

ORGANISATION MONDIALE DU COMMERCE

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Conseil du commerce des services

Original: anglais

NOTIFICATION AU TITRE DE L'ARTICLE III:3 DE L'ACCORD GÉNÉRAL SUR LE COMMERCE DES SERVICES

La délégation de la République populaire de Chine a fait parvenir au Secrétariat la notification ci-après.

1. Membre adressant la notification:

République populaire de Chine

2. Notification au titre de:

Article III, paragraphe 3 de l'Accord général sur le commerce des services

3. Date d'entrée en vigueur/Durée:

13 juin 2002

4. Organisme responsable de la mise en œuvre et de l'application de la mesure:

Banque populaire de Chine

5. Description complète de la mesure* indiquant les modes de fourniture visés, l'effet sur le commerce des services (par exemple, restrictions/mesures de libéralisation) et l'incidence de la mesure sur les engagements énoncés dans la liste du Membre et dans sa liste d'exemptions de l'article II (NPF), le cas échéant:

Mesures concernant l'administration des bureaux de représentation d'établissements financiers à capital étranger

On trouvera ci-joint le texte intégral en anglais de ces mesures.¹ Seule la version en chinois fait foi, la traduction en anglais n'étant fournie qu'à titre de référence.

6. Membres spécifiquement affectés, le cas échéant:

Tous les Membres

* Y compris les accords internationaux, les mesures de reconnaissance ou d'autres types.

¹ En anglais seulement.

7. Les textes peuvent être obtenus auprès de:

- Point d'information ☒
- Secrétariat de l'OMC ☒
- Autres sources (adresse, télécopie
et téléphone d'un autre organisme) ☐

Measures for Administration of Representative Offices of Foreign Capital Financial Institutions in China

(Promulgated by the People's Bank of China on June 13, 2002)

Chapter 1 General Provisions

Article 1 In order to meet the requirements of economic development and the reform and open to foreign countries, and to improve the management to the representative offices of foreign capital financial institutes, these Regulations are formulated according to the stipulations of the Regulations of the People's Republic of China on the Administration of Foreign Capital Financial Institutions.

Article 2 The foreign capital financial institutions under these Measures include foreign financial institutions and the foreign funded financial institution founded and registered in China.

Foreign financial institutions mean those financial institutions that are registered in foreign countries and are approved by the financial supervision authorities or industrial association of the local countries or regions.

The foreign capital financial institutes registered in China include: foreign capital bank whose headquarters is registered in China; the joint venture bank that are founded by foreign financial institution and Chinese company or enterprise in China; foreign capital financial company, currency broker or credit card company whose parent companies are in China; financial company, currency broker and credit card company that are founded by foreign financial institution and Chinese company or enterprise in China; other foreign capital financial institutions that are approved by the People's Bank of China to be established in China.

The representative offices of foreign capital financial institutions under these Measures (hereafter referred to as the "representative offices") include: representative offices and general representative offices (engaged in consultative services, communication, market research and other non-commercial activities) established by foreign capital financial institutions in China. The key responsible person of representative office is chief representative, and the key responsible person of general representative office is general representative.

Article 3 Any representative office must abide by the laws and regulations of the People's Republic of China, and its legal rights and interests are protected by the laws of the People's Republic of China.

Chapter 2 Application and Establishment

Article 4 For any foreign financial institution to establish representative office, the applicant must have following qualifications:

1. The country or region where the applicant is registered must have good financial supervision and management system;
2. The applicant is the financial institution that is established as approved by the financial supervision authority of its country or region, or the applicant is one of the member of financial industry association;
3. The operating status of the applicant is good, and there is not any key violative record;
4. Other prudent conditions specified by the Peoples Bank of China. For any foreign capital financial institution that is registered in China to establish representative office, the applicant must have the qualifications of above clause 3.

