

**China Securities Regulatory Commission
The People's Bank of China**

Order

No.12

The "Provisional Measures on the Administration of the Domestic Securities Investment of Qualified Foreign Institutional Investors", which will come into effect from 1 December 2002, is hereby promulgated.

**Chairman: Zhou Xiaochuan
Governor: Dai Xianglong**

5 November, 2002

**Provisional Measures on the Administration of the Domestic Securities
Investment of Qualified Foreign institutional Investors**

Chapter 1. General Provisions

Article 1 These Measures are enacted in accordance with the relevant laws and administrative regulations to govern the investing behaviour of Qualified Foreign Institutional Investors in the domestic securities markets of the PRC, promoting the development of the PRC securities markets.

Article 2 The Qualified Foreign Institutional Investors (hereafter called "Qualified Investors") as mentioned in these Measures refer to overseas fund management institutions, insurance companies, securities companies and other asset management institutions, which are in compliance with the conditions of these Measures, have been approved by the China Securities Regulatory Commission ("hereafter called CSRC") for investing in the securities markets of the PRC, and granted the limit from the State Administration of Foreign Exchange Control ("hereafter called SAFE").

Article 3 The Qualified Investors shall appoint domestic merchant banks as custodian to hold in custody the assets and appoint domestic securities companies to manage the domestic securities trading activities.

Article 4 The Qualified Investors shall abide by the laws, regulations and other relevant rules of the PRC.

Article 5 CSRC and SAFE shall, in accordance with the law, supervise and govern the securities investing activities undertaken by the Qualified Investors within the territory of the PRC.

Chapter 2. Qualifications, Criteria and Approval Procedures

Article 6 Qualified Investors applicants should fall within the following criteria:

- (1) Applicants should be financially sound, trustworthy and meet the requirement of the CSRC concerning the scale of assets, and their risk control level shall meet the requirement of law and securities regulatory authorities of the country or region in which they operate;
- (2) Qualification of the applicants' employees shall meet the relevant requirements for practitioners of the country or region in which the applicants operate;
- (3) Applicants should maintain a sound management structure and proper internal control system and should conduct business in accordance with the relevant regulations and have not been seriously punished by the governing authorities of the country or region in which they operate over the last three years prior to application;
- (4) The law and supervisory system of the country or region in which applicants operate are sound and proper, and the securities regulatory authorities of the country or region have signed Memorandum of Understanding with the CSRC concerning their co-operation, maintaining an efficient regulatory and co-operative relationship;
- (5) Other criteria as stipulated by the CSRC based on prudent regulatory principles.

Article 7 The criteria of scale of assets as referred to in the aforesaid article are:

Fund Management

Bodies : Having operated fund business for over 5 years with the most recent fiscal year managing assets of not less than US\$10 billion;

Insurance

Companies : Having operated insurance business for over 30 years with

paid-in capital of not less than US\$1 billion and managing securities assets of not less than US\$10 billion in the most recent fiscal year;

Securities

Companies : Having operated securities business for over 30 years with paid-in capital of not less than US\$1 billion and managing securities assets of not less than US\$10 billion in the most recent fiscal year;

Commercial

Banks : Ranking among the top 100 of the world in the total assets for the most recent fiscal year and managing securities assets of not less than US\$10 billion.

The CSRC may adjust the aforesaid criteria for scale of assets subject to the development of the securities market.

Article 8 Applicants shall, through custodian, submit to the CSRC and the SAFE respectively the following documents in respect of their qualification and investment limit.

- (1) Application Forms (including applicants' basic status, investment limit contemplated in their application and investment plan etc);
- (2) Documentary evidence as stipulated in Article 6 of these Measures;
- (3) Draft Custodian Agreement signed with custodian;
- (4) Audited Financial Reports for the most recent three years;
- (5) Statement of source of funds and Letter of Undertaking committing not to withdraw funds during the approved period;
- (6) Power of Attorney of applicants;
- (7) Other documents as required by the CSRC and SAFE.

All the aforesaid requisite documents, if written in foreign languages, must be accompanied by Chinese translations or Chinese extracts.

Article 9 The CSRC shall, within 15 working days from the date the full set of application documents are received, determine whether to grant approval or not.

Securities Investment Business Licence will be issued to those applicants whose application has been approved whereas written notice will be given to those applicants whose application has been rejected.

Article 10 Applicants shall apply to the SAFE through custodian for investment limit after obtaining the Securities Investment Business Licence.

SAFE shall, within 15 working days from the date full set of application documents are received, determine whether to grant approval or not. Applicants whose application has been approved will be notified in writing their permitted investment limit and a Foreign Exchange Registration Certificate will be issued. Written notice will be given to those applicants whose application has been rejected.

The Securities Investment Business Licence will automatically become void if applicants are unable to obtain the Foreign Exchange Registration Certificate within one year after the Securities Investment Business Licence is granted.

Article 11 Preference will be given to the institutions managing closed-end PRC funds subject to the requirements of Article 6 of these Measures or pension funds, insurance funds and mutual funds with good investment records in other markets with a view to introducing mid-and-long-term investments.

