

ORGANIZACIÓN MUNDIAL DEL COMERCIO

S/C/N/221
24 de diciembre de 2002

(02-7098)

Consejo del Comercio de Servicios

Original: inglés

NOTIFICACIÓN DE CONFORMIDAD CON EL PÁRRAFO 3 DEL ARTÍCULO III DEL ACUERDO GENERAL SOBRE EL COMERCIO DE SERVICIOS

Se ha recibido de la delegación de la República Popular China la siguiente notificación.

1. Miembro que notifica:

La República Popular China

2. Notificación en virtud del:

Párrafo 3 del artículo III del Acuerdo General sobre el Comercio de Servicios

3. Fecha de entrada en vigor/duración:

1.6.2002

4. Organismo responsable de la aplicación de la medida:

Comisión Reguladora de Valores de China

5. Descripción de la medida* indicando las formas de suministro previstas, los efectos en el comercio de servicios (como por ejemplo restricciones a la liberalización o medidas de liberalización) e incidencia de la medida en los compromisos enunciados en la Lista del Miembro y en su Lista de exenciones del artículo II (NMF), en su caso:

Normas para el establecimiento de empresas de valores con inversión extranjera

Se adjunta el texto completo de la traducción de las normas al inglés.¹ La traducción al inglés se facilita únicamente a efectos de consulta y la versión china será la auténtica.

6. Miembros específicamente afectados, en su caso:

Todos los Miembros

* Incluidos los acuerdos internacionales y las medidas de reconocimiento o de otro tipo.

¹ En inglés solamente

7. Texto disponible en:

- Servicio de información ☒
- Secretaría de la OMC ☒
- Otras fuentes (dirección, fax y teléfono de otro organismo) ☐

Rules for Establishing Foreign Invested Securities Companies

(Promulgated by the China Securities Regulatory Commission on June 1st, 2002)

Article 1 These Rules are formulated, in accordance with the relevant provisions of the Company Law and the Securities Law, to adapt to the requirements of opening securities market to the outside world, strengthen and improve the supervision and administration of foreign invested securities companies and clarify the conditions and procedures for the establishment of foreign-invested securities companies.

Article 2 Foreign-Invested securities companies referred to in these Rules include the securities companies altered as a result of overseas shareholders' acceptance of the transfer of or purchase of domestic securities companies' shares or the securities companies established by overseas shareholders and domestic shareholders through joint contribution.

Article 3 The China Securities Regulatory Commission (hereinafter referred to as the "CSRC") shall be responsible for the examination, approval, supervision and administration of foreign-invested securities companies.

Article 4 The organizational form of foreign-invested securities companies is limited liability company.

Foreign investment shared securities companies' names, registered capital, organizational institutions establishment and duties and responsibilities thereof shall conform to the Company Law, the Securities Law as well as the relevant provisions of the CSRC.

Article 5 A foreign-invested securities company may engage in the following business:

- (1) underwriting of shares (including Renminbi common stocks and foreign capital stocks) and bonds (including government bonds and corporate bonds);
- (2) brokerage of foreign capital stocks;
- (3) brokerage and self-operation of bonds (including government bonds and corporate bonds);
- (4) other business approved by the CSRC.

Foreign capital stocks referred to in the preceding paragraph include foreign capital stocks listed within the territory (B shares) and foreign capital stocks listed outside the territory.

A securities company shall make applications in respect of business scope to the CSRC in accordance with the provisions in the first paragraph of this Article.

Which intends to engage in the stock underwriting business acting as a lead underwriter shall acquire the qualification for lead underwriters in the stock underwriting business in accordance with the CSRC's provisions on administration of qualification for lead underwriters in the stock underwriting business.

Article 6 A foreign-invested securities company shall meet the following conditions:

- (1) the registered capital shall conform to the provisions of the Securities Law on the registered capital of comprehensive securities companies;
- (2) the shareholders shall meet the qualification conditions stipulated by these Rules, the ratio and form of their contribution shall conform to the provisions of these Rules;
- (3) the personnel who have acquired the professional qualification for securities business in accordance with the provisions of the CSRC shall not be less than 50, and there are necessary accounting, legal and computer professionals;

- (4) shall have sound systems such as internal management, risk control, separate administration of organization, personnel, information, business implementation and other aspects in the underwriting, brokerage, self-operation and other business, have proper internal control technology system;
- (5) shall have qualified place of business and up-to-standard trading facilities;
- (6) other prudential requirements stipulated by the CSRC.

