

Ireland and
China: Financial
Regulators
Strengthen
Connections

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Introduction

The Irish Olympic boxing team was not the only successful Irish group to travel to the People's Republic of China (the "PRC") recently; the Taoiseach, Brian Cowen T.D., led a trade mission to the PRC at the end of October.

During the visit he presided over the signing of a Memorandum of Understanding ("MoU") between the Irish Financial Services Regulatory Authority (the "Financial Regulator"), the China Securities Regulation Commission (the "CSRC") and the China Banking Regulatory Commission (the "CBRC").

The CSRC is the state agency of the Securities Policy Committee of the State Council of the PRC and is responsible for the supervision and regulation of national securities and futures markets in the PRC, while the CBRC is the state agency of the State Council responsible for the regulation of the Chinese banking sector.

The signing of the MoU was the culmination of an initiative taken in the middle of 2007, following recognition of the fact that the lack of a MoU with the PRC left Ireland's funds industry at a disadvantage with some of its competitors. These countries had arrangements in place for a number of years for other financial services but which their fund industries were now able to benefit from.

The MoU is intended to form the basis of future co-operation between the two regulators, it should be noted that it does not create any binding international obligations on either of the parties. The MoU does not modify or supersede any laws or regulatory requirements in force in, or applying to, Ireland or the PRC and does not create any rights enforceable by third parties, nor does it affect any arrangements under other memoranda of understanding which either supervisory authority may have agreed with other regulators in third party countries.

The purpose of the MoU is to protect investors and promote the development of the securities markets by providing a framework for co-operation, increased mutual understanding and the exchange of information, to the extent permitted by the laws and regulations in force in Ireland and the PRC, and the availability of respective resources of the

regulators. It will facilitate financial institutions from either the PRC or Ireland doing business together in either country.

One important aspect which should be noted from the MoU is that, to the extent permitted by its domestic laws and regulations, the Financial Regulator, the CSRC and the CBRC will use reasonable efforts to provide the other regulatory authorities with any relevant information that is discovered which gives rise to a breach, or anticipated breach, of the laws and regulations in relation to the securities and futures markets of the other country.

One of the direct results of the signing of the MoU is that Chinese Qualified Domestic Institutional Investors ("QDII") shall now be able to invest into Irish domiciled investment funds, regulated by the Financial Regulator, on behalf of their clients, and Irish institutions will be able to access the Chinese Qualified Foreign Institutional Investor ("QFII") status and invest directly in the PRC subject to meeting those requirements. This is potentially a huge benefit for the Irish funds industry and crucially for the promoter selecting a country in which to domicile their funds.

Qualified Domestic Institutional Investors

The QDII scheme permits Chinese domiciled investors to invest in foreign securities markets via certain fund management institutions, insurance companies, securities companies and other asset management institutions which have been approved by the CSRC as QDII's. The QDII scheme, introduced in June 2006, allows Chinese domiciled institutions and residents to invest with Chinese commercial banks, as QDII's, for these entities to then invest in overseas financial products.

At the time of the original launch of the scheme, any investment by such a QDII was restricted to fixed-income and money market products. The scope of the QDII scheme was widened in May 2007 and QDII's may now invest in equity products. The stocks or investment funds in which a QDII invests must be listed on a stock exchange or regulated by a financial regulator that has signed a MoU with the CSRC.

The entering into by the Financial Regulator and the CSRC of the MoU makes it possible for QDII collective investment schemes to now invest into Irish regulated funds, opening up Irish regulated funds to one of the world's largest pools of private capital.

This should result in Ireland, which has already earned a reputation amongst asset managers globally as the most attractive jurisdiction in which to establish a regulated fund,

becoming even more attractive, due to the fact that a fund established in Ireland will now be able to raise capital from PRC domiciled investors.

Qualified Foreign Institutional Investors (“QFII’s”)

The QFII system permits certain types of qualified foreign investors to invest in local currency and use specific accounts to invest in local Chinese securities markets. The return on the investment, including dividends and capital gains from the investment can then be legally exchanged into foreign currency and repatriated.

The China A share market was historically closed to foreign investors but in November 2002 was opened, via the QFII scheme, to permit qualified foreign investors to invest in the China A share market under certain foreign exchange flow and disclosure requirements. The major institutions that are permitted to apply to be a QFII include fund management companies, insurance companies, securities firms and commercial banks with qualifications prescribed by the CSRC and the other relevant PRC regulators. Upon the approval of the CSRC a QFII is granted an investment quota by the State Administration of Foreign Exchange ("SAFE") and, after selecting a PRC custodian bank and one or more local brokers, may place orders to buy and sell stock in the China A share market. Several China A Share Funds have been authorised by the Financial Regulator since the first investments were made by QFIIs in July 2003.

As well as China A shares, the investment scope of a QFII extends to treasury bonds, convertible bonds, corporate bonds, warrants and other financial products approved by the CSRC.

The entering into by the Financial Regulator and the CSRC of the MoU should make it easier for Irish regulated fund management companies, insurance companies, securities firms and commercial banks to become QFII's, providing they have the qualifications prescribed by the CSRC and the other relevant PRC regulators.

The signing of the MOU by the Financial Regulator, the CSRC and the CBRC should result in increased levels of protection for investors in both Ireland and the PRC by providing a framework for co-operation, increased mutual understanding, the exchange of information, and the availability of the respective resources of each of the regulatory authorities. The MoU will facilitate investment by Chinese QDII's into Irish regulated investment funds, and access by Irish institutions to QFII status, permitting them to invest directly in the PRC. The

signing of the MoU will strengthen Ireland's attractiveness and standing as a domicile of choice for investment funds.

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