

金融法律热点问题

银保监会就《信托公司行政许可事项实施办法》征求意见

2020年4月4日，银保监会就《信托公司行政许可事项实施办法(征求意见稿)》(以下简称“《办法》”)公开征求意见。该《办法》是在《关于规范金融机构资产管理业务的指导意见》(以下简称“《资管新规》”)出台、金融业进一步对外开放背景下的信托业准入监管新规，我们对《办法》中重点内容的解读如下：

一、放宽外资准入门槛

《办法》取消了境外金融机构入股信托公司须具备总资产高于十亿美元的要求，降低了外资股东的准入门槛，便利更多境外金融机构入股信托公司。但值得注意的是，《办法》未对外资股东的其余资质要求作出删减，且额外强调外资股东需使用自有资金进行投资。尽管此前监管机构对信托公司的外资股比无上限要求，但由于对外资股东的资质要求高等多方面原因，实践中外资参股信托公司先例不多且均为财务投资方。而在目前《资管新规》鼓励更多投资标准化产品的新常态下放宽准入门槛，有利于在标准化产品投资方面实力强劲的境外金融机构获得更多投资信托业的动力和可能性。

二、完善许可细节

《办法》调整了部分许可流程细节，体现了简政放权、科学监管、高效服务的政策导向。例如删除获得境外理财资质后开展境外理财业务需报告的要求，以放宽监管；删除信托公司可以发行金融债券和次级债的规定，与信托公司通常不得开展负

债业务的政策相配合，但上市融资渠道仍予以保留，有利于推动信托公司上市；增加信托公司以固有资产从事股权投资的许可流程，更合理地管理信托公司业务等。

三、促使信托业转型

《办法》细化了《资管新规》中鼓励金融机构回归本源业务的要求，详细列明信托业本源业务范围，如企业年金管理业务等；明确信托公司调整或增加业务需经银保监会许可；并强调监管机构对公司治理、业务范围调整以及合规管理等事项审查批准的权力和流程。这些要求对信托公司完善公司治理、开展本源业务、实现转型“产业投行”新角色具有指导意义。

《办法》与2020年3月1日施行的《信托公司股权管理暂行办法》共同构成《资管新规》框架下信托业的准入指导性文件，对外资的进一步开放政策以及鼓励回归本源业务的监管趋势为在标准化产品投资能力强的境外金融机构进入中国信托业创造了时机。

我们将持续关注并及时与我们的客户分享最新的进展。

张一诺 合伙人 电话：86 10 8553 7673 邮箱地址：zhangyn@junhe.com



本文仅为分享信息之目的提供。本文的任何内容均不构成君合律师事务所的任何法律意见或建议。如您想获得更多讯息, 敬请关注君合官方网站“www.junhe.com”或君合微信公众号“君合法律评论”/微信号“JUNHE_LegalUpdates”。

Financial

CBIRC Solicits Comments on ‘*Implementing Measures on Administrative Approvals for Matters Related to Trust Companies (Consultation Paper)*’

On April 4, 2020, the China Banking and Insurance Regulatory Commission (“**CBIRC**”) released the *Implementing Measures on Administrative Approvals for Matters of Trust Companies (Consultation Paper)* (“**Draft Measures**”) for public comment. The Draft Measures proposed new rules for the administrative approval and supervision of trust companies, following the implementation of the *Guiding Opinions on Regulating Asset Management Business of Financial Institutions* (“**Guiding Opinions**”) with an increased opening-up of China’s financial market in the foreseeable future. Below are our observations of some key points in the Draft Measures.

I. Relaxing Market Access Requirement for Foreign Investors

The Draft Measures propose to lift the requirement on the total assets of a foreign financial institution shareholder, namely, its total assets shall be more than one billion USD, which loosens the market access requirement applicable to foreign investors for investing in trust companies and may facilitate more foreign financial institutions investing in domestic trust companies. However, it is worth noting that the

Draft Measures do not remove the other remaining qualification requirements for foreign shareholders, and further explicitly require that foreign shareholders shall use their own proprietary funds to make such investment.

Although previously the regulators did not limit the proportion of foreign equity in a trust company, in part due to the imposition of stringent qualification requirements on foreign shareholders, in practice there have been only very few foreign-invested trust companies and foreign financial institutions have normally invested in trust companies as financial investors. Currently, since the Draft Measures relax the restrictions on the foreign investors and the Guiding Opinions encourage investments in standardized products, foreign financial institutions with extensive experience in this area may have more incentive to invest in trust businesses.

II. Clarifying Details on Administrative Approvals

The Draft Measures amend the details of some administrative approval procedures, in line with the policies of “streamlining administration and delegating governmental authorities”, “smart and

reasonable supervision” and “providing efficient services”. For example, the Draft Measures no longer require a trust company with business qualifying for overseas wealth management to report to the CBIRC when conducting such business, thereby loosening the regulation in this regard; remove the provision that trust companies may issue financial bonds and subordinated bonds, to remain consistent with the existing policy that trust companies shall generally not operate any business by using loaned funds, whereas financing by listing is still a viable option under the Draft Measures, which may encourage trust companies to go public; and provide the procedures for trust companies to obtain approval for using proprietary assets to invest in private equities which enable trust companies to properly diversify their businesses.

III. Facilitating Transformation of Trust Industry

The Draft Measures elaborate in detail on the principle for financial institutions to serve the real economy under the Guiding Opinions by specifying the core businesses of trust companies serving the real economy, such as corporate annuity management business, require the adjustment or expansion of business scope to be subject to CBIRC’s approval, and underscore the

regulator’s authority and relevant procedures for reviewing and approving matters regarding trust companies, such as corporate governance, adjustment of business scope, and compliance management. The aforesaid requirements offer guidance to trust companies with respect to improving corporate governance, conducting businesses that serve the real economy, and transforming into a new mode/role of “acting as an investment bank serving the real economy”.

The Draft Measures and the *Interim Draft Measures for the Administration of Equity Ownership in Trust Companies* implemented on March 1, 2020 together constitute the guiding documents regarding the access to trust business within the framework of the Guiding Opinions. The further opening-up of China’s market for foreign investors and the regulatory trend to encourage businesses to focus on serving the real economy are expected to open a window for foreign financial institutions that have strong investment capabilities with respect to standardized products to participate in the trust businesses of China.

We will continue to monitor the situation and keep our clients apprised of any important developments.

Norah Zhang Partner Tel: 86 10 8553 7673 Email: zhangyn@junhe.com

This document is provided for and only for the purposes of information sharing. Nothing contained in this document constitutes any legal advice or opinion of Jun He Law Offices. For more information, please visit our official website at www.junhe.com or our WeChat public account “君合法律评论”/WeChat account “JUNHE_LegalUpdates”.

