



HAN KUN LAW OFFICES

Legal Commentary



CHINA PRACTICE • GLOBAL VISION

August 1, 2012

Asset Management Law

Comment on Revisions of Qualified Foreign Institutional Investors Rules

James WANG | Chu LIU

On July 27, 2012, China Securities Regulatory Commission (“CSRC”) promulgated the Regulation of China Securities Regulatory Commission on the Implementation of the Measures for the Administration of Securities Investment Made in China by Qualified Foreign Institutional Investors (“QFII”) (the “Regulation”), aiming to amend the Notice of China Securities Regulatory Commission on the Implementation of the Measures for the Administration of Securities Investment Made in China by Qualified Foreign Institutional Investors (the “Notice”) issued on August 24, 2006. CSRC, People’s Bank of China and State Administration of Foreign Exchange jointly issued on August 24, 2006 the Measures for the Administration of Securities Investment Made in China by Qualified Foreign Institutional Investors (the “Measures”), amending the relevant rules regarding the QFII program for the first time since its initiation in 2002. The Regulation aims to further open up the capital market and attract more long term investment from abroad. More specifically, the Regulation would simplify the approval process for QFII, lower the requirements, loosen the restriction on opening securities trading accounts, expand the investable scope, facilitate the investment and operation, improve the supervision system of the investment by QFII, and ensure that relevant risks are under control.

The main points of the Regulation, as compared to the Notice and other relevant laws and regulations on the QFII program, are as follows:

Article	Change	The Notice (2006)	The Regulation (2012)
1	Lower the QFII qualification requirements for “fund management institutions” (under the Notice)/“asset management institutions” (under the Draft Regulation)	The applicant shall have at least five years’ experience in the asset management business, and the securities assets under management by the applicant in the most recent accounting year shall not be less than USD5 billion.	The applicant shall have at least two years’ experience in the asset management business, and the securities assets under management by the applicant in the most recent accounting year shall not be less than USD500 million.
	Lower the QFII qualification requirements for insurance companies.	The applicant shall have been established for five or more years, and the securities assets held by the applicant in the most recent accounting year shall not be less than USD5 billion.	The applicant shall have been established for two or more years, and the securities assets held by the applicant in the most recent accounting year shall not be less than USD500 million.
	Lower the QFII qualification requirements for securities companies.	The applicant shall have at least 30 years’ experience in the securities business, its actual paid-in capital shall be no less than USD1 billion, and the securities assets under management by the applicant in the most recent accounting year shall be no less than USD10 billion.	The applicant shall have at least five years’ experience in the securities business, its net asset shall be no less than USD500 million, and the securities assets under management by the applicant in the most recent accounting year shall be no less than USD5 billion.
	Lower the QFII qualification requirements for commercial banks.	The applicant’s total assets for the latest accounting year shall rank among top 100 in the world, and the securities assets under management by the applicant in the most recent accounting year shall be no less than USD10 billion.	The applicant shall have at least 10 years’ experience in the banking business, with a total of USD300 million Tier 1 Capital, and the securities assets under management by the applicant in the most recent accounting year shall be no less than USD5 billion.
	Lower the QFII qualification requirements for other institutional investors (such as pension funds, charity foundations, endowment funds,	The applicant shall have been established for five years or more, and the securities assets held by the applicant in the most recent accounting year shall not be less than USD5 billion.	The applicant shall have been established for two years or more, and the securities assets held by the applicant in the most recent accounting year shall be no less than USD500 million.

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	trust companies, and governmental investment management companies).		
2	Simplify the application and approval process	In applying for the QFII qualification, the applicant shall submit the application documents (in one original and one duplicate) to China Securities Regulatory Commission.	In applying for the QFII qualification, the applicant shall submit the application document in electronic manner through the website of China Securities Regulatory Commission, together with a copy to China Securities Regulatory Commission. Should any of the significant events stipulated in Article 30 of the Administrative Measures occurs, the QFII shall file for record with China Securities Regulatory Commission electronically through its website.
	Simplify the document requirement	The documents to be submitted mainly include: (a) application form; (b) basic information of the primary responsible person; (c) investment plan; (d) description of the source of fund; (e) explanation on whether or not the applicant has been subject to any severe sanctions by the regulatory authorities in the recent three years; (f) business license (in photocopy) issued by the applicant's country or region of origin; (g) financial business permit (in photocopy) issued by the regulatory authority of the applicant's country or region of origin;	The Regulation clarifies in paragraph (e) that foreign institutional investors that have not been established for three years are only required to submit an explanation on whether or not the applicant has been subject to any severe sanctions by the regulatory authorities since their establishment, rather than in the recent three years; the Regulation deletes paragraph (h); The Regulation modifies paragraph (i) by replacing the draft custody agreement with the executed custody agreement, so there is no longer a need to submit a draft copy first before submitting the executed one; The Regulation also modifies paragraph (j) by replacing the audited financial statements for the past three years with

