



China Regulatory Updates

November 2009

Connotation of "Han Yi"

- › *Standardization*
- › *Unique player in the PRC legal service market*
- › *Simplicity, but always with a focus on key points and attention to details*

Our Values

- › *Professionalism*
- › *Cost Efficiency and Effectiveness*
- › *Constant Self-Improvement Towards Perfection*



■ Foreign Investment

Rules on Foreign Exchange Administration of Cross-Border Securities Investment Amended

Foreign Investors Explicitly Prohibited from Investing in PRC Online Game Industry

■ Insurance

Supporting Rules for New Insurance Law Issued

■ Securities

Rules on Governance of Companies Listed on GEM Board Released

Chinese Securities Market Will Be Open to Partnership Investors

Shanghai Office
Suite 4103, II Grand Gateway
3 Hongqiao Road
Shanghai 200030, China
Tel: (86-21) 6448-5600
Fax: (86-21) 6448-5611

Beijing Office
Suite 311, Tower E1
Oriental Plaza
Beijing 100738, China
Tel: (86-10) 8518-5580
Fax: (86-10) 8515-3818

Foreign Investment

Rules on Foreign Exchange Administration of Cross-Border Securities Investment Amended

The PRC State Administration of Foreign Exchange (“SAFE”) has recently released two rules on cross-border securities investment, i.e., the *Provisions on Administration of Foreign Exchange Related to Domestic Securities Investment by Qualified Foreign Institution Investors* (the “QFII Rules”) and the *Circular on Several Issues Concerning the Administration of Foreign Exchange Related to Outbound Securities Investment by Fund Management Companies and Securities Firms* (the “QDII Circular”).

Based on its previous surveillance experience, SAFE has improved its regulations and policies with respect to QFII and QDII, and further clarified the specific supervision requirements in the QFII Rules and the QDII Circular, including among others:

- (a) Procedures related to foreign exchange matters for QFII and QDII are further simplified in terms of investment quota application procedures and documents, account opening process, foreign exchange agiotage, and etc.

- (b) QFIIs are encouraged to engage in securities investment for long or medium term. The QFII Rules have lifted the restrictions on the investment quota of a single QFII and the lock-up periods for investment principals of QFIIs with long or medium investment cycles (*please refer to the October 2009 issue of Han Yi China Regulatory Updates for more details*).
- (c) QFIIs and QDIIs are explicitly forbidden to transfer or resell their respective investment quota in any form.
- (d) Supervision in terms of statistics and sequent surveillance over QFII and QDII are further intensified. The filing duty of QFIIs’ custodians is also emphasized.

In addition, SAFE is going to publish the information with respect to QFII’s investment quota approved by it on a quarterly basis at its website (www.safe.gov.cn) from now on.

Foreign Investors Explicitly Prohibited from Investing in PRC Online Game Industry

The PRC General Administration of Press and Publication (“GAPP”), together with other ministries concerned, has recently issued a circular to further strengthen the administration of prior approval of online games’ running and approval of online game import.

Online game industry is one of the most profitable sectors in China now, but the internet culture operation industry as a whole is explicitly prohibited to foreign investment according to the currently effective *Catalogue for the Guidance of Foreign Investment Industries*. In the recently-released circular, GAPP has reiterated that foreign investors are forbidden from investing in PRC online game services in the form of wholly owned enterprises, equity or contractual joint ventures or other formalities. Neither can a foreign investor control or participate in any domestic enterprise’s online game business operation in any indirect or

disguised form (such as the so-called “*CCF model*” or through other technical arrangements).

GAPP further emphasized that:

- (a) No organization or individual may be engaged in any online game service unless it has obtained GAPP’s prior approval and is granted with internet press license that covers operation of online game business;
- (b) GAPP is the sole authority that has the power to approve the operation of online game businesses. No online game can be publicly played unless approved by GAPP in advance; and
- (c) GAPP is the government authority that is responsible for the examination and approval of all imported online games.

Insurance

Supporting Rules for New Insurance Law Issued

The China Insurance Regulatory Commission (“CIRC”) has recently amended and promulgated a series of supporting rules for the newly amended *PRC Insurance Law*, including the *Provisions on the Administration of Insurance Companies*, the *Provisions on the Supervision of Professional Insurance Agencies*, the *Provisions on the Supervision of Insurance Brokerage Institutions* and the *Provisions on the Supervision of Insurance Assessment Institutions* (collectively as the “Supporting Rules”). The Supporting Rules became effective on October 1, 2009.

With the aim to further protecting the insured and supervising the insurance sector, the Supporting Rules mainly have the following highlights in their amendments:

- (a) As to the insurance companies, the Supporting Rules have (i) raised the entry threshold for insurance companies and their branches; (ii) required to strengthen the internal control and external supervision of insurance companies’ branches; and (iii) provided various measures to strengthen the surveillance over insurance companies’ marketing sectors.
- (b) As to the insurance intermediary institutions, the Supporting Rules have further clarified the rights and obligations of participants of insurance intermediary activities and provided more protection to the insured. The Supporting Rules have also raised the registered capital amount requirement for insurance brokers. In addition, according to the Supporting Rules, CIRC will (i) focus its attention mainly on the insurance market and its related risks; (ii) further cut down administrative approval items; and (iii) reduce its intervention in insurance intermediaries’ daily operation.
- (c) The Supporting Rules have further specified information disclosure requirements in connection with new types of life insurance products.

Securities

Rules on Governance of Companies Listed on GEM Board Released

On October 15, 2009, the Shenzhen Stock Exchange released the *Guidance for the Standardized Operation of Companies Listed on the GEM Board* (the “Guidance”), which has become effective upon issuance.

The Guidance has required that GEM board listed companies (the “GEM Board Companies”) should establish standardized corporate governance structure and internal control policies. The Guidance has also specified rules on certain issues, such as the use of the premium funds, information disclosure obligations and investor relationship management. In particular, according to the

Guidance, all premium amounts raised should be deposited into the special account established for fund-raising and can only be invested in the operation of the GEM Board Companies’ core business instead of any high-risk areas (such as securities investments). GEM Board Companies should disclose the use plan of such premium amounts within 6 months upon their receipt of such funds. Furthermore, the Guidance has provided that GEM Board Companies may set out in their articles of association the lockup periods for shares held by their key employees excluding directors, supervisors and senior managements.

Chinese Securities Market Will Be Open to Partnership Investors

In mid October 2009, the China Securities Regulatory Commission circulated for public comments its proposed amendments to Articles 14 and 19 of the *Measures for the Administration of Securities Registration and Clearance*. One notable amendment is to expand the scope of parties that may open securities account and can therefore participate in the domestic PRC securities investment activities. In addition to individuals and corporate entities that are currently permitted to open securities investment accounts, the draft rule proposes that partnership enterprises and non-legal person venture capital investment enterprises can also open securities investment accounts with

competent securities registration and clearance institution.

According to publicly available news reports, there are already some partnership enterprises that have been allowed in practice to open accounts for investment on the GEM board market. If the proposed CSRC amendment is adopted, it will provide a legal basis for partnership enterprises and other non-legal person enterprises to fully participate in the investment activities in China's securities market, which will be good news for domestic private equity funds seeking exits directly from the Chinese securities market.

For further information, please write us at inquiry@hanyilaw.com.

These updates are intended for information purpose only and are not a legal advice or a substitute for legal consultation for any particular case or circumstance. © Han Yi Law Offices All rights reserved.