

金融法律热点问题

上海 or 深圳？ - QFLP 基金落户选择的不同考量

在中国众多的一二线城市中，上海和深圳均处于金融开放的前沿。过去，上海和深圳几乎在同一时间出台吸引外资资管机构落地的试点政策，比如针对境外资管机构投资于境内一级市场的 QFLP（合格境外有限合伙人）试点政策，及针对投资于海外市场的 QDLP/QDIE（合格境内有限合伙人/合格境内投资企业）试点政策。由于城市的不同特性，上海和深圳之间体现了差异化竞争的态势，从政策设计到实际吸引外资资管机构落户的实践方面均有所不同。以下我们针对上海和深圳两地的 QFLP 试点优势比较提供相关信息，供拟申请 QFLP 试点的客户参考。

一、申请资格

上海于2010年发布的《关于本市开展外商投资股权投资企业试点工作的实施办法》（以下简称“《上海办法》”）规定，QFLP基金管理机构应至少拥有一个投资者，该投资者或其关联实体的经营范围应当与股权投资或股权投资管理业务相关。深圳于2017年9月22日修订的《深圳市外商投资股权投资企业试点办法》（以下简称“《深圳办法》”）则分别细化对QFLP基金管理机构的境外投资者和境内投资者的要求，例如要求境外投资者在申请前的上一会计年度具备自有资产规模不低于1亿美元或管理资产规模不低于2亿美元或者持有境外金融监管部门颁发的资产管理牌照，并要求境内投资者要么必须是持牌金融机构或其控股的一级子公司，要

么是满足一定标准盈利要求的由深圳市政府重点支持和引进的大型企业。

不同于《深圳办法》，《上海办法》并未对QFLP基金管理机构的股东规定具体的门槛，但在实践中上海主要欢迎国际知名或者在专业细分领域领先的资管机构作为QFLP基金管理机构的主要投资者。而深圳则似乎是向中小资产管理规模的境外资产管理机构（特别是香港持牌机构）敞开了大门，并且境外资管机构与当地持牌金融机构或企业集团合资从事QFLP工作在深圳较为普遍。上述不同的资格要求在一定程度上反映出两个城市在QFLP试点方面的不同定位。

二、机构设立及募资

根据QFLP的试点规定，试点企业包括外商投资股权投资企业（即QFLP基金）和外商投资股权投资管理企业（即QFLP基金管理机构），即由QFLP基金管理机构发起设立QFLP基金或受托管理股权投资企业。上海和深圳均要求QFLP基金和QFLP基金管理机构设在本市。

《深圳办法》要求QFLP基金必须是以非公开方式“向境内外投资者募集资金”，同时规定，QFLP基金管理机构应当在取得资格后12个月内完成在中国证券投资基金业协会的登记并成立第一只人民币私募基金。《深圳办法》还进一步规定，QFLP基金的普通合伙人与有限合伙人中由同一实体控

制的，该同一控制人通过该等合伙人的出资占比不得超过50%。这都反映出深圳更倾向于将QFLP基金定位为向第三方募集资金的人民币基金。

不同于深圳，上海QFLP基金的募资行为完全可以仅在境外完成，不涉及境内的资金募集行为。甚至QFLP基金的所有投资者（在QFLP基金是合伙企业的情形下，指普通合伙人和有限合伙人）均可为境外实体。由于不在中国境内募资，该等基金并不构成《私募投资基金监督管理暂行办法》（以下简称“《私募暂行办法》”）管辖下的私募基金，QFLP基金管理机构应无需在基金业协会办理私募基金管理人登记，也无需就该只仅在境外募资的QFLP基金在基金业协会办理私募基金备案，除非《私募暂行办法》另行修改，将境外募资境内投资的基金的投资和管理活动纳入管辖范围。当然，这并不排除如QFLP基金管理机构拟在中国境内募集资金成立人民币基金的，则应适用《私募暂行办法》，即只有在完成私募基金管理人的登记后方可进行募资活动，并应根据《私募暂行办法》的规定在完成私募基金备案后开展投资活动。

