



## Client Alert – Removal of PRC Investment Quotas for QFII / RQFII (May 2020)

On 7 May 2020 the People's Bank of China ("PBOC") and State Administration of Foreign Exchange ("SAFE") issued new Administrative Provisions on Funds for Domestic Securities and Futures Investment by Foreign Institutional Investors (境外机构投资者境内证券期货投资资金管理规定) which remove investment quotas on QFII / RQFIIs and standardise the arrangements for custody, bank accounts, remittances and payments in mainland China by foreign investors. The new rules become effective on 6 June 2020.

A new definition has been created of Qualified Investors ("QI") which include both Qualified Foreign Institutional Investors ("QFII") and Renminbi Qualified Foreign Institutional Investors ("RQFII") who invest in the domestic securities and futures market with the approval from the China Securities Regulatory Commission ("CSRC").

### General Provisions

QIs must appoint a domestic custodian to act on its behalf. If a QI has more than one custodian, it must nominate one of them as the main custodian to deal with all registration related matters.

The PBOC and SAFE are responsible for supervising, managing and inspecting the account(s) capital receipts, payments and currency exchanges of QIs.

### Registration

Registration is a two-step process.

QIs must first obtain permission from CSRC to conduct securities and futures business.

The QI must then appoint the main custodian to submit the following materials to SAFE by way of a business registration:-

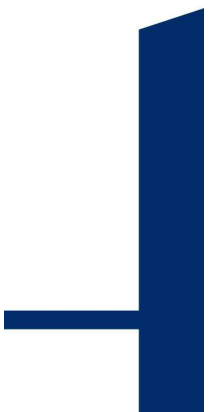
- (i) Registration Form for Foreign Institutional Investors (which can be found in Appendix 1 of the Chinese language Provisions); and
- (ii) A photocopy of the Securities and Futures Business License.

The main custodian is responsible for determining the authenticity of materials provided by QIs and SAFE will direct questions and comments on the application to the main custodian.

### Opening Bank Accounts

Once the business registration certificate has been granted, the QI must open accounts with the custodian for investment and inward fund remittance.

- QIs who inwardly remit foreign funds must open a foreign currency account and an RMB deposit account connected to that foreign currency account.
- QIs who inwardly remit RMB funds must open an RMB deposit account.





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- QIs who inwardly remit RMB funds and foreign funds at the same time must open an RMB deposit account, a foreign currency account and an RMB deposit account connected to the foreign currency account.

The names of the RMB deposit account should match.

Full details of the account opening process and requirements are set out in Appendix 2 of the Procedures - Operational Guidelines for the Management of Domestic RMB Accounts of Foreign Institutional Investors.

### Operation of Bank Accounts

For the purposes of a QI's foreign currency account, income is defined as each of:-

- principal remitted inward by the QI;
- foreign funds required to pay relevant taxes and fees (including taxes, custodian fees, audit fees, management fees);
- foreign currency interest income;
- proceeds transferred from dealing in foreign exchange derivatives;
- proceeds transferred from purchasing foreign exchange in the RMB deposit account connected to the foreign currency account; and
- other income stipulated in the Regulation on Foreign Exchange Administration.

For the purposes of a QI's foreign currency account, expenditure is defined as each of:-

- proceeds that are settled into the RMB deposit account connected to the foreign currency account;
- proceeds transferred out for foreign exchange derivatives transactions;
- outward remittance of principal and proceeds; and
- other expenditure stipulated in the Regulation on Foreign Exchange Administration.

A QI should not transfer funds between these accounts and other domestic accounts except as permitted at law.

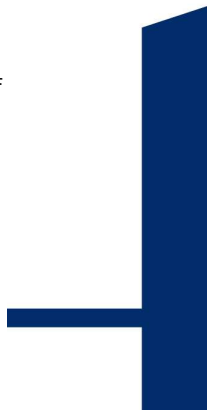
Where a QI inwardly remits RMB funds and foreign funds at the same time, they may not transfer funds between two such types of RMB deposit accounts.

The funds in these accounts must not be used for purposes other than domestic securities and futures investment and hedging for risk management.

Currencies of funds for inward and outward remittance by a QI must be the same. QIs may not carry out cross currency arbitrage between RMB and foreign currencies.

No cash can be withdrawn from these accounts for general business or other use.

The operation of these accounts and the interest rate is governed by the relevant regulations of PBOC on management of domestic RMB settlement accounts of foreign institutions.





### Remittance Arrangements

A QI can actively select the currency for the remittance of funds to undertake domestic securities and futures investment.

A QI who remit funds for investment should promptly notify its custodian to settle the foreign exchange necessary for the investment and transfer the foreign exchange into its RMB deposit account connected to the foreign currency account in accordance with its investment instructions.

The custodian appointed by the QI is responsible for handling:-

- the outward remittance of relevant investment principal and proceeds;
- the outward remittance of the accumulated income that has been realized by the QI subject to a written undertaking by the QI to pay taxes and fees in full in accordance with relevant laws and regulations on tax in China; and
- the outward remittance of relevant funds in the event of liquidation of the QI or a product liquidation and the closure of the account for the QI subject to the completion of a special audit report on returns on investment issued by a mainland CPA, and any tax filing forms.

