

金融法律热点问题

主要 QFLP 试点城市政策比较

自 2011 年上海率先启动合格境外有限合伙人(简称“QFLP”)试点, QFLP 试点今年迎来十周年。在过去十年中, QFLP 试点在试点城市、管理模式、投资范围等方面不断发展并日趋成熟, 已经成为除常见的外商直接投资(FDI)路径之外境外机构投资境内一级和一级半市场的主要路径。截至目前, 开展 QFLP 试点的城市为 13 个, 包括上海、深圳、北京等主要城市。

我们比较了各地 QFLP 试点政策, 发现各地政策虽大体相似, 但各有特色, 为境外机构提供了多样化的选择。以下我们针对主要的九个试点城市(即上海、北京、深圳、天津、重庆、青岛、海南、珠海、广州)简要梳理了境外机构投资者参与 QFLP 试点关注的主要问题。

一、QFLP 试点架构

以上海为例, 参与 QFLP 试点资质的境外机构需要在中国境内设立一个外商投资股权投资管理企业(即 QFLP 基金管理人), 而后设立外商投资股权投资企业(即 QFLP 基金)。各地对于 QFLP 管理人和 QFLP 基金的称谓不尽相同, 但 QFLP 基本架构类似, 即由 QFLP 基金管理人发起设立 QFLP 基金和/或受托管理 QFLP 基金。此外, QFLP 基金管理人可以以公司或合伙企业形式设立, 而 QFLP 基金一般以合伙企业形式设立。

二、试点资质申请要求

1、 外资股东资质要求

除北京、青岛、珠海外, 其他六个城市的试点政策均未对 QFLP 基金管理人的外资股东规定具体的牌照要求及资产管理规模门槛。实践中, 各地对境外投资者的背景和资质仍有一定的软性要求, 以上海为例, 上海主要欢迎国际知名或者在专业细分领域领先的境外资管机构。

2、 注册地、注册资本、实缴资本与高管要求

注册地: 九个城市的 QFLP 试点办法均要求 QFLP 基金管理人和 QFLP 基金设立在本市。

注册资本与实缴资本: 部分试点城市对 QFLP 基金管理人的注册资本和实缴资本有一定的要求, 其中上海、重庆、珠海均要求 QFLP 管理人的注册资本不得低于 200 万美金; 天津则要求实缴资本不低于 1000 万人民币(约 155 万美金)。

高管: 上海、天津、青岛、重庆、海南与珠海均要求 QFLP 基金管理人至少具备 2 名高级管理人员, 其中, 每一名高级管理人员的股权投资或投资管理经验均不低于 2 年, 高管任职经历不低于 2 年。北京则要求至少 2 名高管人员有 3 年以上股权投资或投资管理经验。深圳、广州未对高管人数及资质作出明确要求。

三、管理模式与募资

1、 管理模式

QFLP 管理模式目前有三种, 即“外资管外资”、“内资管外资”和“外资管内资”。目前上

海、北京、深圳、青岛、海南、珠海均支持前述三种管理模式，天津、广州、重庆尚不支持“内资管外资”。

值得注意的是，天津要求 QFLP 基金管理人必须认缴 QFLP 基金不超过 5% 的基金份额，而珠海要求 QFLP 基金管理人必须是 QFLP 基金的普通合伙人，这意味着，在这两个试点城市，QFLP 基金的普通合伙人和管理人必须为同一法律主体。

2、募资

九个试点城市均允许 QFLP 基金仅在境外募资或同时在境内外募资。

深圳和广州目前未对 QFLP 基金的基金规模、单个有限合伙人最低投资金额和境外投资者资质设置具体门槛；其他七个试点城市均设置了不同程度的要求。其中，珠海还特别降低了港澳投资者认缴 QFLP 基金出资额的限制。

就境外投资者的资质要求而言，多数试点城市均要求境外投资者为境外主权基金、养老基金、捐赠基金、慈善基金等长期机构投资者，并对境外投资者的资产管理规模、治理结构、投资经验等提出了一定的要求。

四、QFLP 基金管理人是否需要登记为私募基金管理人

目前，深圳、海南、青岛、广州、珠海五地的 QFLP 办法明确规定 QFLP 基金管理人必须在中国证券投资基金业协会（简称“基金业协会”）登记为私募基金管理人后方可发起设立首只 QFLP 基金；而重庆、天津和上海的 QFLP 办法未明确要求 QFLP 基金管理人必须登记为私募基金管理人。实践中，设立在上海的 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。值得注意的是，如果 QFLP 基金管理人拟在中国境内募集设立人民币基金的，则无论当地 QFLP 办法是否有明确规定，均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。我们了解到，北京在实践中也执行与上海一样的口径。