Article	Change	The Notice (2006)	The Regulation (2012)
		<p>(h) articles of association (in photocopy);</p> <p>(i) draft of the custody agreement entered into with the custodian;</p> <p>(j) audited financial statements for the latest three years;</p> <p>(k) other documents requested by CSRC; and</p> <p>(l) the relevant power of attorney, written notarization and Chinese translation.</p> <p>The applicant shall submit the executed custody agreement to the CSRC within five working days after opening the special Renminbi account.</p>	the audited financial statements for the past one year.
6	Allow multiple securities accounts, satisfy the need for QFIIs to choose multiple securities companies, and facilitate the investment of QFII	A QFII shall entrust a custodian to apply to China Securities Depository and Clearing Corporation Limited for opening more than one securities account. The securities accounts under such application shall correspond to the special Renminbi accounts approved by the SAFE on a one-on-one basis.	The Regulation eliminates the expression of “one on one” in the Notice and thus allows the QFII to open multiple securities accounts with different securities companies with one single special Renminbi account.
7 and 8/7	Allow QFIIs to open separate accounts for different clients, facilitates the investment of QFIIs and enhance transparency	<p>Article 7: QFIIs shall apply to open securities accounts in their own names, and shall, in the case of providing clients with asset management services, open nominal holders’ accounts.</p> <p>Article 8: When a QFII applies to open securities accounts for long-term capital such as publicly offered funds, insurance funds, pension funds, charity foundations,</p>	The Regulation consolidates Articles 7 and 8 in the Notice by stating that QFIIs shall open separate securities accounts for its proprietary capital and the clients’ assets under its management ¹ . When a QFII applies to open securities accounts for a client, the names of such accounts may be set in the form of “QFII + the name of the client”.

¹ Also including the open-end China funds, which refers to open-end securities investment funds set up outside of China in the form of public offering that invest at least 70% of their assets in China, according to the Provisions on Foreign Exchange Administration of Domestic Securities Investment by Qualified Foreign Institutional Investors (Announcement of the State Administration of Foreign Exchange [2009] No. 1)

Article	Change	The Notice (2006)	The Regulation (2012)
		endowment funds, or governmental investment funds, the names of such accounts may be set in the form of "QFII + Fund/Insurance Capital/etc.". The assets in such accounts shall be owned by the "Fund (or Insurance Capital, etc.)" and are independent from the QFII's and the custodian's assets.	
	Satisfy the need of QFIIs to invest in the specific customer product provided by the fund management institutions and facilitate the operation of QFII		The Draft Regulation adds that domestic fund management institutions may provide specific customer asset management services to QFIIs and open accounts for them, while the scope of investment is the same as that of QFIIs.
8/9	Expand investment scope	<p>QFIIs may invest in the following Renminbi financial instruments within the approved investment quota:</p> <p>(a) Stocks listed and traded on securities exchanges;</p> <p>(b) Bonds listed and traded on securities exchanges;</p> <p>(c) Securities investment funds;</p> <p>(d) Warrants listed and traded on securities exchanges;</p> <p>and</p> <p>(3) Other financial instruments in which an investment is permitted by CSRC.</p> <p>QFIIs may participate in the offering of new shares, offering of convertible bonds, follow-on offering of shares and subscription of allotted shares.</p>	Apart from the index option ² , QFIIs are further allowed to invest in fixed income products on the inter-bank market.
	Raise foreign exchange quota		In 2009, the State Administration of Foreign Exchange

² Guidelines for Qualified Overseas Institutional Investors Participating in Stock Index Futures Trading (Announcement [2011] No. 12 of China Securities Regulatory Commission)

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	for investment		promulgated the <i>Provisions on Foreign Exchange Administration of Domestic Securities Investment by Qualified Foreign Institutional Investors</i> , raising the foreign exchange quota for QFII's investment, facilitating the process for opening capital accounts, and loosening the lock-up of QFII capital and the restriction on the remittance and repatriation of foreign exchange.
10/9	Loosen restriction on share ownership	The securities investment made within China by overseas investors shall be subject to the following share ownership percentage caps: (a) The ownership percentage in a listed company by any single overseas investor through QFII shall not exceed 10% of the total shares of that company; and (b) The aggregate ownership percentage in a single listed company by all overseas investors shall not exceed 20% of the total shares of that listed company.	The share ownership percentage cap for any single overseas investor through QFII remains 10%. The maximum aggregate ownership percentage of all overseas investors in any single listed company is increased to 30% from 20%.
14	Allow QFIIs to open separate accounts for different clients, facilitates the investment of QFIIs and enhance transparency	As a nominal holder, a QFII may divide and vote part of the shares held in its name according to the number of shares held by it on an overseas investor's behalf.	The Regulation eliminates Article 14 of the Notice as it is no longer necessary under the revised rules.

In summary, the amendments are proposed by CSRC for the purpose of loosening relevant restrictions and enhancing its supervision of the QFII program. It is believed that if the proposed amendments are adopted, QFIIs will continue to become a more significant part of the A share market, helping the stable growth and further opening-up of China's capital market, which in turn will attract more and more overseas long term capital to China.

Important Announcement

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If you have any questions regarding this publication, please contact any of the following Han Kun lawyers:

Contact Us

Beijing Office

Tel.: +86-10-8525 5500
Suite 906, Office Tower C1, Oriental Plaza
No. 1 East Chang An Ave.
Beijing 100738, P. R. China

Estella CHEN **Attorney-at-law**
Tel.: +86-10-8525 5541
Email: estella.chen@hankunlaw.com

Shanghai Office

Tel.: +86-21-6080 0909
Suite 5709, Tower 1, Plaza 66, 1266 Nanjing
West Road,
Shanghai 200040, P. R. China

Yinshi CAO **Attorney-at-law**
Tel.: +86-21-6080 0980
Email: yinshi.cao@hankunlaw.com

Shenzhen Office

Tel.: +86-755-3680 6500
Suite 4709, Excellence Times Plaza, 4068
Yitian Road, Futian District,
Shenzhen 518048, P. R. China

Jason WANG **Attorney-at-law**
Tel.: +86-755-3680 6518
Email: jason.wang@hankunlaw.com