Article 7 An overseas shareholder of a foreign-invested securities company shall possess the following conditions:

- (1) the country where it is situated shall have perfect securities law and system of supervision and administration, its securities regulatory institution shall have already concluded the understanding memorandum of cooperation in securities supervision and administration with the CSRC and maintained effective cooperative relationship in supervision and administration;
- (2) shall have the lawful qualification for securities business, have engaged in the financial business for more than ten years and have not been seriously punished by their regulatory institutions and judicial organs in the recent three years in the country where it is situated;
- (3) various index for risk control in the recent three years shall conform to the provisions of the country where it is situated and the requirements of its securities regulatory institution;
- (4) shall have perfect internal control system;
- (5) shall have better reputation and business performance in the international securities market;
- (6) other prudential requirements stipulated by the CSRC.

Article 8 A domestic shareholder of a foreign-invested securities company shall meet the qualification conditions for securities companies' shareholders stipulated by the CSRC.

There shall be at least one securities company wholly with domestic investment among the domestic shareholders of a foreign-invested securities company. However, a foreign-invested securities company into which a securities company wholly with domestic investment is altered is not restricted by this provision.

Article 9 A domestic shareholder may make its contribution in cash or with material objects; an overseas shareholder shall make its contribution in freely convertible currency.

Article 10 The ratio of overseas shareholders' shareholding or that of their rights and benefits enjoyed in a foreign-invested securities company shall not accumulatively (including direct ownership and indirect ownership) exceed one third.

Among the domestic shareholders, there shall be at least one securities company wholly with domestic investment the ratio of whose shareholding or that of whose rights and benefits enjoyed in the foreign-invested securities company shall not be less than one third.

Article 11 The directors, general managers and deputy general managers shall have the qualification for acting as superior management personnel in securities companies stipulated by the CSRC.

Article 12 In applying for the establishment of a foreign-invested securities company, the following documents shall be submitted by the agent jointly designated or entrusted by all shareholders:

- (1) the application form jointly signed by the legal representative or authorized representative of the overseas and domestic shareholders;
- (2) the draft contract and articles of association of the foreign-invested securities company to be established;
- (3) the application forms of qualification for acting as the chosen directors, general managers and deputy general managers of the foreign-invested securities company;
- (4) the copies of the shareholders' business licenses or registration certificates and qualification certificates for securities business;
- (5) the audited financial statements of the overseas and domestic shareholders in the year before application;
- (6) the letters explaining whether these shareholders have met the conditions stipulated by item (2) and (3) in Article 7 of these Rules provided by the securities regulatory institutions in the countries where overseas shareholders are situated;
- (7) the legal opinions letter provided by the law firms with related professional qualification for securities business within the Chinese territory.

Article 13 The CSRC shall examine the application documents stipulated in the preceding Article in accordance with relevant laws, administrative regulations and these Rules and within 45 working days as of receipt of the qualified application documents, shall make the decision of approval or disapproval and notify the applicants in writing. Where a decision of disapproval is made, the reasons shall be given in writing.

Article 14 The shareholders shall, within six months as of signing and issuing of the approval document by the CSRC, pay their contribution in full or provide the agreed cooperative conditions, elect the board of directors, engage the superior management personnel, apply for the registration of establishment to the department for industry and commerce and obtain the business license.

Article 15 The chairman of the board of directors or the authorized representative of a foreign-invested securities company shall, within 15 working days as of signing and issuing of the business license, submit the following documents to the CSRC for applying for a Permit for Securities Business:

- (1) the copy of the duplicate of the business license;
- (2) the articles of association of the company;
- (3) the capital verification report provided by the accounting firm with related professional qualification for securities business within the Chinese territory;
- (4) the name list and resumes of the directors, supervisors and superior management personnel, the name list of the main business professionals and the copies of the certificates of their qualification for securities business;
- (5) the text of the internal control system;
- (6) the letter explaining the situation of the place of business and trading facilities.

Article 16 The CSRC shall examine the application documents stipulated in the preceding Article in accordance with relevant laws, administrative regulations and these Rules and shall make the decision within 15 working days as of receipt of the qualified application documents. A Permit for Securities Business shall be issued to those that conform to the conditions as stipulated; to those that do not conform to the conditions as stipulated, the permit shall not be issued and the reasons shall be given in writing.

Article 17 Without obtaining a Permit for Securities Business issued by the CSRC, a foreign-invested securities company shall not start business and engage in securities business.

