

3. Brief Comparison of Publicly Placed Funds and Privately Placed Funds

Generally speaking, the Funds Law Amendment imposes fewer controls and gives more leeway to privately placed funds.

	Publicly placed fund	Privately placed fund
Number of Investors	No limit	No more than 200 qualified investors
Qualification for Investors	No specific qualifications	<p>Limited to Qualified Investors. A qualified investor is required to have assets or income meeting the below thresholds, subscribe to fund units of a mandatory minimum amount, and be capable of identifying and bearing the associated investment risks.</p> <p>According to the Draft Regulations:</p> <p>(i) a qualified individual investor is one who meets any of the following conditions:</p> <p>1) he/she has personal or household financial assets of at least RMB 2 million;</p> <p>2) his/her personal annual income averages at least RMB 200,000 measured over the prior 3 years; or</p> <p>3) his/her household annual income averages at least RMB 300,000 measured over the prior 3 years;</p> <p>(ii) a qualified non-individual investor (e.g. a corporation or an enterprise) must have net assets of at least RMB 10 million; and</p> <p>(iii) an investment product (e.g. a trust product, an</p>

	Publicly placed fund	Privately placed fund
		insurance product) which is set up and managed by a financial institution regulated by one of the financial regulators under the State Council (i.e. the CSRC, the China Banking Regulatory Commission, and the China Insurance Regulatory Commission) is deemed to be a qualified investor.
Minimum Amount Invested by a Single Investor in a Single Fund	No minimum requirement.	RMB 1 million, according to the Draft Regulations.
Promotion	The use of mass media and other public means to promote the offering and sale of publicly placed funds is not prohibited.	The use of mass media, including publications, radio, television, and internet, and the use of workshops, report meetings or analyst meetings etc. to promote the offering and sale of privately placed funds is expressly prohibited.
Fund Manager	<p>A fund manager must be a duly organized company or partnership.</p> <p>A fund manager must obtain a Fund Management Qualification Certificate issued by the CSRC.</p>	A fund manager for a privately placed fund must be registered with the AMAC. If it is not, then it cannot make securities investments under any name containing the term “fund”, “fund management” or equivalent, unless permitted by other laws and regulations.

	Publicly placed fund	Privately placed fund
	<p>Fund Management Company Qualifications</p> <p>(1) It has articles of association in compliance with the Funds Law Amendment and the Company Law.</p> <p>(2) Its registered capital is not less than RMB 100 million which is paid up in cash.</p> <p>(3) Its major shareholders must be determined to: (i) have had good performance, sound financial positions and a good public reputation, in running its financial business or managing financial institutions; (ii) have an asset scale reaching the standard prescribed by the State Council; and (iii) have no record of any violation of laws in the last three years.</p> <p>(4) The number of its employees holding a fund practicing qualification meets the mandatory standard.</p> <p>(5) Its directors, supervisors and senior managers satisfy the relevant conditions for holding their positions.</p> <p>(6) It has business premises and security and other facilities which satisfy the relevant requirements.</p> <p>(7) It has a sound internal governance structure as well as a sound internal auditing and monitoring system and a sound risk control system; and</p> <p>(8) It meets other requirements specified by applicable laws and the CSRC.⁹</p>	<p>According to the Draft Regulations, a non-financial institution fund manager must register with the AMAC if it meets the following criteria:¹⁰</p> <p>1) it has paid-in capital or actually contributed capital of RMB 10 million or more;</p> <p>2) among the products it manages on its own behalf or on behalf of other parties, more than RMB 100 million is invested in publicly issued stocks, bonds and fund units and other securities and derivatives specified by the CSRC;</p> <p>3) it has two licensed qualified persons-in-charge and one principal in charge of compliance and risk control; and</p> <p>4) it has a good social reputation, and it has no recorded violation over the past 3 years or any record of bad faith with any relevant financial regulator, the Administration for Industry and Commerce or any tax regulator or other administrative agency, or any commercial bank or self-disciplinary organization.</p>