三、我们的观察

根据我们对两地QFLP试点规定及实践的观察，我们认为上海相比深圳在落户地的选择上具有结构性优势。首先，在上海，境外资产管理机构可在初期阶段仅以海外募集的美元资金通过QFLP基金完成境内投资，待将来适当的时候再进行境内人民币募资。具体而言，《上海办法》允许上海QFLP基金管理人仅以在境外募集的基金在中国进行投

资并由管理人自行决定是否或何时募集人民币基金。从商业规划上看，QFLP基金管理人可能会待拥有一定的境内投资业绩并满足大型机构投资者（如银行、保险机构等）对境内投资业绩的要求后再在境内募集人民币基金。其次，目前已有不少在上海已经设立分别投资于国内外二级市场的PFM和QDLP实体的境外资产管理机构。从市场实践看，这些机构可平衡利用已有在岸资源进行QFLP试点工作，以节省成本投入，实现整体资源的优化和整合。上海试点的上述两项优势可能成为境外资产管理机构在选择QFLP试点的落地地时的重要考量。

我们注意到，对于众多境外资产管理机构而言，在尚未熟悉中国市场的情况下，初期阶段不大可能在境内开展募资，对他们而言，较为实际可行的做法是，在境外筹措美元基金并通过QFLP进入中国进行投资，从而获得可追溯的中国境内投资业绩，以获得大型机构投资者的认可。上海的QFLP政策在相当大的程度上可满足这一实际需要，而《深圳办法》则不能满足目前仅计划在境外募资的这一类境外资产管理机构的需要。

通过比较上海和深圳两地QFLP政策的异同，可以看出，尽管在试点架构、申请流程、合格投资者、高管人员要求、结汇便利性等方面，两地的差异没有那么明显，但由于上述两地的政策定位和实践的不同，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。

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Financial

Shanghai or Shenzhen? Considerations in the Choice of Location for QFLP Funds

Among the numerous cities in mainland China, both Shanghai and Shenzhen stand out as forerunners in the opening up of financial markets. Both cities have introduced pilot programs aiming to encourage foreign fund managers to establish a local presence, including Qualified Foreign Limited Partnership (QFLP) pilot programs focusing on inbound private equity investment, and Qualified Domestic Limited Partnership (QDLP) and Qualified Domestic Investment Enterprise (QDIE) pilot programs directed towards outbound investment in different asset classes. While the two cities introduced their respective programs at around the same time and would appear to offer closely competing opportunities, there are actually marked differences between the two cities in terms of the design and implementation of these policies.

In this Bulletin, we provide some useful information on the relative advantages of Shanghai and Shenzhen for our clients to take into account when deciding where to apply for their QFLP pilot qualification.

I. Eligibility/Qualifications of Applicants

The Implementation Measures for the Launch of the Foreign-Invested Equity Investment Enterprises Pilot issued by Shanghai in 2010

(“Shanghai Measures”) stipulates that a QFLP fund manager shall have at least one investor, and that the business scope of such investor or its affiliates shall be related to equity investment or equity investment management.

The *Shenzhen Measures for the Foreign-Invested Equity Investment Enterprise Pilot Program* issued by Shenzhen, amended on September 22, 2017 (“Shenzhen Measures”) provide details of the requirements on the foreign investors and domestic investors respectively. A foreign investor shall meet at least one of the following requirements: (i) In the year before application, its own assets shall be no less than USD 100 million; (ii) In the year before application, the assets under management (AUM) shall be no less than USD 200 million; (iii) The foreign investor shall hold an asset management license issued by a foreign financial regulatory authority. A domestic investor is required to be either a licensed financial institution, a subsidiary that is directly controlled by a licensed financial institution, or a large enterprise that has been introduced by and has the support of the Shenzhen Municipal Government, and meets certain profitability requirements.

In contrast to the Shenzhen Measures, the

Shanghai Measures do not set any specific threshold for a shareholder of the QFLP fund manager. However, in practice, it has been primarily globally renowned asset management institutions or asset specialists that have been welcomed to set up as QFLP fund managers in Shanghai.

Shenzhen seems to be more open to those fund managers with small to medium sized AUM, and particularly to Hong Kong-licensed institutions. It has been not uncommon for foreign fund managers to set up joint ventures with local licensed financial institutions or enterprise groups to establish QFLP pilot projects in Shenzhen.

In summary, the varying qualification requirements reflect the different positioning of the two cities with respect to the QFLP pilot program.