Article 5 To apply for the establishment of representative office, the applicant shall take application form from the local branch bank of the People's Bank of China (the branch bank and the representative office (to be founded) are located at the same place). The filled application form and following documents shall be submitted to the local branch bank of the People's Bank of China:

1. The application that is signed by board chairman or bank president (CEO or general manager) and is to be submitted to the president of the People's Bank of China;
2. Copy of business license or legal practice certificate issued by relevant administrative authority of local country or region;
3. Company by law, the list of directors and 10 biggest shareholders or main partners;
4. The annual financial reports of the three years before the application;
5. The Opinions issued by local financial supervision authority on the applicant's establishment of representative office in China, or the Recommendation issued by corresponding industry association;
6. The future chief representative's status certificate, certificate of educational background, resume and the statement signed by the chief representative (to be) to indicate whether the representative has bad record.
7. Power of Attorney signed by the board chairman, bank president (CEO or general manager) or authorized person on the appointment of chief representative;
8. Other materials that shall be submitted as required by the People's Bank of China. The documents submitted by foreign capital financial institution that is registered in China exclude the document specified by above clause 5.

Article 6 The submitted documents, except for the annual financial report, shall have Chinese version if they are in foreign languages.

In which: the Power of Attorney, Business License (copy) or Practice Certificate (copy) must be verified by the notary organ approved by local country or region, or verified by the Chinese embassy or consulate in the local country or region.

Article 7 The local branch bank of the People's Bank of China shall first primarily examine the application documents submitted by foreign capital financial institutions, and then furnish them to the headquarters of the People's Bank of China for verification and approval.

Article 8 The name of representative office is composed of as follows successively: the name of foreign capital financial institution, the name of local city and the words of "representative office".

Article 9 In case that a foreign financial institution has established five or five more affiliates in China, the financial institution can apply for the establishment of general representative office.

The management and procedures of application and establishment of general representative office are identical to those of representative office.

The name of general representative office is composed of as follows successively: the name of foreign capital financial institution and the words of "general representative office in China".

Article 10 Examination and verification system shall be applied to the position qualifications of the general representative and chief representative.

The headquarters of the People's Bank of China is responsible for verifying or cancelling the qualifications of positions of general representative for general representative office and the chief representative for representative office.

Article 11 The general representative of general representative office and the chief representative of representative office shall have following qualifications:

1. In general, the candidate of general representative of general representative office must have 5 more years experiences engaged in financial field or relevant works and 3 more years experiences engaged in taking the position above the manager of business department or equivalent to the manger of business department;
2. In general, the candidate of chief representative of representative office must have 3 more years experiences engaged in financial field or relevant works;
3. The candidate shall at least have academic diploma of university graduate. If the candidate has no such academic diploma, the candidate of general representative's experiences engaged in financial field or relevant works shall increase 6 years, and the candidate of chief representative's experiences engaged in financial field or relevant works shall increase 3 years.

Article 12 If any foreign capital financial institution applies for the replacement of general representative and/or chief representative, the foreign capital financial institution shall submit following documents to the local branch bank of the People's Bank of China:

1. The Application that is signed by the person authorized by the foreign capital financial institution and is submitted to the president of the People's Bank of China;
2. Power of Attorney signed by the person authorized by the foreign capital financial institution;
3. The resume of the person who is to take the position;
4. The copies of status certificate and certificate of academic diploma of the person who is to take the position;
5. The Statement signed by the person who is to take the position; the Statement shall indicate whether the person has bad record;
6. Other documents required by the People's Bank of China.

Article 13 The local branch bank of the People's Bank of China shall first primarily verify and examine the documents submitted by the foreign capital financial institution for the replacement of general representative and/or chief representative, then furnish the documents to the headquarters of the People's Bank of China for verification and approval.

Article 14 If the establishment of representative office is approved, the headquarters of the People's Bank of China shall issue Approval Certificate, and the valid period of the representative is 6 years.

After has got the Approval Certificate, the representative office shall go to the management department of industry and commerce to finish registration according to relevant stipulations. If the representative office does not finish the registration procedures within specified term, another application signed by the board chairman or bank president (CEO or general manager) of the foreign capital financial institution shall be submitted to the People's Bank of China to transact the Approval Certificate again.

The representative office must be moved to the specified office site within 6 months after it gets the approval from the People's Bank of China. If the representative office is not moved to the specified office site after 6 months, the original approval shall be invalid automatically.

Chapter 3 Supervision and Management

Article 15 Any representative office and it's staff members are not allowed to enter into any contract or agreement that may bring income to the representative office or the represented foreign

capital financial institution with any undertaking or natural person, and they may not conduct any commercial activities in any form.