Chapter 3. Custody, Registration and Settlement

Article 12 A custodian shall meet the following requirements:

- (a) has a specific fund custody division;
- (b) with paid-in capital of not less than RMB 8 billion;
- (c) has sufficient professionals who are familiar with custody business;
- (d) can manage the entire assets of the fund safely;
- (e) able to clear and settle safely and effectively;
- (f) be qualified as a designated bank for foreign exchange and business conducted in RMB;
- (g) no material breach of Regulations on Foreign Exchange Control in the last three years.

Domestic branches of foreign-invested commercial banks with more than three years of continual operation are eligible to apply for the custodian qualification. Its paid-in capital eligibility shall be based on its foreign headquarters' capital.

Article 13 Applications for the qualification of custodian shall be reviewed and approved by CSRC, PBOC and SAFE.

Article 14 Domestic commercial banks applying for the qualification of custodian shall submit the following documents to CSRC, PBOC and SAFE:

- (a) Application letter;
- (b) Copy of financial business permit;
- (c) Management system in relation to its custody business;
- (d) Documents proving the existence of effective and speedy information technology system;
- (e) Other documents as required by CSRC, PBOC and SAFE.

CSRC, together with PBOC and SAFE, will review application documents and decide whether to approve the applications or not.

Article 15 A custodian shall perform the following duties:

- (a) keep the entire assets which are under the custody of Qualified Investors;
- (b) on behalf of Qualified Investors, operate settlement, sales, receipt, payment

and the business settled in RMB;

- (c) supervise investment operations of Qualified Investors and report timely to CSRC and SAFE in case their investment orders are found to have violated laws and regulations;
- (d) report to SAFE the remittance (in or out), conversion, receipt, payment of capital of Qualified Investors within two working days upon Qualified Investors remitting principal or revenue (either in or out);
- (e) report to CSRC and SAFE the income and expenditure of RMB special account of Qualified Investors within 5 working days after the end of each month;
- (f) prepare annual financial reports with regard to the domestic securities investment of Qualified Investors in the previous year within three months after the end of each fiscal year, and submit the reports to CSRC and SAFE;
- (g) maintain information in relation to remittance (either in or out), conversion, receipt, payment of capital and records on capital transaction of Qualified Investors for at least 15 years;
- (h) other duties as required by CSRC, PBOC and SAFE based on prudent supervision principles.

Article 16 A custodian must strictly separate its own assets from the assets under its custody.

A custodian shall open accounts for various Qualified Investors and the accounts of assets under its custody shall be separately managed.

Each Qualified Investor shall appoint only one custodian.

Article 17 Qualified Investors shall appoint a custodian to apply for a securities account at the securities registration institution on its behalf. In such case, a custodian should possess valid documents, such as power of attorney from Qualified Investors and its securities investment business license, and report the relevant situation to CSRC within five working days upon the opening of a securities account.

Qualified Investors shall appoint custodian to open on its behalf a RMB settlement capital account at the securities registration institution for settlement with securities registration institution. A custodian is responsible for capital settlement of domestic securities investment of Qualified Investors, and shall

report the relevant situation to CSRC and SAFE within 5 working days upon the opening of the RMB denominated capital account.

Chapter 4. The Investment

Article 18 Subject to approved investment facilities, Qualified Investors may invest in the following RMB financial instruments:

- (a) Shares listed on the stock exchange (excluding domestically listed foreign shares);
- (b) National debt securities listed on the stock exchanges;
- (c) Convertible bonds and enterprise bonds listed on the stock exchanges;
- (d) Other financial instruments as approved by CSRC.

Article 19 Qualified Investors can appoint domestically established securities companies to manage domestic securities investment.

Article 20 Domestic securities investment of Qualified Investors shall observe the following requirements:

- (a) Proportion of shareholding of a single Qualified Investor to a single listed company shall not exceed 10% of the total number of shares of the listed company;
- (b) Sum of proportion of shareholding of all Qualified Investors to a single listed company shall not exceed 20% of the total number of shares of the listed company.

CSRC may adjust the said proportion based on the development of securities market.

Article 21 Qualified Investors investing in domestic securities shall comply with the requirements as set out in the “Guidelines to Foreign Investors”.

Article 22 Securities companies shall keep in record the transactions of Qualified Investors and their trading activities of not less than fifteen years.

Chapter 5. Fund Management

Article 23 Upon approval of SAFE, Qualified Investors shall open a special RMB account with the custodian.

Within five working days from the opening of a special RMB account by the Qualified Investors, the custodian shall report to CSRC and SAFE of the relevant situation.

Article 24 Use of the special RMB account includes: settlement of funds (foreign exchange funds from overseas, and the accumulated settlement of the foreign exchange funds shall not exceed the approved investment amount), proceeds from the disposal of securities, dividends in cash, deposit interests, bonds interests. Expenses of the special RMB account include: purchase of the price of securities (including stamp duty, fees, etc), domestic custodian fees and management fee, purchase of remittance funds (used for the remittance of principal and the receiving of revenues).

The capital of special RMB account shall not be used for money lending or for facilitating guarantee.