Article 18 A securities company wholly with domestic investment which applies for altering into a foreign-invested securities company shall meet the conditions stipulated by Article 6 of these Rules.

An overseas shareholder which purchases or invest in shares in a securities company wholly with domestic investment shall meet the conditions stipulated by Article 7 of these Rules and the ratio of its held shares purchased or that of its contribution shall conform to the provisions of Article 10 of these Rules.

Article 19 A securities company wholly with domestic investment which applies for altering into a foreign-invested securities company shall submit the following documents to the CSRC:

- (1) the application form signed by the legal representative;
- (2) the resolution of the shareholders' meeting with regard to its alteration into a foreign-invested securities company;
- (3) the draft of the revised articles of association of the company;
- (4) the agreement of stock rights transfer or capital contribution agreement (shares purchase agreement);
- (5) the name list and resumes of the personnel to hold posts in this securities company assigned by foreign investors;
- (6) the copies of the overseas shareholders' business licenses or registration certificates and qualification certificates for securities business;
- (7) the audited financial statements of the overseas shareholders in the year before application;
- (8) the letters explaining whether these shareholders have met the conditions stipulated by item (2) and (3) in Article 7 of these Rules provided by the securities regulatory institutions in the countries where overseas shareholders are situated;
- (9) the plan for sorting out the business which the foreign-invested securities company shall not engage in according to law;
- (10) the legal opinions letter provided by the law firms with related professional qualification for securities business within the Chinese territory.

Article 20 The CSRC shall examine the application documents stipulated in the preceding Article in accordance with relevant laws, administrative regulations and these Rules and within 30 working days as of receipt of the qualified application documents, shall make the decision of approval or disapproval and notify the securities company which makes the application in writing. Where a decision of disapproval is made, the reasons shall be given in writing.

Article 21 The securities company the alteration of which is approved shall, within six months as of signing and issuing of the approval document by the CSRC, handle the affairs regarding the stock rights transfer or capital addition, sort out the business which the foreign-invested securities company shall not engage in according to law, apply for the registration of alteration to the department for industry and commerce and replace the business license.

Article 22 The securities company the alteration of which is approved shall, within 15 working days as of registration of the alteration, submit the following documents to the CSRC for applying for replacing the Permit for Securities Business:

- (1) the copy of the duplicate of the business license;
- (2) the articles of association of the foreign-invested securities company;
- (3) the original permit for securities business of the company and the duplicate thereof;
- (4) the capital verification report provided by the accounting firm with related professional qualification for securities business within the Chinese territory;
- (5) the report on the work of sorting out the business which the foreign-invested securities company shall not engage in according to law;

- (6) the legal opinions letter and the capital verification report regarding the sorting out work stipulated in the preceding item provided by the law firm and the accounting firm with related professional qualification for securities business.

Article 23 The CSRC shall examine the application documents stipulated in the preceding Article in accordance with relevant laws, administrative regulations and these Rules and shall make the decision within 15 working days as of receipt of the qualified application documents. A Permit for Securities Business shall be replaced for those that conform to the conditions as stipulated; for those that do not conform to the conditions as stipulated, the permit shall not be replaced and the reasons shall be given in writing.

Article 24 A merged foreign-invested securities company or a securities company newly established or continuing to exist as a result of a merger between a foreign-invested securities company with a securities company wholly with domestic investment shall meet the conditions for the establishment of a foreign-invested securities company stipulated by these Rules; its business scope, the ratio of stock rights or rights and benefits enjoyed by the overseas shareholders shall conform to the provisions of these Rules.

Where there are overseas shareholders in the shareholders of a securities company established as a result of division of a foreign-invested securities company, its business scope, the ratio of stock rights or rights and benefits enjoyed by the overseas shareholders shall conform to the provisions of these Rules.

Article 25 The application documents submitted and the materials reported to the CSRC in accordance with the provisions of these Rules must be written in Chinese. Where the documents or materials provided by the overseas shareholders and the securities regulatory institutions where they are situated are written in foreign languages, the Chinese translations which are consistent with the contents of the original texts shall be enclosed.

Where the documents submitted and the materials reported by the applicant can not adequately describe the applicant's situation, the CSRC may require the applicant to make additional explanation.

Article 26 Where investors from Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan region invest in shares in securities companies, these Rules shall be referred to in application.

Article 27 Where there are no provisions regarding the matters of establishment, alteration, termination, business activities, supervision and administration in these Rules, other relevant provisions of the CSRC shall be applied.

Article 28 These Rules shall be implemented as of July 1, 2002.