Article 16 The establishment, termination, renewal and prolongation of the representative office shall be proclaimed at the newspaper specified by the headquarters of the People's Bank of China within 15 days after the representative office is registered at relevant administration of industry and commerce. In addition, they shall be reported to local branch bank of the People's Bank of China.

Article 17 The representative office must have independent office site, office facilities and full time staff members.

Article 18 In general, the tenure of general representative or chief representative shall be more than two years, and the general representative and chief representative are not allowed to take management position(s) in commercial organization(s) during the tenure.

The general representative and the chief representative shall be always at the representative office to control daily works. If they continuously leave their posts for more than one month, special persons shall be appointed to perform their functions on their behalf, and such case shall be reported to the local branch bank of the People's Bank of China. In the case that the representative continuously leaves his/her post for more than 3 months, another person shall be appointed to replace original representative if there is no any special reason, the replacement shall be submitted to the headquarters of the People's Bank of China for verification and approval.

Article 19 The representative office shall furnish previous year's work report to the local branch bank of the People's Bank of China by the end of Feb. of every year, and the local branch bank of the People's Bank of China shall forward the work report to the headquarters of the People's Bank of China.

The work report of the representative office shall be finished in Chinese according to the format specified by the People's Bank of China.

Article 20 The representative office shall furnish the annual report to the local branch bank of the People's Bank of China within 6 months after the end of financial year of the represented foreign capital financial institution.

Article 21 If the foreign financial institution that has established representative office in China happens any following important matter, its representative office shall promptly report the matter to the local branch bank of the People's Bank of China, and the local branch shall forward the matter to the headquarters of the People's Bank of China:

1. The change of by law, registered capital or registered address;
2. Organization recombination, equity change or the change of key responsible persons;
3. Serious loss of operating;
4. Important case;
5. The important supervision measures implemented for the foreign financial institution by the supervision authority of its country or region;
6. Other matters that can bring important impacts on the operating and production of the foreign financial institution.

Article 22 In the case that any foreign capital financial institution changes the name of representative office in China because of incorporation, division and other recombination, application and following documents shall be first submit to the headquarters of the People's Bank of China:

1. The application that is signed by board chairman or bank president (CEO or general manager) of new institution;
2. Approval Certificate of Recombination issued by relevant administrative authority of local country or region;
3. Consolidated financial statements of the new institution;
4. By law, the list of directors and 10 biggest shareholders or main partners of the new institution;
5. Copy of business license or legal practice certificate issued by relevant administrative authority of local country or region of the new institution;
6. The chief representative's status certificate, certificate of educational background, resume and the statement signed by the chief representative (to be) to indicate whether above representative of the new institution has bad record.
7. Power of Attorney signed by the board chairman, bank president (CEO or general manager) or authorized person of the new institution on the appointment of chief representative;
8. Other materials that shall be submitted as required by the People's Bank of China.

Article 23 In the case that foreign capital financial institute changes the name of its representative office in China because of other reasons, the Application signed by the board chairman or bank president (CEO or general manager) must be furnished to the headquarters of the People's Bank of China, and the copy of the Application shall be submitted to the local branch bank of the People's Bank of China.

Article 24 After the foreign capital financial institution gets the approval for the renewal of the name of its representative office in China from the People's Bank of China, it shall go to the administrative department of industry and commerce to process renewal procedures.

Article 25 Any of following case shall be submitted to the local branch bank of the People's Bank of China for approval:

1. The prolongation of the valid period of the representative office. The Application signed by the authorized person of the foreign capital financial institution and the work report of latest three years signed by the general representative or the chief representative shall be submitted to the Business Management Department of the local branch bank under the People's Bank of China for approval 2 months before the expiry. The prolonged period of every application is 6 years.
2. Address change. The Application of Address Change signed by the chief representative or the general representative shall be submitted to the Business Management Department of the local branch bank under the People's Bank of China for approval. The Application of Address Change shall be also reported to the headquarters of the People's Bank of China. The representative office must move to the new address within 3 months after it gets the approval.

