

The Effects of the Revised Measures for the Administration of Securities Investment Fund Management Companies on the Foreign Shareholders of Fund Management Companies

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The China Securities Regulatory Commission (hereinafter referred to as “CSRC”) has recently promulgated the *Measures for the Administration of Securities Investment Fund Management Companies* and the *Provisions on Issues concerning the Implementation of the Measures for the Administration of Securities Investment Fund Management Companies* (collectively the “**Revised Measures**”). The Revised Measures, taking effect from 1 November 2012, modified two corresponding regulations (collectively the “**Original Measures**”) issued in 2004, and repealed the *Circular concerning the Regulation on the Establishment of Fund Management Companies and Equity Disposal* issued in 2006 (hereinafter referred to as the “**Circular**”). The following brief analysis will focus on relevant effects of this modification on relevant rights and interests of foreign shareholders of joint venture fund management companies.

Relief of Qualification Requirements for Foreign Shareholders

The Revised Measures generally maintains the same qualification requirements for foreign shareholders as those in the Original Measures except that the management experience requirement for qualified financial institutions as foreign shareholders is extended from “publicly raised funds” to “publicly raised funds, pension funds, charity funds or endowment funds etc.”, which means that offshore financial institutions with management experience in pension funds, charity funds and endowment funds can also establish fund management companies as qualified foreign shareholders.

Clarifying Issues on Calculating Shareholding Ratio of Foreign Shareholders

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The Revised Measures maintains the original ceiling (*i.e.*, 49%) on accumulated foreign shareholding ratio (*including direct and indirect shareholding*) and further clarifies that such indirect foreign shares shall not be included in the total foreign shares, where (i) the domestic shareholder (the actual controller included) is listed overseas or increases the issuance of shares overseas after establishment of the joint venture fund management company, and (ii) the domestic shareholder (the actual controller included) is an A-share listed company and QFII holds its shares, unless the controlling right of such domestic shareholders is transferred to foreign entities. Previously, there are cases where the domestic shareholder (holding 51% of shares) of a fund management company (foreign shareholding ratio of 49%) when applying for offshore IPO, is required to make a commitment towards CSRC that it will take measures in due course to cure non-compliance issues with respect to the foreign shareholding ratio of the fund management company after its IPO.

Lifting the Lock-up Period and Access-denial Period for Foreign Shareholding

In accordance with the Circular, (i) a shareholder, holding shares of a fund management company for less than one year, shall not transfer such shares; (ii) during a 3-year period after a shareholder has transferred all shares of a fund management company, CSRC will not accept its applications for establishment of a new one or acquiring shares of an existing one. The Revised Measures strengthens the requirement for the major shareholder (*i.e.*, *the domestic shareholder with the highest shareholding ratio, not less than 25%*) by providing that the major shareholder shall uphold the concept of long-term investment, and make written commitments to hold the shares of the fund management company for at least 3 years, but has removed the aforesaid requirements for non-major shareholders (including foreign shareholders). In other words, the 1-year lock-up period and 3-year access-denial period have been lifted for foreign shareholders.

Issues on Corporate Governance that Might be Concerned by Foreign Shareholders

Directors. With an aim to make the decisions by the board of directors more professional, the Revised Measures stipulates that the general manager of a fund management company shall also be a board member. In order to prevent the problems incurred from the dominant shareholding of the major shareholder, the Revised Measures provides that where a single shareholder, alone or in combination with related shareholders, holds 50% or more of the shares, the number of directors related to the aforesaid shareholder shall not exceed one third of the board members, and the domestic and foreign shareholders shall negotiate how to arrange other directors. “Directors related to the aforesaid shareholder” refer to (i) directors recommended or nominated by such shareholders (excluding independent directors and directors who are also senior management team members, recruited through open market recruitment), and (ii) directors who are employed in or receive salaries from such shareholders or their affiliated enterprises or otherwise have a stake in such shareholders; provided however that where a single shareholder, alone or in combination with related shareholders, holds 100% of the shares, only item (ii) applies.

Supervisors. For the same purpose of preventing the problems incurred from the dominant shareholding of the major shareholder, the Revised Measures regulates that no less than one half of the number of board of supervisors shall be representatives of employees, provided that where the board of supervisors is not set up, there shall be at least one representative of employees among executive supervisors.

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Senior Management. The Revised Measures requires that the board of directors shall, when examining business performance of the senior management team, pay attention to the long-term fund investment performance, the company's regulatory compliance and risk control and other measures on protection of interests of fund unit holders, and shall not take the assets under management or the profit increase within a short term as primary examination criteria.

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