	Publicly placed fund	Privately placed fund
		<p>The Draft Regulations indicate that the CSRC will issue a separate regulation for fund managers which are commercial banks, trust companies, insurance companies, insurance asset management companies, securities companies, futures companies, fund management companies or any other type of financial institution.</p> <p>To the extent provided under the fund contract, a privately placed fund may be managed by one or several unit holders acting as the fund manager, in which case, the said unit holders will have unlimited joint liability if the assets of the fund are insufficient to discharge the fund's obligations.</p>
	<p>Common Criteria Applicable to non-Fund-Management Company Fund Managers</p> <ol style="list-style-type: none"> 1) It has over 3 years experience managing securities assets, and the securities products it managed over the prior 3 years have performed well; 2) It has good corporate governance with sound internal controls and effective risk management systems; 3) It has had sound finances and good operating results in the prior 3 years; 4) It operates in good faith and in compliance with relevant regulations, and no material violation has been recorded against it by a regulatory authority in the prior 3 years, nor is it under investigation for a violation of laws or regulations, nor is it in the process of rectifying a prior violation of applicable laws and regulations; 	

	Publicly placed fund	Privately placed fund
	<p>5) It is a member of the AMAC;</p> <p>6) It has (i) senior management personnel meeting the requirements of applicable laws and regulations and (ii) at least 10 employees engaged in research and investment who hold a fund practicing qualification; and</p> <p>7) Other criteria specified by the CSRC.</p>	
	Additional Criteria Applicable to Each Type of Non-Fund-Management Company	
	Securities Company ¹¹	<p>1) It has at least RMB 20 billion of total assets under management, or not less than RMB 2 billion of collective assets under management; and</p> <p>2) All the risk control indicators have been in continuous compliance with relevant standards over the past 12 months.</p>
	Insurance Asset Management Company	<p>1) It has at least RMB 20 billion of assets under management; and</p> <p>2) It has at least RMB 500 million in net assets by the end of the previous quarter.</p>
	Private Securities Fund Management Firm, Equity Investment Management	<p>1) It has at least RMB 10 million in paid-in capital or actual capital contributions; and</p> <p>2) It has had at least RMB 2 billion of securities assets under management measured annually over the prior 3 years.</p>

	Publicly placed fund		Privately placed fund
	Firm, Venture Capital Investment Management Firm		
Fund Custodian	A publicly placed fund must be placed under the custody of a fund custodian.		A privately placed fund need not be placed under the custody of a fund custodian if its fund contract so provides.
Permitted Investments	(i) Publicly traded stocks and bonds, and (ii) Other securities ¹² and their derivatives specified by the CSRC.		(i) Publicly offered shares of joint stock companies, bonds and fund units, and (ii) Other securities and their derivatives specified by the CSRC.
Allocation of Proceeds and Risks	The proceeds and risks of publicly placed funds are allocated to unit holders pro rata to the fund units they respectively hold.		Privately placed funds have leeway to specify the allocation of proceeds and risks in the fund contract.
Registration	Publicly placed fund must be registered with the CSRC.		Upon placement of a privately placed fund, the fund manager must complete relevant filings with the AMAC. According to the Draft Regulations, if a private fund has assets over RMB 100 million or more than 50 unit holders, the AMAC must report the same to the CSRC in addition to any other reporting obligations of the fund manager under other relevant regulations.

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Information Disclosure	The Funds Law Amendment provides a non-exhaustive list of information required to be publicly disclosed.	Fund information must be disclosed by fund managers and fund custodians to unit holders in accordance with the fund contract.
Bankruptcy remoteness	The fund property is independent and separate from the self-owned property of the fund manager and fund custodian, and the self-owned property of fund sales institutions, fund payment institutions and fund depository institutions.	
Deemed Fund Investment Activities	Securities investment activities by a company or a partnership, where the company or partnership is established through publicly or privately placed fund raising for the purpose of conducting securities investment activities and whose assets are managed by a fund manager or a general partner, are also regulated by the Funds Law Amendment.	