CHIOMENTI

Newsletter

Corporate – M&A Department

Broader Access Given to Foreign Banks and Insurers in China

Introduction

On 30 September 2019, the State Council of the People's Republic of China announced its decision (the "**State Council Decision**") to revise the current *Administrative Regulations on Foreign-invested Insurance Companies*[1] ("**FII Regulations**") and the *Administrative Regulations on Foreign-invested Banks*[2] ("**FIB Regulations**"), with the aim to further open-up to foreign investors the financial industry of China.

"*The revision of the two regulations has further loosened the access conditions for foreign banks and insurance companies, enriched the commercial presence of foreign banks in China, and provided a more flexible and independent institutional environment for the establishment and operation of foreign banks and insurance companies in China*", commented the leading counsel of the *China Banking and Insurance Regulatory Commission* ("**CBIRC**").

As of the end of June 2019, foreign banks have set up in China 41 foreign-invested independent legal entities, 116 branches and 151 representative offices; while foreign insurance companies have set up in China 59 foreign-invested independent legal entities and 131 representative offices.

Following the revisions brought by the State Council Decision, it would be easier for foreign banks and insurance companies to make investment and conduct business operation in China. Notwithstanding, in order to implement the revised FII Regulation and FIB Regulation, CBIRC

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[1] First promulgated by the State Council in 2001 and last amended on 6 February 2016.

[2] First promulgated by the State Council in 2006 and last amended on 27 November 2014.

will further amend the *Implementing Rules of the FII Regulation*[3] and the *Implementing Rules of the FIB Regulation*[4] respectively, which should give a more detailed guideline in practice.

I Revisions on FIB Regulation

According to the FIB Regulation, foreign-invested banks refers to the following institutions established upon approval within the territory of the People's Republic of China according to the relevant laws and regulations of the People's Republic of China:

- **a** a wholly foreign-owned bank established separately by one foreign bank[5] or jointly with investment from one foreign bank and other foreign financial institutions[6] ("**WFOE Bank**");
- **b** a Sino-foreign joint venture bank established with joint investment from foreign financial institutions and Chinese companies and enterprises ("**JV Bank**", together with the WFOE Bank, collectively referred to as the "**Independent Foreign-invested Banks**");
- **c** a branch of a foreign bank ("**Branch Bank**"); and
- **d** a representative office of a foreign bank ("**Bank Rep Office**").

The State Council Decision has revised the FIB Regulation mainly from four aspects: loosening the requirements on shareholders of foreign-invested banks, removal of the limitation on the co-existence of Independent Foreign-invested Banks and Branch Bank, expansion of the business scope of foreign-invested banks and adjustment of the administration requirements on working capital of Branch Bank.

I.I Loosen the Requirements imposed on Shareholders of Foreign-invested Banks

The following requirements used to be imposed on the shareholders of a foreign-invested bank now have been removed by the State Council Decision and therefore will no longer be applicable:

- **a** Foreign shareholders of WFOE Bank and JV Bank: the total assets as at the end of the year prior to the application for establishment of the WFOE Bank or the JV Bank shall be no less than USD10 billion;
- **b** Foreign parent bank of Branch Bank: the total assets as at the end of the year prior to the application for establishment of the Branch Bank shall be no less than USD20 billion;
- **c** Chinese shareholders of JV Bank: the sole Chinese shareholder or any principal Chinese shareholder shall be a financial institution.

These revisions will provide more possibilities for those medium/small size foreign banks and/or foreign financial institutions to set up foreign-invested banks in China, and also expand

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[3] First promulgated in 2004 and last amendments in 2018.

[4] First promulgated in 2006 and last amendments in 2015.

[5] "Foreign banks" refers to the commercial banks registered outside the territory of the People's Republic of China and approved or permitted by the financial regulatory authorities of their home countries or regions.

[6] "Foreign financial institutions" refers to the financial institutions registered outside the territory of the People's Republic of China and approved or permitted by the financial regulatory authorities of their home countries or regions.

the scope of Chinese partners that foreign investors may choose when investing in a JV Bank in China.

I.II Co-existence of Independent Foreign-invested Banks and Branch Bank

In order to better satisfy various business needs of foreign banks in China, following the State Council Decision, it is now possible for the same foreign bank to have in China concurrently:

a WFOE Bank and Branch Bank; or
b JV Bank and Branch Bank.

I.III Expansion of the Business Scope of Foreign-invested Banks

In addition to the original business already permitted to be carried out in China under the FIB Regulation, now WFOE Bank, JV Bank and Branch Bank may also conduct[7]:

a agency distribution of government bonds;
b agency redemption of government bonds;
c government bonds underwriting; and
d agency collection and payment services.

