

## 金融法律热点问题

### QFII/RQFII：资金汇出和锁定期限制取消

2018年6月12日，中国人民银行（以下简称“央行”）、国家外汇管理局（以下简称“外管局”）重新发布了《合格境外机构投资者境内证券投资外汇管理规定》（以下简称“《规定》”）以及《关于人民币合格境外机构投资者境内证券投资管理有关问题的通知》（以下简称“《通知》”）（以下合称“新规”），宣布对合格境外机构投资者（“QFII”）与人民币合格境外机构投资者（“RQFII”）实施新一轮外汇管理改革，以进一步便利跨境证券投资。《规定》及《通知》均自发布之日起生效。

较2016年央行和外管局发布的旧规，新规主要有三项改进。

#### 一、取消 QFII 资金汇出 20%比例要求

新规取消了QFII每月累计净汇出资金（本金及收益）不得超过其上一年度境内总资产的20%的资金汇出比例要求。

#### 二、取消 QFII、RQFII 本金锁定期要求

新规取消了QFII、RQFII的3个月投资本金锁定期的限制。QFII、RQFII现可根据投资情况汇出本金。

#### 三、允许 QFII、RQFII 开展外汇套期保值以对冲汇率风险

自去年外国投资者被允许在银行间债券市场通过外汇衍生交易对冲汇率风险后，此次新规明确允许QFII、RQFII亦可进行外汇套期保值。依据新规，QFII、RQFII可通过具备代客人民币对外汇衍生品业务资格的托管人或境内金融机构办理外汇衍生品业务，并规定QFII、RQFII开展外汇套期保值操作应当遵守实需交易原则，也即QFII、RQFII开展外汇衍生品交易应限于对冲其境内证券投资所产生的外汇风险敞口，外汇衍生品敞口与作为交易基础的境内证券投资项下外汇风险敞口应具有合理的相关度。

新规也对外汇套期的头寸规模作出了明确规定：QFII、RQFII持有的外汇衍生品头寸应控制在不超过其上月末境内证券投资对应的人民币资产规模（不含专用存款账户内人民币存款类资产）。QFII、RQFII持有的外汇衍生品头寸可按月根据托管人核算的境内证券投资对应的人民币资产规模情况进行调整，确保符合实需交易原则。

#### 四、我们的观察

我们理解，此次取消资金汇出和锁定期限制将对QFII/RQFII的投资带来一定便利，接下来我们期待能够在投资范围限制等方面对QFII/RQFII有进一步放松，从而使其在与股票通的竞争中体现QFII/RQFII机制的比较优势。我们将持续关注相关规定的修改情况以与客户分享最新动态。

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## Financial

### Outbound Remittance and Lock-up Restrictions Removed

On June 12, 2018, the People's Bank of China (“PBOC”) and the State Administration for Foreign Exchange (“SAFE”) reissued the *Provisions on Foreign Exchange Administration of the Domestic Securities Investments by Qualified Foreign Institutional Investors* and the *Circular on the Relevant Matters concerning the Administration of Domestic Securities Investments by RMB Qualified Foreign Institutional Investors* (collectively, “New Regulations”), in which they announced a new round of foreign exchange administration reforms for qualified foreign institutional investors (“QFIs”) and RMB qualified foreign institutional investors (“RQFIs”), so as to further simplify and facilitate cross-border securities investment. The New Regulations came into effect from the date of publication.

The New Regulations include three key areas of improvement to the old regulations issued by the PBOC and SAFE in 2016.

#### **I. Remove the 20% cap on outbound remittances for QFIs**

Where previously a QFI could not in any month cumulatively repatriate funds (including principal and return) of more than 20% of its total onshore assets held at the end of the preceding year, the New Regulations remove the cap on outbound remittances for QFIs.

#### **II. Remove the principal lock-up period requirement for QFIs and RQFIs**

The 3-month investment principal lock-up period requirement for both QFIs and RQFIs has been removed by the New Regulations. QFIs and RQFIs now may repatriate their investment principal based on the status of the investment.

#### **III. Allow QFIs and RQFIs to hedge the currency risk through foreign exchange hedging**

With foreign investors in the China Interbank Bond Market already allowed to hedge the currency risks through foreign exchange derivative transactions, the New Regulations now explicitly permit QFIs and RQFIs to conduct foreign exchange hedging. Pursuant to the New Regulations, QFIs and RQFIs may undertake foreign exchange derivative transactions through custodians or domestic financial institutions licensed to undertake RMB-to-foreign-currency derivative transactions on behalf of clients. The New Regulations further stipulate that QFIs and RQFIs shall only engage foreign exchange derivative transactions on a “real need” basis, i.e. the QFIs and RQFIs shall limit their trading of foreign exchange derivatives to hedging the foreign exchange exposure stemming from

domestic securities investment, and that the exposure of the foreign exchange derivatives shall have reasonable correlation to the foreign exchange exposure associated with the underlying domestic securities investment.

The New Regulations also provide explicit provisions on foreign exchange hedging positions (“**Positions**”). The Positions held by a QFII/RQFII shall not exceed the size of the RMB asset corresponding to the onshore domestic securities investment (“**RMB Asset Size**”) as at the end of the preceding month (excluding any RMB-denominated deposit-type assets within special deposit accounts). Such Positions may be adjusted according to the RMB Asset Size calculated by the custodians on a monthly basis,

in order to ensure compliance with the principle of trading on a “real need” basis.

#### **IV. Our Observations**

We understand that the removal of restrictions on outbound remittances and on the lock-up period will to some extent facilitate investments made by QFIIs and RQFIIs. We further expect that in order to highlight the advantages of the QFII/RQFII regimes when compared with the Stock Connect, there may be additional loosening of the restrictions on further aspects of QFII/RQFII, such as the investment scope. We will continue to pay close attention to any amendments to relevant regulations and will share the latest developments with our clients.

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