 21 2208 6238  
张弛 合伙人 电话：86 21 2208 6177  
罗丹晨 律师 电话：86 21 2283 8320

邮箱地址：xieq@junhe.com  
邮箱地址：zhangchi\_Austin@junhe.com  
邮箱地址：luodch@junhe.com

本文仅为分享信息之目的提供。本文的任何内容均不构成君合律师事务所的任何法律意见或建议。如您想获得更多讯息，敬请关注君合官方网站“www.junhe.com”或君合微信公众号“君合法律评论”/微信号“JUNHE\_LegalUpdates”。

