

Legal Commentary

July 30, 2024

Implications of New QFI Funds Management Rules

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Background

On 26 July 2024, the People's Bank of China (PBOC) and the State Administration of Foreign Exchange (SAFE) released the revised *Provisions on the Administration of Funds of Foreign Institutional Investors for Domestic Securities and Futures Investment* (《境外机构投资者境内证券期货投资资金管理规定》, the "**Revised Provisions**"), which will come into effect on 26 August 2024 and supersede the current version issued on 7 May 2020 (the "**Current Provisions**").

To facilitate your understanding of the implications of the Revised Provisions on the qualified foreign investors (QFIs) and QFI custodian banks, we set out below the key changes of the Revised Provisions against the Current Provisions, covering (1) SAFE registration, (2) foreign exchange risk management, (3) account management and (4) repatriation.

SAFE registration

	Current Provisions	Revised Provisions	Implications
Initial registration	<p>Article 6</p> <p>A QFI shall, after obtaining the QFI license from the China Securities Regulatory Commission (CSRC), entrust the principal reporter/main custodian to submit the following materials to the SAFE for the application for business registration:</p> <ul style="list-style-type: none">■ Registration Form for Foreign Institutional Investor; and■ A copy of QFI license issued by the CSRC.	<p>Article 6</p> <p>A QFI shall provide the principal reporter/main custodian with the following materials for business registration with SAFE through the principal reporter/main custodian on the SAFE's digital platform:</p> <ul style="list-style-type: none">■ A copy of QFI license issued by the CSRC;■ An undertaking letter on complying with QFI tax payment related rules under PRC laws.	<ul style="list-style-type: none">■ The initial registration process has been simplified under the Revised Provisions. The registration form is no longer required from QFI's end, but the principal reporter/main custodian shall input the relevant information for the QFI on SAFE's platform.■ QFI is newly required upon the initial registration to submit

	Current Provisions	Revised Provisions	Implications
			<p>an undertaking letter on complying with QFI tax payment related rules under PRC laws. Pursuant to Article 15 of the Revised Provisions, such one-off undertaking letter will take the place of and eliminate the requirement of the undertaking letter for full payment of tax required for each repatriation of profits by the QFI under the Current Provisions, i.e., QFI custodian banks can proceed with the repatriation upon QFI's written orders without a separate undertaking letter.</p>
Change registration	<p>Article 21 Upon the change to the QFI license, other important information of the QFI such as the custodian, or the change to the principal reporter/main custodian, the QFI shall make the change registration within 10 business days after the receipt of the new QFI license or occurrence of relevant change.</p>	<p>Article 7 The timeframe for change registration is extended to 30 business days.</p>	<ul style="list-style-type: none"> ■ The extension of the timeframe for change registration will give the QFI and principal reporter/main custodian more time for preparation of the change registration and relieve their operational burden.
Deregistration	<p>Article 21 In the event that the CSRC deregisters the QFI license of a QFI due to dissolution, entry into</p>	<p>Article 22 The timeline for reporting to and deregistration with the PBOC and SAFE is postponed to 30 business</p>	<ul style="list-style-type: none"> ■ The Revised Provisions have removed the time restraint on the realization of assets and closure of special

	Current Provisions	Revised Provisions	Implications
	bankruptcy procedures, or personal reasons of the QFI or takeover by a receiver, the QFI shall promptly report to the PBOC and the SAFE through its principal reporter/main custodian, and in principle shall realize its assets and close its special account within 30 business days.	days after the realization of assets and closure of special account.	accounts in consideration of the practical difficulty for compliance with such requirement under the Current Provisions.

Foreign exchange risk management

The Revised Provisions have synchronized the foreign exchange regulatory regime with that under the CIBM Direct program, and QFIs are permitted under Articles 17 and 18 of the Revised Provisions to choose one of the following models for foreign exchange risk managements (including buying and selling spot foreign exchange, and carrying out foreign exchange derivatives transactions):

- trading with the custodian or other financial institutions as their client — QFIs shall, through their custodian, report the list of counterparty financial institutions and changes thereto to the China Foreign Exchange Trade System & National Interbank Funding Center (“CFETS”);
- becoming a member of the CFETS and directly trading on the inter-bank foreign exchange market — this is only applicable to QFIs that are banking institutions; or
- becoming a member of the CFETS and trading on the inter-bank foreign exchange market via a prime broker.

Under the Current Provisions, QFIs are permitted to carry out foreign exchange derivatives transactions (but not spot foreign exchange buying and selling) with their custodian or other financial institutions, and are not offered the options to enter the inter-bank foreign exchange market for foreign exchange transactions.

Account management

The Revised Provisions have introduced more flexibility regarding the opening and funds transfer in connection with QFI special accounts.

- No separation of accounts for securities and derivatives transactions. Under Articles 11 and 12 of the Revised Provisions, QFIs are no longer required to separately open and maintain special accounts for securities transactions and derivatives transactions.
- Two-way non-trading transfer between QFI and CIBM. Article 14 of the Revised Provisions confirms that the two-way non-trading transfers between the QFI special accounts and CIBM special accounts

of a same QFI are permitted.

- Opening of special accounts with other financial institutions. Pursuant to Article 19 of the Revised Provisions, QFIs are permitted to open special accounts with other financial institutions for spot foreign exchange buying and selling, and futures and derivatives trading purposes. Such special accounts can only be used for domestic funds settlement, but the cross-border remittance of investment principals and proceeds by the QFIs should still be conducted via the accounts opened with the QFI custodian as required under Article 9 of the Revised Provisions.

Repatriation

The Revised Provisions for the first time remove the consistency requirement for the currency of funds remitted in and out by the QFIs and remove the cross-currencies arbitrage prohibition, and permit QFIs to repatriate either foreign currencies or RMB funds where the QFIs remit in foreign currencies for investments. However, where the QFIs remit in RMB funds, the QFIs still need to repatriate RMB funds only (but not foreign currencies).

Outlook

In general, the Revised Provisions have simplified or eased time restraints on certain QFI-related SAFE registrations, allowed QFIs more options for foreign exchange risk management, and introduced more flexibility regarding QFI account management and repatriation. QFIs and QFI custodian banks shall pay attention to the changes made to the Current Provisions to align their practices and adjust internal procedures where necessary. After the Revised Provisions, SAFE will, from time to time, release Q&A or other regulatory documents to clarify the requirements under the Revised Provisions. We will keep a close eye on material developments and update you in a timely manner.

Important Announcement

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