Baker McKenzie FenXun
奋迅 · 贝克麦坚时

Financial Services
China

Client Alert

June 2018

Baker McKenzie FenXun
A Leading Chinese and International Law Joint Platform

For further information, please contact:

Sophia Man
Partner
+852 2846 2175
sophia.man@bakermckenzie.com

Lei Fan
Consultant
+86 21 6105 8581
lei.fan@bakermckenziefenxun.com

Zhen Lei
Associate
+86 21 6105 5918
zhen.lei@bakermckenziefenxun.com

China liberalizes capital repatriation and allows CNY-FX hedging for QFII/ RQFII

On 12 June 2018, the People's Bank of China (PBOC) and the State Administration of Foreign Exchange (SAFE) issued Provisions on the Foreign Exchange Administration of the Securities Investment in the Mainland by Qualified Foreign Institutional Investors (SAFE Announcement 2018 No.1) and Circular of the People's Bank of China and the State Administration of Foreign Exchange on the Administration of the Securities Investment in the Mainland by RMB Qualified Foreign Institutional Investors (Yin Fa [2018] No.157), to facilitate the repatriation of capital and the management of foreign exchange risks in association with the securities investment by qualified foreign institutional investors (QFIIs) and RMB qualified foreign institutional investors (RQFIIs). Effective from 12 June 2018, the new rules provide that:

1. Removing the three-month lock up period on repatriation of principal and 20% limit on repatriation of principal and profit of QFII investments.

Under the previous rules, a QFII could only repatriate principal and profits of its securities investments by installments, after the lapse of a three-month lock-up period. Moreover, the aggregate amount (including principal and profits) repatriated by a QFII within any month must not exceed 20% of the total assets held by the QFII in China at the end of the year before that month.

The new rules have removed the three-month lock-up period and the 20% repatriation limit; thus allowing a QFII to repatriate principal and profits of its securities investment in China at any time based on its needs. However, under the new rules SAFE retains its power to exercise macro prudential supervision over the repatriation of capital by QFIIs, based on China's financial situation, FX market supply and demand and international balance of payment position. This means, if needed, SAFE may continue to impose temporary restriction on QFII repatriation by the means of the so-called "window guidance".

2. Allowing a QFII/ RQFII to hedge exchange rate risk through entering into CNY-FX derivative transactions.

The new rules allow a QFII/ RQFII to trade derivatives with its custodian or other banks in China that hold the requisite derivative license, to hedge the exchange rate risk arising from currency conversion. The new rules also set out the requirements that a QFII/ RQFII should comply with when it engages in derivative transactions, including:

- Any derivative transaction entered into by a QFII/ RQFII must be based on its genuine business needs and for hedging the exchange rate risk arising from its onshore securities investment only.

- The exposures under the derivatives entered into by a QFII/ RQFII shall have a “reasonable correlation” with its underlying securities investment in China. Specifically, the aggregate exposure under a QFII/ RQFII’s derivative trades shall not exceed the CNY asset volume (other than saving account assets) under its securities investment in China at the end of the month immediately preceding the trades.

- The exposures of derivatives held by a QFII/ RQFII can be adjusted on a monthly basis. Such adjustment must be done within five working days following the end of each month, based on the CNY asset volume under the QFII/ RQFII’s securities investment in China calculated by the custodian bank.

- The current regulations regarding the permissible types of derivative transaction and settlement requirements shall apply to QFII/ RQFII. In this regard, it is notable that SAFE has permitted the trading of CNY-FX non-deliverable forwards in China on 12 February 2018.

The Chinese government has pledged to further open up its financial sector on various occasions since late 2017. These new rules mark the effort of the regulators to adjust the QFII/ RQFII regime to make it more attractive to foreign investors when they invest in the A-share market. A QFII / RQFII that has an existing fund using the QFII/ RQFII quota is advised to revisit the fund documentation and update it to reflect the new policies.

www.bakermckenziefenxun.com
www.bakermckenzie.com
www.fenxunlaw.com

Baker McKenzie FenXun (FTZ)
Joint Operation Office
Unit 1601, Jin Mao Tower
88 Century Avenue, Pudong
Shanghai 200121, PRC

Tel: +86 21 6105 8558
Fax: +86 21 5047 0020