五、投资范围

九个城市的 QFLP 基金的可投范围均不尽相同，其中上海、北京、深圳、海南的投资范围相对较宽，举例如下：

- 1、九个城市的 QFLP 基金均可投资于非上市公司股权；
- 2、上海、北京均允许 QFLP 基金投资于不良资产、夹层、优先股、债转股，其中，上海已经有 QFLP 基金投资于不良资产和夹层的先例；
- 3、上海、北京、深圳、青岛允许 QFLP 基金投资上市企业非公开交易股权（含大宗交易、协议转让、定向增发等）、可转债；
- 4、深圳明确允许 QFLP 基金投资于境内私募股权、创业投资基金，青岛允许 QFLP 基金投资于产业基金，上海目前对于 QFLP 基金投资于境内基金采取一事一议的原则，珠海明确禁止 QFLP 基金以基金中基金的模式进行投资；
- 5、海南的 QFLP 基金的投资范围最为灵活，其实实施投资领域负面清单管理，即对于不在投资领域负面清单中的投资业务，QFLP 基金均可以开展，但实操性如何仍有待观察；
- 6、天津、重庆、珠海、广州的 QFLP 基金的投资范围目前仅限于未上市公司股权。其中天津和重庆对产业领域进行了限制，天津鼓励 QFLP 基金投资于天津市战略新兴产业，而重庆则鼓励投向重庆辖内的高端制造、高新技术、现代服务、节能降耗、新能源、环境保护和统筹城乡发展、促进产业结构调整的行业等。

我们的观察

通过比较九个城市 QFLP 政策的异同，可以看出，尽管在试点架构、申请流程、境外投资者、高

管人员要求等方面，九个城市的差异不是十分明显，但在管理模式、投资方向、政策定位和实践等方面仍有不同，对于希望进入中国投资的境外资产管理机构而言仍意味着较大区别。我们建议客户密

切关注实践的发展，选择合适的路径，把握在华展业的机遇。

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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Financial

QFLP Pilot – An Overview of Policies in Nine Cities

Since Shanghai initiated the first Qualified Foreign Limited Partnership (QFLP) pilot program in 2011, the QFLP pilot program marked its 10th anniversary this year. In the past decade, the QFLP pilot program has evolved and improved significantly, with an increase in the number of piloted cities, a more mature management system, as well as an expanded investment scope. With these changes, the pilot program has become a predominant route for foreign institutions to access China equity market, both the primary and the primary semi-markets, opposite to secondary markets (i.e., listed markets), in addition to the commonly sought foreign direct investment (FDI) route. Up to now, a total of thirteen (13) cities have established the QFLP pilot program, including the major cities like Shanghai, Shenzhen, and Beijing.

We have compared the QFLP policies of these thirteen cities, reaching a conclusion that though similar, the QFLP policies of each city have distinct characteristics that provide diverse options for foreign institutions. Here below we summarize the key points of the QFLP policies (each individually as the “QFLP rule”) in nine major cities (i.e., Shanghai, Shenzhen, Beijing, Tianjin, Chongqing, Qingdao, Hainan, Zhuhai and Guangzhou) which most concern foreign institutional investors participating in the QFLP pilot qualification application process.

I. QFLP Pilot Structure

Taking Shanghai as an example, foreign institutions participating in the application process for QFLP pilot qualification must first set up a foreign-invested equity investment management enterprise (the “QFLP fund manager”) in China, and then they must set up a foreign-invested equity investment enterprise (the “QFLP fund”). Though the names of the “QFLP fund manager” and the “QFLP fund” vary according to different QFLP rules, the basic structures of QFLP pilot program are the same – i.e., the QFLP fund manager establishes the QFLP funds and/or conducts investment management for QFLP funds as entrusted. A QFLP fund manager may be formed as a company or a partnership enterprise, while a QFLP fund is usually formed as a partnership enterprise.

II. Application Qualifications

2.1 Foreign Investors

Aside from Beijing, Qingdao and Zhuhai, the other six cities do not have a requirement for license-holding or a minimum asset under management (AUM) on foreign shareholders of the QFLP fund manager. However, in practice, various locations still have certain soft requirements for the background and qualifications of foreign investors. For

example,, Shanghai mainly welcomes foreign asset management institutions that are internationally renowned or leading in professional segments.

2.2 Registered Place, Registered Capital, Paid-in Capital and Senior Management Personnel

Registered Place: All nine cities require both the QFLP fund manager and the QFLP fund to be established in the city where they intend to apply for the QFLP qualification.

Registered Capital and Paid-in Capital: Some pilot cities set minimum thresholds for the registered capital and paid-in capital of the QFLP fund manager, for example, Shanghai, Chongqing and Zhuhai require the registered capital of a QFLP fund manager to be no less than USD 2 million, while Tianjin requires the paid-in capital to be no less than RMB 10 million (approximately USD 1.55 million).

Senior Management Personnel: The QFLP rules of Shanghai, Tianjin, Qingdao, Chongqing, Hainan and Zhuhai require a QFLP fund manager to have at least two senior management personnel, each having no less than two years experiences in equity investment or investment management as well as hold a post at senior management level for no less than two years; Beijing requires no less than two senior management personnel as well, each having at least three years of equity investment or investment management experience. Notably, Shenzhen and Guangzhou have no explicit requirements on the number and qualification of senior management personnel.