II. Entity Incorporation and Fund-raising

Both Shanghai and Shenzhen rules draw a distinction between a foreign-invested equity investment enterprise (i.e., a QFLP fund) and a foreign-invested equity investment management enterprise (i.e., a QFLP fund manager). A QFLP fund manager may raise and launch a QFLP fund, or be entrusted to manage an enterprise whose business is equity investment. Both Shanghai and Shenzhen require that QFLP funds and QFLP fund managers should be based in their respective cities.

The Shenzhen Measures require that a QFLP fund shall “raise funds from domestic and foreign investors” privately, and shall complete the registration with the Asset Management Association of China (AMAC) and launch its first RMB private fund within 12 months after obtaining the pilot qualification. In addition, if the general partner and some of the limited partners of the QFLP fund are controlled by the same entity, the

total capital contributions made by the controlling entity through the partners shall not exceed 50%. Overall, it would appear that in Shenzhen, the QFLP fund is positioned as an RMB fund mainly raised from third party investors.

In contrast with Shenzhen, for a QFLP fund established in Shanghai, all of its fundraising can be conducted outside of China with no need to absorb any domestic funds. Moreover, where the QFLP fund is a partnership, the general partner and the limited partners may all be foreign entities. In such circumstances, since the funds are not raised within China, such funds do not constitute a private fund as defined under the *Interim Measures for the Supervision and Administration of Private Investment Fund* (“Interim Measures”). Unless the Interim Measures are otherwise amended to include the investment and management activities of such purely offshore fundraising fund, there is currently no requirement for the fund manager of such QFLP funds to register as a private fund manager with the AMAC nor to file the funds with the AMAC. Please note that the above interpretation does not exempt a QFLP fund manager intending to launch an RMB fund in China from the need to comply with the Interim Measures, which require that prior to conducting any fund-raising in China, a fund manager shall register with the AMAC as a private fund manager and shall file such QFLP fund with the AMAC before making investments.

III. Our Observations

Based on our observations of the QFLP pilot regulations and the actual practices of the two cities, we believe that, in terms of determining where to establish a local base for QFLP fund managers, Shanghai offers certain structural advantages over Shenzhen.

Firstly, under the Shanghai pilot program, an applicant may use US dollar funds to make

investments through the QFLP fund in China at the initial stage and depending on its own situation, form an RMB fund through onshore fundraising at a later stage.

Specifically, the Shanghai Measures permit a foreign fund manager to make investment in China only with funds raised outside China and allow the QFLP fund manager to decide whether and when to raise RMB funds. In terms of its commercial planning, a QFLP fund manager may prefer not to raise RMB funds in China until it is able to meet the requirement of having a track record of investments with large, domestic institutional investors, such as banks and insurance institutions.

Secondly, under the Shanghai scheme, a foreign fund manager that has already incorporated both private securities investment management and QDLP management entities in Shanghai may leverage these onshore resources for its participation in the QFLP pilot program, and through the optimization and integration of overall resources, may thereby minimize costs.

These are two significant advantages of the Shanghai QFLP pilot and should be taken into consideration in the choice of location for a QFLP pilot.

It is apparent that for many foreign fund managers, it has not been viable to attempt to raise RMB funds within China without some prior

experience in the Chinese market. A more realistic option is to use US dollar funds raised offshore to invest in China at initial stage, and to thereby establish an observable investment track record in China and gain credibility among large institutional investors to facilitate RMB fundraising at a later stage. The QFLP policy of Shanghai is probably the most appropriate to address this need. By contrast, the Shenzhen Measures, which do require that RMB funds should be raised from the outset, do not offer the same degree of flexibility.

While there may initially appear to be few substantial differences in the QFLP pilot schemes of Shanghai and Shenzhen in aspects such as the framework of the pilot schemes, their application procedures, the requirements on qualified investors and senior management personnel, or the convenience of settlement of foreign exchange, our comparison indicates that in practice there are actually some significant variations between the two cities' policy initiatives that should be taken into account by foreign fund managers who intend to invest in China. In order for our clients to make the most of the opportunities available to them in China, we recommend they pay close attention to the implementation of policy, and thereby select an approach that is most suitable to their own requirements.

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