Article 25 Qualified Investors shall, within three months from the granting of the Permit for Securities Investment by CSRC remit the principal from outside the country into the PRC, and after clearing, directly transfer to the special RMB account. Principal remitted to the PRC by Qualified Investors shall be approved by SAFE as convertible currency, and the amount remitted shall be limited to the amount approved.

Within three months after obtaining the Foreign Exchange Registration, the Qualified Investors' actual remitted amount shall be regarded as approved amount; the difference between approved amount and the actual amount shall not be remitted inward prior to the obtaining of a newly approved investment amount.

The receiver of the above outward remittance shall be Qualified Investors.

Article 26 Qualified Investors of the close-end PRC fund management institutions, after remitting inward principal for three years, may appoint a custodian with the submission of the necessary documents to SAFE to apply for the purchase of

foreign exchange for the repatriation of principal by batches or by instalments. Each remittance shall not exceed 20% of the total principal, and consecutive remittances shall not be conducted at an interval of less than one month.

Other Qualified Investors, after remitting inward principal for one year, may appoint a custodian to submit the necessary documents to the SAFE to apply for the purchase of foreign exchange for the repatriation of principal by batches or by instalments. Each remittance shall not exceed 20% of the total principal, and consecutive remittances shall not be conducted at an interval of less than three months.

The overseas payees of the above remittance shall be Qualified Investors.

Article 27 Qualified Investors whose principal of approved investment amount is remitted to the PRC for less than one year but over three months, after the submission of Assignment application and Assignment Contract and upon approval of CSRC and SAFE, may assign the approved investment amount to other Qualified Investors or other applicants who have fulfilled the requirements of Article 6 of this Provisional Measure.

Upon the approval by SAFE of the investment amount and the issue of Permit for Securities Investment, if the assigned assets are below the approved amount of SAFE, the difference may be remitted to the country as principal.

Article 28 Qualified Investors, when remitting to the PRC the principal that was previously remitted out of the PRC, in whole or in part, shall be required to re-apply for the investment amount.

Article 29 In the event that Qualified Investors wish to remit out of the PRC the profit after tax of the last financial year, as audited by certified public accountant in the PRC, they shall instruct its custodian fifteen days in advance to apply to SAFE, together with the following documents:

1. Remittance Application Form;
2. Financial Statement of the year where the profit is realised;
3. Auditor's Report issued by a certified public accountant in the PRC;

4. Resolution of the distribution of profits or any other proper legal documents;
5. Tax Payment Certificates;
6. Other documents as required by SAFE.

The overseas payees of the above remittance shall be Qualified Investors.

Article 30 SAFE, in order to achieve a balance of foreign exchange for the PRC, may adjust the expiring date for Qualified Investors to remit the principal and the profits realised out of the PRC.

Chapter 6. Regulatory Management

Article 31 CSRC and SAFE may review annually the Securities Investment Permit, which is granted to Qualified Investors in respect of their investment in securities, and the Foreign Exchange Registration Certificate.

Article 32 CSRC, PBOC and SAFE may require Qualified Investors, custodians, securities companies, stock exchanges and clearing institutions to provide information on the investment activities undertaken by Qualified Investors within the PRC. They may conduct field investment, when necessary.

Article 33 The stock exchanges and the clearing institutions may establish the rules and measures which regulate the investment activities of the Qualified Investors within the PRC, the implementation of which will be effective upon approval of the CSRC.

Article 34 Within five days after the occurrence of any of the following, Qualified Investors should notify the China Securities Regulatory Commission, PBOC and SAFE:

1. Change of custodians;
2. Change of authorised representatives;
3. Change of controlling shareholders;
4. Adjustment of registered capital;
5. Litigation and other significant events;
6. Under injunction outside the PRC;
7. Other circumstances as stipulated by CSRC and SAFE.

Article 35 In the event of one of the following, Qualified Investors should apply to renew their Security Investment Permit

1. Change of business name;
2. Acquisition by other companies;
3. Other circumstances as stipulated by CSRC and SAFE.

Article 36 In the event of one of the following, Qualified Investors should surrender the Security Investment Permit and the Foreign Exchange Registration

Certificates to CSRC and SAFE:

1. Remittance in total of the principal;
2. Transfer of investment quota;
3. The dispersion of authorised entities, entering into the procedures of bankruptcy, or assets being taken over by receivers;
4. Other circumstances as stipulated by CSRC and SAFE.

Failure to comply with the Articles in respect of the annual renewal of the Security Investment Permit and the Foreign Exchange Registration Certificates in accordance with Article 31 herein, and the automatic lapse of the documents shall result in the Security Investment Permit and the Foreign Exchange Registration Certificates automatically becoming invalid.

Article 37 In case of a breach of the provisional Articles, the China Securities Regulatory Commission, PBOC and SAFE may give warnings or penalties to the Qualified Investors, custodians, and securities companies, according to their own authority. However, the same breach shall not be subject to two administrative penalties or more.

Chapter 7. Supplementary Provisions

Article 38 Institutional Investors from the Hong Kong Special Administration Region, the Macau Special Administration Region and Taiwan who invest in the PRC shall be subject to the requirements herein.

Article 39 This Measure shall come into force as of 1 December 2002.