

Legal Commentary

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Financial Regulator's Reminder on the New Company Law

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Recent developments for foreign-invested financial institutions

I. Another foreign-owned securities company on its way

On 6 September 2024, the China Securities Regulatory Commission (**CSRC**) publicly released feedback regarding an application submitted by Mizuho Securities Co., Ltd. (**Mizuho Group**) for the establishment of Mizuho Securities (China) Co., Ltd. (“瑞穗证券（中国）有限公司”).

If approved, Mizuho Group will become the fifth foreign financial group to establish a wholly foreign-owned (**WFOE**) securities company in China, joining the ranks of J.P. Morgan, Goldman Sachs, Standard Chartered, and BNP Paribas, which currently represent the four existing WFOE securities companies. Overall, this would increase the total number of foreign-invested securities companies in China to 19.

Additionally, a number of other foreign financial groups are also seeking entry into the Chinese financial services market. Based on public information on CSRC's website, Citigroup and Intesa Sanpaolo have also submitted applications to CSRC to establish their own securities companies in China.

Recent updates for other foreign-invested financial institutions

■ WFOE fund management companies (**FMC**)

In April 2024, Allianz secured the latest approval from CSRC to establish a WFOE FMC in China, making Allianz the ninth WFOE FMC. The previous eight WFOE FMCs have also been established by prominent foreign financial institutions or asset managers, including BlackRock, Fidelity, Neuberger Berman, Schroders, Manulife, Alliance Bernstein, J.P. Morgan, and Morgan Stanley.

■ WFOE futures companies

Currently, there are two WFOE futures companies set up by J.P. Morgan and Morgan Stanley respectively. Additionally, there are two foreign-invested futures companies, including UBS Futures Co., Limited backed by UBS and Qiankun Futures Co., Ltd. backed by Goldman Sachs.

■ Foreign-controlled wealth management companies (**WMC**)

There are currently five foreign-controlled WMCs operating in China, established by renowned

global financial groups including Amundi, BlackRock, Schrodgers, Goldman Sachs, and BNP Paribas. Compared to the end of last year, all five WMCs have significantly expanded their wealth management scales onshore.

II. Noteworthy takeaway from CSRC’s feedback to Mizuho

Among other items, CSRC specifically requested Mizuho Group to further work on two compliance aspects:

- Since the new Company Law came into force on 1 July 2024, Mizuho Group shall make sure the internal governance mechanism and the articles of association formulated for the proposed securities company comply with the new Company Law.

Our observation:

The new Company Law introduces certain new requirements on corporate governance of companies.

For the financial institutions being established, it is very likely that their preparatory work began long before the enactment of the new Company Law. Therefore, it is advisable for newcomers to go through updates and ensure compliance with the latest regulations, including relevant consultation papers yet to become effective.

Existing financial institutions will also need to revisit their internal system, constitutional documents and policies, to assess if any update is required in terms of board structuring, optionality of supervisors, liabilities and duties of shareholders, directors, senior management personnel, etc.

- Mizuho Group will need to improve the nomination arrangements for senior management personnel of the proposed securities company and properly document them in the articles of association and other internal policies, in accordance with provisions of Article 10 of the *Measures for the Supervision and Administration of Directors, Supervisors, Senior Management Personnel and Practitioners of Securities or Funds Business Operators (Personnel Measures)*.

Our observation:

Article 10 of the Personnel Measures requires the securities or funds business operators to obtain a written undertaking from the relevant nominator on the candidate’s satisfaction of the eligibility requirements. Such undertaking should also offer clear opinions on the candidate’s personal morality, professional ethics, work experience, business skills, and management ability, without concealing any important information or providing false information.

CSRC’s feedback seems to indicate that the regulator will take a substantive review on the eligibility and suitability of relevant candidates and will require additional proof or justification as the regulator deems fit.

For eligibility and suitability of relevant candidates, in addition to the Personnel Measures, it is worth noting that CSRC has further formulated detailed guidelines, i.e., *Working Guidelines for Reviewing Administrative Licenses of CSRC* regarding the interpretation and application of the Personnel Measures.

Our recommendation

The compliance requirements outlined in CSRC's feedback should be viewed in a broader context. Such requirements are worth noting to all relevant financial institutions, whether or not regulated by CSRC, as the regulatory spirit of central financial regulators would be consistent on this front.

In light of the new Company Law's enactment, we suggest all foreign-invested financial institutions conduct a comprehensive review of their existing corporate governance frameworks, including departmental structures, personnel responsibilities and policies, etc. This assessment should aim to identify substantive gaps and implement necessary adjustments to governance structures and policies.

Looking forward, we recommend that these institutions enhance their internal training programs to provide high-quality education for all stakeholders to ensure a thorough understanding of the new Company Law and its implications.

Important Announcement

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