It is worthy mentioning that the previous requirements set forth for WFOE Bank, JV Bank and Branch Bank to operate CNY business in China, such as the minimum of one year of operation in the territory of China and, in particular, the obtainment of specific approval from the banking regulatory authority, have been eliminated, and now the revised FIB Regulation only requires these entities – if intending to operate CNY business – to comply with the prudential conditions prescribed by the banking regulatory authority[8].

Moreover, the previous requirement of a minimum of CNY 1 million for single deal, for Branch Bank to absorb the time deposit from the citizens within the territory of China, has been reduced to CNY 500,000.

I.IV Adjustment of the Administration Requirements on Working Capital of Branch Bank

As for the working capital of Branch Bank, the previous FIB Regulation used to provide that:

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[7] After such expansion, the business scope of Independent Foreign-invested Banks appears to be identical as the Chinese domestic banks.

[8] The so-called "prudential requirements", as per the *Implementing Rules of the FIB Regulation* (2015, which should be amended by CBIRC soon), include at least the following: (i) having a favorable industrial reputation and social image; (ii) having sound business performance as a going concern and good asset quality; (iii) having the management with good professional expertise and management competence; (iv) having a sound risk management system capable of effectively controlling various risks; (v) having a sound internal control system and an effective management information system; (vi) having prepared financial and accounting reports according to the prudential accounting principle with the accounting firm concerned holding unqualified opinions thereon; (vii) having no record of material violation of laws or regulations or major case resulting from the problems with internal management; (viii) having an effective human resources management system and possessing high-quality professionals; (ix) having the experience in and capability of managing or supporting activities of institutions within the territory of China; (x) having effective mechanisms for the constraint and replenishment of capital; (xi) having a sound corporate governance structure; and (xii) other prudential requirements provided by laws, administrative regulations and the banking regulatory authority.

a 30% of the working capital of the Branch Bank shall exist in the form of interest-bearing assets designated by the banking regulatory authority; and

b The proportion of the share of Renminbi in the sum of the working capital plus reserves and other items to the Renminbi risk assets of the Branch Bank shall be no less than 8%.

The revised FIB Regulation only requires Branch Bank to hold "certain percentage".[9] of interest-bearing assets as per the requirements of the banking regulatory authority, and the aforesaid requirement of minimum 8% (item "b" above) will not be applicable to the foreign banks whose capital adequacy ratio constantly complies with the requirement of the financial regulatory authority of the country or region where it is located and the banking regulatory authority in China.

These changes will help to increase the flexibility of foreign banks to allocate funds among their branches, thereby improving the efficiency of financial resource allocation; on the other hand, foreign banks may also be encouraged, to a certain extent, to set up relatively small scale Branch Bank in more locations.

II Revisions on FII Regulation

The revisions made on the FII Regulation this time are relatively less, mainly include:

a Remove the two requirements used to be set forth on foreign insurance companies when applying to set up foreign-invested insurance companies.[10] in China, i.e. (i) the foreign insurance company shall have been engaged in the insurance business for 30 years or more; and (ii) the foreign insurance company shall have had a representative office established within the territory of China for no less than 2 years.

b Provide the possibility (i) for foreign insurance group companies to set up foreign-invested insurance companies in China, and (ii) for foreign financial institution to invest in foreign-invested insurance companies in China, both, however, with the relevant detailed rules to be further formulated by the insurance regulatory authority later.

The above revisions of the FII Regulation, with the lower access conditions to the Chinese insurance market, could help to attract more foreign insurance companies to enter into China; while the green light opened to foreign insurance group companies and foreign financial institutions, could further enrich the shareholder type of foreign-invested insurance companies in China.

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[9] The details of which might be further specified by the upcoming updated *Implementing Rules of the FIB Regulation*, or be decided by CBIRC on a case by case basis.

[10] As defined by the previous FII Regulation 2016, "foreign-invested insurance company" refers to and include: (i) an insurance company established by a foreign insurance company and a Chinese company or enterprise within the territory of China to carry on joint business operations; (ii) a foreign invested insurance company established and invested in by a foreign insurance company to carry on business operations within the territory of China; and (iii) a branch office of a foreign insurance company established within the territory of China.

As for the 11 measures to be launched for further opening-up of financial sector, as announced by the Financial Stability and Development Committee of the State Council in July 2019, further new rules opening up the Chinese insurance market in the following aspects may be expected:

a To allow foreign financial institutions to establish or to make investment in pension management companies;

b To advance the transitional period during which the limit for the proportion of foreign shareholding in life insurance companies shall be raised from 51% to 100% to 2020 from the originally scheduled 2021;

c To repeal the provision that domestic insurance companies shall hold no less than 75% of the shares in an insurance asset management company in total, and allow foreign investors to hold over 25% of shares in such company.

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