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SPONSORED UPDATE: CHINA



CHINA'S NEW QFII RULES ISSUED IN JULY 2012

On July 27, 2012, the China Securities Regulatory Commission ("CSRC") promulgated the Regulations on the Relevant Issues Relating to the Implementation of the Administrative Measures on Securities Investment by Qualified Foreign Institutional Investors ("QFII") within the People's Republic of China (the "New QFII Rules"), which took effect immediately and superseded the existing notice on the same subject issued by CSRC on August 24, 2006.

The New QFII Rules aim to allow more institutions to gain QFII status and to facilitate the execution of their investments. In order to do so, the following changes are made to the old QFII regime:

More Liberal Qualification Requirements

Foreign financial institutions will be subject to lower qualification requirements to obtain QFII status, as shown in the table below:

Type of Institution	Requirements under New QFII Rules	Previous Requirements
Asset management institutions, insurance companies and other institutional investors (such as pension funds, charitable funds, endowments or sovereign funds)	Minimum years of operation ("MYO"): 2 years	MYO: 5 years
	Assets under management ("AUM"): USD 500 million	AUM: USD 5 billion
Securities companies	MYO: 5 years	MYO: 30 years
	Net asset value: USD500 million	Paid up capital: USD 1 billion
	AUM: USD 5 billion	AUM: USD 10 billion

Type of Institution	Requirements under New QFII Rules	Previous Requirements
Commercial banks	Having operated banking business for over 10 years	Ranked among the top 100 commercial banks by assets worldwide
	Tier one capital: USD 300 million	
	AUM: USD 5 billion	AUM: USD 10 billion

Better Operation of Accounts

QFIIs will be allowed to set up separate securities accounts for their own and each of their clients' funds, and will also be allowed to open trading accounts at multiple brokerages.

Expanded Investment Options

The New QFII Rules are part of a string of changes made to further open the domestic securities markets to qualified foreign investors. In April this year, the State Council of the PRC increased the total QFII quota from USD 30 billion to USD 80 billion. The New QFII Rules will expand market access for QFIIs by allowing them to invest through the interbank bond market, in addition to trading shares, bonds, investment certificates and stock index futures on exchanges or through investment funds. Derivative instruments (other than stock index futures) and markets other than stock exchanges and the interbank bond market remain closed to QFII.

Another major amendment in the New QFII Rules is to raise the ceiling on the combined shareholding of QFIIs in any listed company in China's A-share market from 20% of the total issued share capital to 30%, which will permit QFIIs to exercise a significant degree of control over PRC listed companies. The maximum stake any single QFII may hold remains unchanged at 10%.



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SPONSORED UPDATE: MALAYSIA

SOCIAL MEDIA USERS,
BEWARE!

The legal and online community has recently been abuzz over the latest amendments to the Malaysian Evidence Act 1950. The Evidence (Amendment) (No. 2) Act 2012, which is not yet in force, provides for a new Section 114A regarding the presumption of fact in publications; inter alia, that a person may be held accountable for offending material that is either published depicting the person as the owner, published from the person's network or computer unless he proves to the contrary. Consequently, a person may now be found guilty for publishing anything deemed offensive although it was in fact posted by someone else.

Many have criticized this amendment as being one that is absurd, unfair and oppressive citing examples such as victims of hackers being put behind bars, Facebook users being found guilty for posts on their Facebook wall by third parties and operators of eateries offering free WiFi services getting into serious trouble. Such criticism is not baseless as the wording of Section 114A is broad enough to cover all the hypothetical scenarios described above. Nonetheless, the true test of whether the amendment proves to be onerous and unreasonable would depend on the actual application of the provision and judicial interpretation by the courts of Malaysia.

It is a possibility that the amendment would result in users being more cautious and responsible as they now bear the onus of proving they did not in fact post or create the offending material. Users would likely begin to be more responsible and ensure that effective safety measures are in place such as the use of appropriate passwords, anti-virus and anti-spam ware to ensure that they are not put in a compromising position whereby the operation of the amendment would presume them to be guilty for offending material which in fact they are not responsible for. Social media users would also now be more cautious as to who they allow to post content on their pages and would be more concerned about moderating third party content on their pages, blogs or sites.

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individual cases. No decision to act or not to act in a particular way should be taken merely on the basis of this article, and detailed legal advice should always be sought at the earliest possible moment.



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SPONSORED UPDATE: PHILIPPINES

REVISED GUIDELINES ON
FREE AND PRIOR INFORMED
CONSENT

The National Commission on Indigenous Peoples ("NCIP") recently promulgated the Revised Guidelines on the Exercise of Free and Prior Informed Consent ("FPIC") and Related Processes ("Revised Guidelines") [NCIP Administrative Order No. 3, series of 2012], which repealed The Free and Prior Informed Consent Guidelines of 2006.

It is the policy of the State that no concession, license, permit or lease, production-sharing agreement, or other undertaking affecting ancestral domains shall be granted or renewed without going through the process laid down by law and the Revised Guidelines. For plans, project, programs or activities requiring a FPIC, an application for a Certification Precondition ("CP"), the certificate issued by the NCIP attesting to the grant of FPIC, shall be endorsed by the appropriate regulatory agency or unit of government to the relevant NCIP Regional Office.

The Field-Based Investigation ("FBI") Team conducts the FBI. Should it be apparent from the FBI that an ancestral domain ("AD") will be affected by the proposed project, the FPIC Team will be mobilized. When the area is patently and publicly known to be outside any AD, or the activity is determined after FBI not to affect an AD, a Certificate of Non-Overlap shall be issued.

The Revised Guidelines lists down the type of plans, projects, programs and activities which are considered large scale/extractive/intrusive, and should thereby undergo a FPIC process involving 2 community assemblies and a consensus-building period. If the Indigenous Cultural Communities/Indigenous Peoples ("ICC/IP") consensus is favorable to the proponent, the parties shall negotiate and enter into a memorandum of agreement ("MOA"). If the consensus is not favorable, the Resolution of Non-consent ("RNC") shall be given.

The FPIC process for plans, projects, programs and activities that are considered non-extractive/small-scale involves negotiation between the community and the applicant, facilitated by the FPIC Team. If the consensus is against the project, a RNC shall be issued. If the consensus is favorable, a CP shall be issued.

Note that the Revised Guidelines provides that, unless specifically stated in the MOA, there shall be a separate exercise of the right to FPIC for each major phase of the proposed activity, such as exploration, operation or development, contraction of operator, and the like.

The consent of the ICC/IP to a particular proposal is not transferable, except in case of merger, reorganization, transfer of rights, acquisition by another entity, or joint venture, to any other party.



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