國楓律師事務所
GRANDWAY LAW OFFICES

Newsletter

Update

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Article(s)

Update

China Revised Eight Laws to Facilitate the Implementation of Foreign Investment Law

On April 23 the 10th Session of the Standing Committee of the 13th National People's Congress of China adopted the amendment to eight laws which are the Construction Law, the Fire Protection Law, the Electronic Signature Law, the Law on Urban and Rural Planning, the Law on Vehicle and Vessel Tax, the Trademark Law, the Anti-Unfair Competition Law and the Administrative Approval Law.

Among others, the amendment to the Anti-Unfair Competition Law covers the following five aspects: (i) improving the definition of "business secret"; (ii) clarifying the circumstances under which the infringement of business secrets is constituted; (iii) enlarging the scope of infringers including other natural persons, legal persons and unincorporated organizations in addition to business operators; (iv) enhancing the legal liability for the infringement of business secrets; and (v) adding a new article which clarifies the shift in the burden of proof of the infringement of business secrets during civil trial procedures.

CSRC to Allow Domestic Banks to Trade Bond Futures

At present brokerages and a few other types of buyers have been allowed in to the bond futures market but trading volumes are thin. The China Securities Regulatory Commission ("CSRC") is currently drafting legal amendments that will permit commercial banks to trade in bond futures by as soon as the end of the year.

While the amendment will not permit foreign investors to participate in the trading of bond futures, the government hopes the move will help to enhance the allure of China's USD$13 trillion bond market by boosting liquidity and price discovery. Big state-owned banks remain the largest investors in Chinese government bonds, and granting them access to hedging instruments is expected to improve broader market conditions.

NMPA Releases Action Plan for Accelerating Smart Drug Regulation

The National Medical Products Administration ("NMPA") has recently issued the Action Plan for Accelerating Smart Drug Regulation (the "Plan").

The Plan expressly states that efforts will be made to develop the drug regulation cloud, remove physical barriers between different systems, and make it possible to share resources, adding that network resources, including internet and national e-government websites, will be deployed comprehensively to build a sole drug regulation network. Also, the Plan calls for efforts to formulate the standards for information application, and norms for drug regulation and accelerate the integration of regulatory data, including policies, regulations and administrative approval. A coordinated and efficient application platform for three major business, including drugs, medical devices and cosmetics, will be established.

Shanghai Municipal Health Commission issued *the Notice on Further Strengthening the Work related to the Procurement and Use Management of Drugs and Medical Devices* in February, 2019, which was well reminded that the rebate shall be strictly prohibited in Shanghai. The Medical institutions shall procure drugs and medical devices according to the contract and no second negotiation shall be allowed.

In recent years, commercial bribe in the field of medicine transaction is known as the key corruption in medical area. In this case, it can be seen that the Shanghai competent authorities are paying close attention to the purchase and sale activities of the drugs and medical devices.

Mainland China and Hong Kong Ink the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings

The Supreme People's Court ("SPC") and the Department of Justice ("DOJ") of the Hong Kong Special Administrative Region ("HKSAR") have recently signed the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region (the "Arrangement").

The overall purpose of this Arrangement is to equate, in respect of interim measures, the arbitral proceedings in Hong Kong with the Mainland's arbitral proceedings, which enables a party to arbitral proceedings in Hong Kong to file an application for an interim measure to a people's court in the Mainland. Meanwhile, a party to the Mainland's arbitral proceedings may apply to a court in the HKSAR for an injunction or any other interim measure. The Arrangement provides clarity in 13 articles on the scope of interim measures, the definition of arbitral proceedings in Hong Kong, procedures for applying for interim measures, processing of applications for interim measures, etc. Following the promulgation of a judicial interpretation by the SPC and the completion of the relevant procedures in the HKSAR, both sides will announce a date on which this Arrangement shall come into effect.

Article(s)

Analysis of the New Rules of QFII and RQFII

by Echo Liu

On January 31, 2019, China Securities Regulatory Commission ("CSRC") revised and integrated *the Measures for the Administration of Securities Investment in China by Qualified Foreign Institutional Investors* and its supporting rules (hereinafter referred to as "**QFII Rules**"), and *the Measures for the Pilot Program of Securities Investment in China by RMB Qualified Foreign Institutional Investors* and its supporting rules (hereinafter referred to as "**RQFII Rules**"), and promulgated *the Measures for the Administration of Securities and Futures Investment in China by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors (Consultation Paper)* and *Rules on Issues concerning the Implementation of the Measures for the Administration of Securities and Futures Investment in China by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors (Consultation Paper)* (hereinafter collectively referred to as "**New Rules of QFII and RQFII**"), which are now open for public opinion.