Chapter 4 The Termination of the Representative Office

Article 26 The Application to close the representative office shall be signed by the board chairman or bank president (CEO or general manager) of foreign capital financial institution and submitted to the local branch bank of the People's Bank of China. The local branch bank of the People's Bank of China shall primarily examine the application and forward to the headquarters of the People's Bank of China for approval. After approval, application of registration cancellation shall

submitted to relevant administrative department of industry and commerce, and relevant procedures of cancellation shall be finished at relevant department.

Article 27 In case that the representative office is approved by the People's Bank of China to become a commercial affiliate or a general representative office, the original representative shall be closed, and the application of registration cancellation must be submitted to relevant department.

Article 28 After the representative office is closed or is cancelled by the People's Bank of China according to relevant laws, the general representative office, if any, shall be responsible for unfinished matters. If the general representative office is legally cancelled by the People's Bank of China, or the representative office is cancelled by the People's Bank of China according to relevant laws and there is no general representative office, the foreign capital financial institution represented by the representative office shall be responsible for the disposal of unfinished matters.

Chapter 5 Punishment Rules

Article 29 If undertaking or natural person violates the stipulations of these Measures and establishes the representative office of foreign capital financial institution without the approval of the People's Bank of China, including hanging a horizontal board inscribed the name specified in Article 9 at fixed site, the People's Bank of China shall ban it. If the violation is criminal, criminal responsibilities shall be ascertained according to relevant law.

Article 30 In the case that the foreign capital financial institution establishes representative office without the approval of the People's Bank of China, the People's Bank of China shall not accept its application to establish representative office or other commercial organization in China within 5 years after the illegal representative office is cancelled.

Article 31 If the representative office does not regularly submit the reports and documents specified in Article 19 - 21 according to the stipulations, the local branch bank of the People's Bank of China shall warn the representative office. If the representative office does not submit the reports and documents for two years, the application to cancel the representative office shall be submitted to the headquarters of the People's Bank of China by the local branch bank of the People's Bank of China.

Article 32 If the representative office and its staff members violate the stipulations of Article 15 to conduct financial activities, the People's Bank of China shall punish them according to the Punishment Method to Financial Violation. If they conduct commercial activities, the People's Bank of China shall warn them, and the representative office shall be cancelled in the case that the violation is serious.

Article 33 If the representative office does not submit the application to prolong the valid period, apologetic letter issued by the represented foreign capital financial institution shall be submitted to the local branch bank of the People's Bank of China to explain the reasons. The local branch bank of the People's Bank of China shall determine whether to approve the prolongation of valid period.

Article 34 In one of following cases, the People's Bank of China shall cancel the qualification to take the position of general representative or chief representative for a concrete or even lifelong period:

1. The representative office or its staff member conducts financial activities or other commercial activities;
2. The representative office provides untrue information or conceals important facts, and the circumstances are serious;

3. The representative office violates the stipulations of Article 21 - 21 and does not submit the annual reports and the important matters of the represented foreign capital financial institution;
4. Criminal responsibilities are ascertained to the chief representative or the general representative;
5. The representative office refuses, disturb, hinder or seriously affect the legal supervision of the People's Bank of China;
6. As to the general representative or chief representative who has taken the position, the People's Bank of China finds that the general representative or chief representative has violative behaviours or other behaviours that mean he/she is not suitable to take the position.

Article 35 If the representative office provides untrue information or the submitted documents conceal important facts, the People's Bank of China shall warn it.

Article 36 If other stipulations of these Measures are violated, the People's Bank of China shall warn it or advise the represented foreign capital financial institution to replace the general representative or chief representative.

Chapter 6 Supplementary Provisions

Article 37 These Regulations shall be referred and applicable to the establishment of representative offices by the financial institutions of the Hong Kong Special Administrative Region, the Macao Special Administrative Region and Taiwan Region. In addition, These Measures shall also be referred and applicable to the establishment of representative offices by the fully funded banks, joint venture bank, fully funded financial companies and equity joint financial companies that are founded in the Mainland by the financial institutions in above three regions of China.

Article 38 These Measures shall go into effect as of July 18, 2002, and the Measures for Administration of Representative Offices of Foreign Financial Institutions in China issued on April 29, 1996 shall be annulled at the same time.

Article 39 The People's Bank of China shall be responsible for the explanation of these Measures.