### Investment Activities

QIs are permitted to conduct domestic derivatives transactions for the purposes of hedging foreign exchange risk. QIs may now engage in trading not only foreign exchange risk hedging products but also other financial derivatives allowed by relevant rules and regulations for hedging purposes.

Foreign exchange derivatives positions held by a QI must be maintained at a level below the RMB assets relevant to the domestic securities investment of the QI (except for RMB deposits in special RMB deposit accounts) to demonstrate that they are purely for hedging purposes.

QIs should engage in foreign exchange derivatives business through custodians or domestic financial institutions ('foreign exchange derivatives business agencies') who have the appropriate licence for and experience of handling foreign exchange derivatives business. Foreign exchange derivatives business agency may handle foreign exchange derivatives business for QIs only for hedging purposes.

Dealing in foreign exchange derivatives by a foreign exchange derivatives business agency for a QI must be in accordance with the existing regulations on foreign exchange derivatives.

### Ongoing Obligations and Reporting

In the event of a name change, the QI must instruct its custodian to apply to SAFE for change in registration within 10 working days after obtaining the updated Securities and Futures Business License from the CSRC.

In the event of a change in custodian or other material change, the QI must instruct its main custodian to apply to SAFE for change in registration within 10 working days from the date of the change.

In the event of a change in the main custodian, the QI must instruct a new main custodian to apply to SAFE for a change in registration within 10 working days from the date of the change.





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Where the QI closes, undergoes insolvency proceedings, is under receivership or has other reasons that lead to the cancellation of the QI's business license by the CSRC, the QI must promptly report this to the PBOC and the SAFE through its main custodian, and liquidate assets and close all the QI's bank accounts within 30 working days.

The custodian is responsible for AML / CTF and monitoring both incoming and outgoing transactions for suspicious activity. The QI must cooperate with the custodian in performing these obligations and provide the custodian with true and complete data and information.

Custodians are required to report information about QIs transactions in accordance with the following rules:-

- Administrative Measures for the RMB Bank Settlement Accounts (Order of the People's Bank of China No. 5 [2003])
- Administrative Measures for the RMB Cross-border Receipt and Payment Management Information System (Yinfa No. 126 [2017])
- Notice of the General Office of the People's Bank of China on Improving the Interbank Business Data Submission Procedures of the RMB Cross-border Receipt and Payment Management Information System (Yinbanfa No. 118 [2017])
- Detailed Rules for the Implementation of the Declaration of Balance of Payments Statistics through Banks (HuiFa No. 27 [2015])
- Guidelines for the Balance of Payments Statistical Declarations through Banks (Huifa No. 25 [2019])
- Statistical System of External Financial Assets and Liabilities and Transactions (Huifa No. 24 [2018])
- Standards for Collecting Data on Foreign Exchange Transactions by Financial Institutions (Version 1.2) (Huifa No.1 [2019])

Foreign exchange derivatives business agencies must comply with the provisions on the management of synthetic positions in foreign exchange settlement and file statistical reports on foreign exchange settlement and sales in accordance with relevant provisions of the management regulations on foreign exchange.

### Enforcement

A QI which breaches the following requirements will face enforcement action by SAFE in accordance with the 'Regulations of the People's Republic of China on Foreign Exchange Administration:-

- Failure to obtain a business registration as required;
- Failure to provide SAFE or the custodian with information and materials relating to domestic securities and futures investment as required, or provide false information or application materials;
- A breach of provisions in the course of conducting domestic securities and futures investment;
- A breach of regulations on foreign exchange administration in the course of conducting foreign exchange derivatives; or
- Other acts in breach of the Regulations on Foreign Exchange Administration.





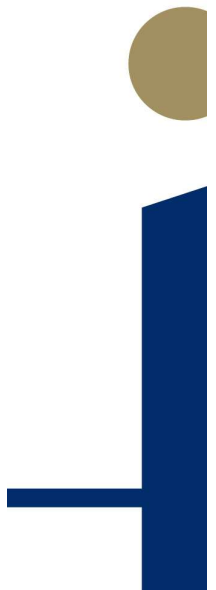
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Any custodian of a QI which breaches the following requirements will face enforcement action either by the PBOC under the Law of the People's Republic of China on the People's Bank of China (for RMB business) or SAFE in accordance with the 'Regulations of the People's Republic of China on Foreign Exchange Administration (for foreign exchange business):-

- Failure to handle the outward remittance of principal and proceeds for the QI in accordance with relevant regulations;
- Failure to open or close relevant accounts for the QI in accordance with regulations, or fail to handle fund transfers and remittances for the QI within the receipt time and payment scope of the account as stipulated by the regulations;
- Failure to handle foreign exchange derivatives for the QI as required;
- Failure to present relevant information, materials and reports to SAFE as required;
- Failure to declare the international BOP statistics or report statistics on foreign exchange settlements and sales as required; or
- Other acts in breach of PBOC rules and the Regulations on Foreign Exchange Administration.

Any foreign exchange derivatives business agency that fails to handle relevant business for QI as required will face enforcement action from SAFE in accordance with the Regulations on Foreign Exchange Administration.





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