III. Management Model and Fundraising

3.1 Management Model

There are three QFLP management models

at present, namely:

- (1) "A foreign-invested QFLP fund manager manages foreign-invested QFLP funds",
- (2) "A domestic QFLP fund manager manages foreign-invested QFLP funds"
- (3) "A foreign-invested QFLP fund manager manages domestic QFLP funds."

Up until now, Shanghai, Beijing, Shenzhen, Qingdao, Hainan, and Zhuhai permit the aforesaid three management models, while Tianjin, Guangzhou and Chongqing have not yet permitted the second model, i.e., "a domestic QFLP fund manager manages foreign-invested QFLP funds".

It is noteworthy that the Tianjin QFLP rule requires the QFLP fund manager to subscribe no more than 5% of the fund units of each QFLP fund, while the QFLP fund manager shall be the general partner of the QFLP fund in accordance with the Zhuhai QFLP rule. That being said, the general partner and the fund manager of a QFLP fund shall be the same legal entity in both cities.

3.2 Fundraising

All nine cities allow QFLP funds to be formed purely through offshore fundraising, or through a combination of onshore and offshore fundraising.

Except for Shenzhen and Guangzhou, the other seven cities have set minimum thresholds for the fundraising amount, the minimum investment amount of a single limited partner, as well as a requirement on the qualification for the foreign investors of the QFLP fund. Among them, Zhuhai offers a lower minimum threshold, particularly for the capital contributions subscribed by Hong Kong/Macao investors.

Regarding the qualification requirements for foreign investors of QFLP funds, most piloted cities require foreign investors to be long-term institutional investors, such as sovereign funds, pension funds, endowment funds and charitable funds, and they further stipulate the requirements on the AUM, governance structure and investment experience of foreign investors.

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

Shenzhen, Hainan, Qingdao, Guangzhou, and Zhuhai explicitly stipulate that the QFLP fund manager shall be registered as a private fund manager (PFM) with the Asset Management Association of China (AMAC) before launching the first QFLP fund, while no such requirement can be found in the QFLP rules of Shanghai, Chongqing and Tianjin. In practice, a QFLP fund manager incorporated in Shanghai 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 in accordance with the relevant regulations governing private funds before conducting fundraising activities, and file the RMB fund with the AMAC whether or not there are such explicit requirements under the QFLP rules of each piloted city. We learnt that Beijing applies the same rule as Shanghai in practice.

V. Investment Scope

The permissible investment scope of QFLP funds varies among the nine cities, out of which Shanghai, Beijing, Shenzhen, and Hainan offer a relatively broad investment scope.

- 1) All QFLP funds established in the nine cities are allowed to invest in equities of unlisted company;

- 2) Both Shanghai and Beijing allow QFLP funds to invest in non-performing assets, mezzanine debts, preference shares and debt-to-equity swaps, whilst Shanghai has approved QFLP funds investing in non-performing assets and mezzanine debts;
- 3) Shanghai, Beijing, Shenzhen, and Qingdao allow QFLP funds to invest in non-publicly traded equities (including acquiring listed shares through block trade, transferring by agreements and private placements) and convertible bonds of listed companies;
- 4) Shenzhen explicitly allows QFLP funds to invest in onshore private equity and venture capital funds; Qingdao allows QFLP funds to invest in industrial funds; Shanghai currently only allows QFLP funds to invest in other onshore funds on a case-by-case basis; and Zhuhai explicitly prohibits QFLP funds from investing through Fund of Funds;
- 5) The investment scope of QFLP funds under the Hainan QFLP rule appears to be the most flexible of all nine cities. Hainan adopts a “negative list” regime for the management of QFLP funds’ investment scope, that is, the QFLP funds may invest in any industry that is not included in the negative list. However, it remains to be seen how such a rule will be implemented in practice.
- 6) Currently, the investment scopes of QFLP funds in Tianjin, Chongqing, Zhuhai, and Guangzhou are limited to equities of unlisted companies. Tianjin and Chongqing further specify the industrial sectors which QFLP funds are allowed to invest. Specifically, Tianjin encourages QFLP funds to invest in strategic emerging industries within Tianjin, while Chongqing encourages investment in industries of high-end manufacturing, high-tech, modern services, energy conservation and consumption reduction, new energy, environmental protection, and

industries that coordinate urban and rural development and promote industrial restructuring within Chongqing.

Our Observations

In a comparison of the QFLP rules in these nine cities, we observed similarities in basic structure, application procedures, qualification requirements for foreign investors and senior management

personnel. However, there are significant differences among these cities in terms of the management model, investment scope, policy orientation and implementation practice, which may result in different foreign investors being attracted to different cities. Our clients are advised to closely follow the development of practices, and choose suitable location for pilot application to better seize the opportunities investing in China.

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