The QFII Rules first issued in 2002 and then has been revised in 2006. The RQFII Rules were officially issued in 2011 and has not been revised yet. There are many similarities between the QFII Rules and the RQFII Rules, while have two significant differences: First, RQFII investors can only use offshore RMB to invest, while QFII investors can use foreign currency such as USD, EUR, JPY and etc. after relevant approval. Second, according to the RQFII Rules, the qualification of an RQFII is related to the countries and regions that have obtained the investment quota, while the qualification of an QFII is not. The biggest breakthrough of the New Rules of QFII and RQFII is to combine the QFII Rules of and the RQFII Rules of into one. which were drafted on the basis of the QFII Rules and absorbed the contents of the RQFII Rules. After this combination, foreign institutional investors only need to apply once to obtain both QFII and RQFII qualifications. However, considered that the history and development of RQFII Rules, qualified investors from countries and regions that have not obtained RQFII quota cannot use offshore RMB to invest temporarily. As can be seen from the New Rules of QFII and RQFII, RQFII is only a special type of QFII that use offshore RMB invest.

I. Major Adjustments in the New Rules of QFII and RQFII

(I) Relaxation of Access Conditions

The New Rules of QFII and RQFII unify the access conditions of the qualification of QFII and RQFII which eliminate quantitative index requirements, such as requirements on operation term, net assets, the size of assets under management and other mandatory index of various types of applicants.

(II) Expansion of Applicants Scope

The scope of the applicants is explicitly summarized and enumerated in the New Rules of QFII and RQFII, which the main adjustments is the addition of futures companies as applicants.

(III) Expansion of the Investment Scope

According to the New Rules of QFII and RQFII, qualified investors can invest in: (i) stocks listed in the National Equities Exchange and Quotations (New OTC Market); (ii) bond repurchase; (iii) private investment funds; (iv) financial futures; (v) commodity futures; (vi) options besides the original investment scope.

Simultaneously, QFII and RQFII will be permitted to participate in securities margin trading in the stock exchange. If a qualified investor invests in a private investment fund, the investment scope of the private investment fund could invest shall comply with the New Rules of QFII and RQFII.

We also noticed that futures investment is clearly listed in the name of the New Rules of QFII and RQFII which adjusts from the original "securities investment" to "securities and futures investments" in the New Rules of QFII and RQFII.

(IV) Application Documents

The New Rules of QFII and RQFII reduce the number of application documents, and the basic information of the principal personnel, the description about the source of funds and the audited financial statements for last year are no longer required, which will greatly reduce the workload of the applicants.

(V) Custodians

1. The examination and approval of the qualifications of the custodians of qualified foreign institutional investors have been adjusted to record management.

2. The number of custodians engaged by qualified investors will be no longer restricted, while a chief custodian shall be designated if there are two or more than two custodians.

(VI) Compliance Supervision on Hedging between Domestic Transactions and Overseas Transactions

The New Rules of QFII and RQFII add the requirement to provide the relevant information of cross-border transactions which the qualified investors are requested to regularly report the hedged trading position information carried out abroad which related to domestic securities futures investment through the custodians according to the requirements of CSRC in order to prevent cross-border market manipulation and other abnormal trading behaviors.

(VII) Promotion of RMB Internationalization

Although RQFII has become more and more familiar as the main financial instrument for RMB internationalization, it is still surprising that the New Rules of QFII and RQFII clearly stipulated that RQFII is conducive to RMB internationalization.

II. Other Supporting Rules of the New Rules of QFII and RQFII

Since the introduction of the QFII Rules in 2002, the relevant authorities have issued a number of supporting rules for implementation of QFII Rules and RQFII Rules, including but not limited to the regulations of China Securities Depository and Clearing Company Limited on depository and clearing, the regulations of the State Administration of Foreign Exchange on foreign exchange management, the regulations of the People's Bank of China on trusteeship and currency swaps, and other regulations of stock exchanges and tax authorities and etc. We believed that the relevant authorities abovementioned will also update and revise their regulations after the New Rules of QFII and RQFII come into effect and more policies that simplify the practice and improve the investment efficiency of qualified investors are expected to be launched.

Above all, the major adjustments of the New Rules of QFII and RQFII are as follows: 1. to reduce the mandatory access conditions of applicants to attract more types of foreign financial institutions which at different development stages to apply for QFII and RQFII applications; however, from our experience in assisting clients to apply for relevant qualifications, we suppose that CSRC may still refer the previous standards to some extent in exercising the discretion in case that overloaded foreign institutions investors come to apply the relevant qualifications after the reduction of the mandatory access conditions; 2. to broaden the applicants scope and to clearly include futures companies in the scope of the applicants, which show the CSRC's determination to develop financial products such as domestic financial futures, commodity futures and options; 3. After several years of supervision over QFII and RQFII, CSRC has accumulated its regulatory experience. The supervision on QFII and RQFII from CSRC is no longer limited to domestic investment and will conduct simultaneous supervision on domestic and overseas investment, which prevent arbitrage on hedging between domestic transactions and overseas transactions.

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