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1. Foreigners allowed bigger stakes in Chinese companies

On 19 March 2014, Shanghai Stock Exchange issued the "*Detailed Implementing Rules of the Shanghai Stock Exchange on Securities Trading by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors*" ("Detailed Implementing Rules"). The Rules have gone into force with immediate effect. The Qualified Foreign Institutional Investors ("QFII") and RMB Qualified Foreign Institutional Investors ("RQFII") programs shall enable licensed foreign investors to buy and sell yuan-denominated "A" shares on the Shanghai and Shenzhen stock exchanges. The Detailed Implementing Rules are more relaxed on some restrictions, the move is meant to attract more long-term capital and boost China's equity market. It is in line with the Chinese leadership's plan to further open up the capital market.

Highlights are outlined as follows:

1. The shareholding ratio is increased

QFII and RQFII can hold up to 30% of the total number of A-shares of a listed company, which was earlier capped at 20 percent of total outstanding shares in a company. And only once the total number of A-shares collectively held by all foreign investors in the same listed company reaches or exceeds 26% of the total number of shares of the listed company does the Exchange make a warning announcement. Up until recently, the threshold used to be 16%.

2. The range of securities products for investment is more detailed

The financial products into which foreign investors shall be able to invest are more detailed. The previous Rules issued in 2002 were general in this regard and did not specify the range of securities products open for investment. The 2014 Detailed Implementing Rules list the types of financial products available for investment, in particular the following:

1) Shares, including ordinary shares, preference shares and other classes of shares recognized by the Exchange;

2) Bonds, including treasury bonds, "when-issued" trading of treasury bonds[1], local government bonds, corporate bonds, enterprise bonds, convertible corporate bonds, convertible corporate bonds with detachable warrants, exchangeable corporate bonds, bonds privately issued by small and medium-sized enterprises, policy-oriented financial bonds[2], subordinated bonds and other bond products recognized by the Exchange;

3) Funds, including various types of exchange-traded funds ("ETF"), closed-end funds, open-end funds, money market funds and other fund products recognized by the Exchange;

[1] "When- issued" trading of treasury bonds is open from the fourth statutory business day prior to the auction day of the treasury bonds and will be closed on the statutory business day immediately preceding the auction day.

[2] Policy-oriented bonds are issued by three so called policy-oriented banks (banks established for national industry policy as well as regional development policy purposes: China Development Bank, the Export-Import Bank of China and the Agricultural Development of China). The issuance of policy-oriented bonds is subject to permission by the People's Bank of China and the bonds can only be purchased by institutional investors.

4) Warrants;

5) Asset-backed securities; and

6) Other securities products allowed by the China Securities Regulatory Commission.

2. State Council Releases National Six-Point Capital Market Package

On 25 March 2014, Premier Li Keqiang called for an executive meeting of the State Council, which agreed on six major guidelines for further capital market reforms to be undertaken by China. They are:

1. Promotion of share registration system reforms, speeding up the construction of a multi-tier equity market, encouraging more market-oriented M&A and restructuring and improving delisting rules.

2. Development of bond market regulation, in particular the development of multiple types of bonds suitable for different investors and a strengthening of credit supervision and regulation.

3. Cultivation of the private equity market, in particular by foregoing administrative approval for qualified and legally compliant private equity offerings; encouragement of venture capital funds to support small and medium-sized enterprises as well as innovations in the technology and service sectors.

4. Construction of a futures market, fostering in particular bulk commodity futures and treasury bonds futures, and strengthening of the capacity of futures to serve the real economy.

5. Easier access by financial intermediaries and professional investors, a healthy development of internet finance and improving the competitiveness of the securities and futures service industry.

6. Improved access to investment and financing opportunities for domestic and foreign investors, installment of an early warning mechanism for monitoring and managing systematic risk, harsher punishments for capital market offences such as false statements, insider trading or market manipulation.

3. China and Germany Sign New Agreement for Avoidance of Double Taxation

On 28 March 2014, China and Germany signed a new Agreement and Protocol for the Avoidance of Double Taxation and Prevention of Fiscal Evasion (“DTA”). The new DTA will go into force on 1 January of the year following the completion of the ratification process in both China and Germany.

The new DTA contains the following major highlights:

1. Definition of Permanent Establishment

Building sites, construction, assembly or installation projects, or supervisory activities in connection therewith, will only constitute a permanent establishment after a duration of more than 12 months (Article 5). Currently, this is the case after 6 months.

The attribution of profits between the main enterprise and the permanent establishment will still be made in accordance with principle of "dealing at arm's length" as outlined in the old OECD Model Commentary of 2008 (Article 7 and Protocol to Article 7). By request of the Chinese side, the new Authorised OECD Approach ("AOA") based on the current 2010 OECD Model Commentary, which is the standard applied to Germany's other current DTAs, was not included in the DTA with China.

2. Dividends

The source tax rate on dividends is reduced from 10% to 5%. However, the reduced rate only applies to entities directly owning at least 25% of shares of the disbursing company. Partnerships are not entitled to the reduced rate. Dividends of income or gains of certain investment vehicles derived from immovable property are subject to a rate of 15%. In all other cases, the standard rate of 10% of the gross amount of dividends shall apply (Article 10).

With the reduction of the source tax rate on dividends to 5%, a direct holding of Chinese entities out of Germany may be considered in the future – as opposed to the current standard practice of employing intermediate holding companies in Hong Kong or Singapore (whose DTAs with Germany also contain a source tax rate of 5% on dividends). In this case, the requirements of Circular 601 issued by the PRC State Administration of Taxation must be respected, according to which the foreign holding company must be the "beneficial owner" of the disbursing entity in China.

3. Interest and Royalties

The current source tax rate of 10% on interest and royalties will continue to apply under the new DTA. Payments received as a consideration for the use of, or the right to use, any industrial, commercial or scientific equipment are subject to a reduced assessment base, resulting in a tax rate of 6% for those kinds of royalties (currently 7%). See Articles 11 and 12 for further details.

4. Capital Gains

The new DTA contains a rule on the taxation of capital gains resulting from the alienation of property. According to this rule, the state of residence of the seller shall have the exclusive right to tax capital gains, unless a specified exception applies (Article 13). For example, the state of residence of the company whose shares are being sold may levy a tax if the seller directly or indirectly held a participation of at least 25% in said company within 12 months before the sale (unless not more than 3% of the shares of a publicly traded company are sold).

5. Exemption from Double Taxation

As under the current regime, income subject to taxation in China is generally exempted from taxation in Germany. However, the exemption only applies under certain conditions in the case of dividends. Moreover, for certain types of income, there is not complete exemption, but Chinese taxes are deducted from the taxes applicable in Germany. This is the case for interest, royalties, capital gains, or director's fees, among others.

The framework contained in the new DTA between China and Germany is largely in line with the set of rules agreed by China and Switzerland under their recently concluded new DTA, which was signed on 25 September 2013. Under the new DTA between China and Switzerland, the withholding tax rate on dividends was also reduced from 10% to 5% for entities directly owning at least 25% of shares of the disbursing company. Whereas the tax rate on both interest and royalties stays at 10% under the DTA with Germany, China agreed to a reduction of the general tax rate on royalties to 9% with Switzerland. However, there is no special rate for payments received as a consideration for the use of "industrial, commercial or scientific equipment".