



Release of Administrative Measures on Foreign-invested Securities Companies

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Background

In the “Notice of the State Council on Several Measures to Promote the Growth of Foreign Capital”(hereinafter referred to as “the Notice”) promulgated by the State Council on 8 August 2017, the Chinese government listed the securities industry as one of the industries whose investment scope is to be expanded for foreign investors. At the same time, on 10 November 2017, in the introduction of the meeting results between China and America given by ZhuGuangyao, Vice Finance Minister. He mentioned that relevant regulations that permit proportion of investment in securities, funds and futures to reach 51% will be issued. And there will be no restrictions in the proportion of investment in three years.

In response to the speech and the Notice, China Securities Regulatory Commission (“CSRC”) released “Administrative Measures on Foreign-invested Securities Companies” (hereinafter referred to as “the Administrative Measures”) on 28 April 2018. The regulation came into effect on the day of issue.

Comparison of the new and old policies

The “Administrative Measure” were revised and renamed on the basis of the “Rules for the Establishment of Foreign-funded Securities Companies” (hereinafter referred to as “the Rules”). Generally, compared with the Rule, the highlight of the Administrative Measures is that it allows the foreign investors to become the controller of the securities companies and removes the restrictions on the types of business that foreign-invested companies can involve in. The specific differences are mainly reflected in the following four aspects:

1. Types of foreign invested securities companies

Comparing with the Rules, the Administrative Measures further expands the scope of securities companies that foreign investors are permitted to invest in. The original types of securities companies stated in the Rule were joint venture securities companies funded and established by both foreign and domestic shareholders and foreign-invested securities companies converted from domestic-funded securities companies by transferring equity shares to foreign investors.

According to the Article 2 in the Administrative Measures, below are three types of securities companies in which foreign investors could currently invest in China:

- (1) Joint venture securities companies funded and established by both foreign and domestic shareholders.
- (2) Foreign-invested securities companies converted from domestic-funded securities companies by transferring equity shares to foreign investors.
- (3) Foreign-invested securities companies converted from domestic-funded securities companies by changing the actual controller of the shareholders of domestic-funded securities companies to foreign investors.

As concluded from above, while retaining the original types in the Rules, the Administrative Measures added the third condition where foreign investors are permitted to become the controller of the foreign-invested securities companies.

In our opinion, the expansion of the scope stated in the Administrative Measures leads to more involvement of investment in the China securities market by foreign investors. Moreover, the expansion enables foreign investors to benefit from the development of China securities market.

2. Qualifications for foreign shareholders of foreign-invested securities companies

Compared with the Rules, Article 6 of the Administrative Measures enhances the qualifications for overseas shareholders of foreign-invested securities companies, requiring that foreign shareholders must be legally established financial institutions, and that their business scale, income and profits have been in the forefront of the world in the past three years, and that their long-term credit has remained at a high level in the past three years. The specific conditions stipulated in the Administrative Measures are as follows:

- (1) The countries or regions where overseas shareholders are located have a sophisticated securities law enforcement and regulation system. The relevant financial regulatory agencies have signed a memorandum of understanding on securities regulatory cooperation with the China Securities Regulatory Commission or agencies approved by China Securities Regulatory Commission and have maintained an effective regulatory cooperation relationship;
- (2) Overseas shareholder is a legally established financial institution in the country or region in which it is located. The financial indicators in the past three years have met the requirements of the laws and regulatory bodies of the country or region where it is located;
- (3) Has conducted securities business for more than 5 years, and has not been severely punished by the regulatory authorities or administrative and judicial organs of the country or region in the past three years, and there are no cases of suspected major violations against laws and regulations under investigation by relevant authorities;
- (4) Have built up sophisticated internal control system;
- (5) Have a good international reputation and business performance, the business scale, income and profit have been in the forefront of the world in the past three years, and the long-term credit has remained at a high level in the past three years;
- (6) Other prudential conditions stipulated by the CSRC.

From the above conditions, we can see that overseas non-financial institutions cannot become shareholders of foreign-invested securities companies. At the same time, even legally established overseas financial institutions may be restricted to become shareholders of securities companies because of their scale, income, profits, long-term credit and other indicators are not up to standard.

Reflected by the spirit embodied in Article 6 of the Measures, the regulatory authorities aim to guide domestic securities companies to introduce better quality overseas shareholders with financial industry experience, and to promote the development of securities companies in a healthier direction.

3. The requirement on capital contribution method and shareholding ratio of foreign shareholders

According to the Rules, the cumulative proportion (including direct ownership and indirect control) of equity held by foreign shareholders in a foreign-invested securities company shall not exceed 49%. The Administrative Measures eliminated the restriction. That is to say the limit on the proportion of foreign shareholders in securities companies is relaxed to 51%, indicating that foreign shareholders can control securities companies at present.

The Administrative Measures strengthened the foreign investors' control in the securities companies, making it possible for the securities companies to implement its domestic policy in China and accelerate the development of globalization.

4. The requirement on business scope of foreign-invested securities companies

According to the Article 5 of the Rules, foreign-invested securities companies can only operate the following five types of business:

- (1) Underwriting and sponsoring of stocks (including RMB ordinary shares and foreign capital stocks) and bonds (including government bonds and corporate bonds);
- (2) Brokerage of foreign capital stocks;
- (3) Broking and self-operation of bonds (including government bonds and corporate bonds);
- (4) Other businesses approved by CSRC. Moreover, according to article 19 of the Rules, when a domestic securities company is converted into a foreign-shared securities company, it shall also close up the business that foreign-invested securities companies cannot operate.

The Administrative Measures eliminates the restrictions on the scope of business above. The only requirement is that the initial business scope should match the experience of the controlling shareholder or the first majority shareholder in securities business.

To sum up, comparing with the Rules, the Administrative Measures has four main differences in types of securities companies, qualification of oversea shareholders, capital contribution method and shareholding ratio of foreign shareholders, and scope of business where foreign investors can involve in. These four changes reflects a positive prospect that the Chinese government is opening its securities market by introducing foreign investors of good quality and is willing to share the profits derived from securities markets with those investors.

Application requirements for the establishment of foreign-invested securities companies

1. Establishment of foreign-invested securities companies

To apply to establish foreign-invested securities companies, the representative designated by all shareholders is required to submit the following documents to the CSRC:

- (1) Application forms signed by the legal representatives or authorized representatives of both domestic and foreign shareholders;
- (2) Contracts and draft articles of association relating to the establishment of foreign-invested securities companies;

(3) Audited financial statements of both domestic and foreign shareholders for recent three years before the application;

(4) Copies of the shareholder's business licenses or registration certificates and securities business qualification certificates;

(5) Documentation to show and prove the foreign shareholder has a good global reputation and satisfying business performance, its business scale, revenue and profit remaining in the forefront in the world in recent three years, and long-term credit status of recent three years;

(6) Other documents required by the CSRC.

2. Foreign-invested securities companies converted from domestic-funded securities companies

Domestic-funded securities companies that apply to be converted into foreign-invested securities companies are required to submit the following documents to the CSRC:

(1) Application forms signed by the legal representative;

(2) Shareholders' resolution on the conversion into a foreign-invested securities company;

(3) Draft amendments to the articles of association;

(4) Audited financial statements of foreign shareholder for recent three years before the application;

(5) Other documents required by the CSRC.

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As a professional agency in assurance and financial consulting, we are fully equipped to help you with the corporate establishment & maintenance, accounting and bookkeeping and audit and assurance.

Source: http://www.csrc.gov.cn/pub/newsite/flb/flfg/bmgz/zjgs/201805/t20180515_338137.html

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