
Chinese Regulator Strengthened Regulations on Shareholders of Commercial Banks

In January, 2018, China Banking Regulatory Commission (CBRC) released the Interim Measures for the Administration of Equity in Commercial Banks (“the Measures”) to prevent and punish illegal acts of shareholders that harm the interests of banks and to ensure the sound operation and healthy development of commercial banks.

Private capital has been enthusiastic in setting up or acquiring banking institutions in the past several years. In the meantime, a series of problems arose, acquisitions of bank shares with non-proprietary funds or using entrustment structure, the illegal transfer of interests between a bank and its shareholder.

In January, 2018, China Banking Regulatory Commission (CBRC) released the Interim Measures for the Administration of Equity in Commercial Banks (“the Measures”) to prevent and punish illegal acts of shareholders that harm the interests of banks and to ensure the sound operation and healthy development of commercial banks. The Measures regulates major shareholders of commercial banks, strengthens the examination of shareholders' qualifications and intensify the investigation and punishment of illegal acts.

A. Definition of Major Shareholders

The Measures defines a major shareholder (the “Major Shareholder”) as the one who holds or controls more than 5% shares or voting rights of a commercial bank, or having a significant influence on the operation and management of a commercial bank even though its shares is less than 5%. “Significant influence” mainly refers to the power to appoint directors, supervisors or senior management of a commercial bank, to affect the financial and management decisions of a commercial bank through agreement or other means or such other situations as identified by CBRC. In addition, when identifying a “Major Shareholder”, the shareholdings of its related parties and parties acting in concert should be combined together.

Article 4 of the Measures requires prior approval from CBRC for any party to acquire 5% or more shares of a commercial bank through the domestic and overseas stock markets. This approval will be valid for a period of six months.

B. Requirements and restrictions on Major Shareholders

The Measures put forward several requirements for the Major Shareholder, including:

(a) The Major Shareholder shall explain the shareholding structures to the commercial bank and the supervisory authority and disclose its actual controller, the ultimate beneficiary, and its relationship with the other shareholders or parties acting in concert.

This requirement guarantees completeness, truthfulness and accuracy of shareholding information, which will help to reduce the phenomenon of evading the law by means of vehicle shareholders and holding shares through entrustment.

(b) The Measures stipulates that a Major Shareholder could only hold shares in no more than two banks, whether directly or through its related parties or parties acting in concert, and should not control more than one commercial bank, unless otherwise authorized by the State Council, provided by laws and regulations or approved by CBRC.

(c) The Major Shareholder should not sell its shares in a bank within five years from the date of acquiring the shares unless otherwise approved by the CBRC.

(d) The Measures requires the Major Shareholder to assume the responsibility of capital replenishment. The Major Shareholder is required to sign a commitment to supply additional capital to the commercial bank when necessary and report its capital replenishment ability to the CBRC on an annual basis through the commercial bank.

This capital replenishment responsibility has been stipulated in Guide to the Administration of Commercial Banks (the “Guide”) promulgated in July 2013. It exceeds the limited liability principle as provided in the Company Law.

C. Responsibility of the board of commercial bank to examine the qualifications of shareholders

In addition to information disclosure by the Major Shareholder, the Measures also requires a bank to examine its shareholders' qualifications, and recording any changes to its Major Shareholders and their respective ultimate controller or beneficiary or related parties or parties acting in concert.

The board of a commercial bank shall evaluate the qualification of a Major Shareholder, its performance of capital commitments or other obligations under its articles of association or other documents and the compliance of the laws, regulations.

This evaluation shall be conducted at least once a year and shall be submitted to CBRC.

The Measures further provides that the chairman and board secretary of a commercial bank are responsible for the shareholder matters.

D. Restrictions on affiliated-party credit

Further to the single borrower's credit limit of 10% of a bank's capital balance stipulated in the Law on Commercial Banks, the Measures provides that the aggregate credit balance given by a bank to a Major Shareholder and its controlling shareholders, actual controllers, related parties, parties acting in concert and ultimate beneficiaries shall not exceed 15 per cent of the net capital of the bank. Credit covers various types of transactions that a bank (and the financial products issued by the bank) substantially assumes credit risk. Moreover, the bank should confirm the ultimate obligor of the credit in accordance with the principle of transparency, to prevent the shell company to circumvent the limit of credit concentration. This clear limit aims to solve the problems of transferring of benefits of a bank to its Major Shareholders through bank credit.

E. Acquisition of bank shares using fund of financial products

The Measures allows shares of a listed bank to be acquired with fund of financial products. But a single investor, issuer or manager (including their actual controllers, related parties and parties acting in concert) of a financial product should not hold more than 5% of the listed bank.

In addition, the Major Shareholder of a bank is not allowed to acquire shares of the bank using fund of financial products. This restriction is aimed to prevent Major Shareholders from controlling commercial banks by using fund of financial products, and thus avoiding the regulatory requirements of making contribution by using its own funds.

F. Conclusions

With the further opening up of financial markets in China, there are more and more diversified financial products and financial institutions are growing bigger and bigger. The Fifth National Financial Work Conference emphasized the importance of proactively prevention of systemic financial risks. A series of regulatory rules have been promulgated recently by regulatory authorities including the Interim Measures for the Management of Equity in Commercial Banks, which show the effort of

Chinese regulators in improving the financial regulatory framework and preventing systemic financial risks.

- Please contact the persons as listed below if you request additional information or have any questions regarding the issues discussed in this newsletter.

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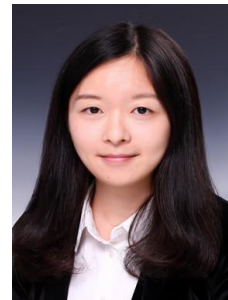


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