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Legal update

China: CBIRC regulations on foreign banks published for public comment

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Banking and finance
Financial institutions

On November 28, the China Banking and Insurance Regulatory Commission (CBIRC) published the draft amendments to the Detailed Rules for the Implementation of the Regulation on the Administration of Foreign-Funded Banks to complement other draft amendments to the Regulation on the Administration of Foreign-Funded Banks published a few days earlier (together, the Draft FIE Bank Rules). The Draft FIE Bank Rules are subject to public consultation for one month and are expected to be released formally at the beginning of 2019.

The Draft FIE Bank Rules for the first time show how the principles of "national treatment" and "same market entry and administrative standards" in banking sector as announced by CBIRC are elaborated by legislation. A few significant movements are notable to the foreign banks who have already opened wholly owned subsidiary banks and/or branches in China, especially the following:

- A foreign bank is allowed to hold in China (a) wholly owned subsidiary bank(s) and branch(es) at the same time, or (b) joint venture bank(s) and branch(es) in parallel at the same time. This is in line with the "one control or two participations" principle applied to domestically funded commercial banks, i.e. one bank is only allowed to control one domestically funded bank or participate into no more than two domestically funded banks in the same nature.

- FIE banks (i.e., wholly owned subsidiary banks and joint venture banks) and foreign banks' Chinese branches, in synergy with their parent banks, are allowed to provide comprehensive financial services to their Chinese clients to support them to issue bonds, launch IPOs, conduct M&A and seek financing overseas. This seems to suggest that FIE banks and foreign banks' Chinese branches, together with their parent foreign banks, can provide investment banking services to Chinese clients for their overseas transactions without any specific licence or permit from CBIRC.

Meanwhile, foreign banks who hold both FIE banks and branches in China are required to ensure:

- Their Chinese branches always meet the prudential conditions set out by CBIRC.

- The FIE banks and Chinese branches have distinctive functions and corporate governance, separate management, business, staff and information risk segregation mechanisms.

- Any business conducted between the FIE banks and/or branches with their foreign parent banks shall comply with the business principles and shall not be subject to terms and conditions that are more favourable than those offered to non-connected parties.

- Their Chinese branches can only conduct wholesale business, i.e. business with entities, not individuals, if an FIE bank is set up in China.

Other amendments include reporting requirements for conducting derivative business and some other business, approval requirements for conducting renminbi business, various thresholds for regulatory asset/debt ratios, regular review and inspection requirements and so on.

Although the new rules, if implemented, are still subject to test, at least these Draft FIE Bank Rules demonstrate the commitment made by Chinese government to further open the banking sector to foreign investment and the efforts made by CBIRC to apply the consistent requirements to domestically funded banks and foreign-funded banks.

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