Charltons - China News Alerts Newsletter - 10 September 2010

[online version](http://www.charltonslaw.com/china-news-alert-issue-351/)

# China News Alert Issue 351

## Capital Markets

### China to nod guaranteed funds to invest in stock futures

China's securities regulator will allow guarantee funds to invest in stock index futures, the Shanghai Securities News has reported.

The China Securities Regulatory Commission (CSRC) released its Guidelines for Guaranteed Fund (a draft for discussion), which made clear regulations concerning investment strategies, investment ratio, guarantor qualification and other aspects of principal guaranteed funds, the paper said.

According to the guidelines, guaranteed funds to be invested in fixed income products should be no less than 70 percent of the net value of the funds. They are also allowed to invest in stock index futures.

As of the end of June, China has six guaranteed funds in operation, with a total value of 30.49 billion yuan (US$4.50 billion).

[Source: China Daily](http://www.chinadaily.com.cn/business/2010-09/07/content_11268296.htm) ([see archive](China_to_nod_guaranteed_funds_to_invest_in_stock_futures.pdf))

## Company

### China vows to treat foreign business fairly

The man expected to become the next leader of China's ruling Communist party has responded to a growing wave of complaints from foreign investors by assuring them that the country will remain an open and fair place for them to do business.

Xi Jinping, a vice-president and the heir apparent to Hu Jintao, told an investment forum that his government was taking "vigorous steps" to ensure China "remains the most appealing destination for investment in the world".

His comments come amid increasingly outspoken criticism of China's business environment from investors in numerous sectors and from a broad range of countries.

These companies point to a wide range of discriminatory government practices and regulatory barriers to foreign investment, government procurement rules that favour domestic companies and the country's lack of a transparent and independent legal system.

On top of complaints from North America and Europe, Japan has also become more outspoken about the problems of business in China.

At a high-level economic meeting in Beijing last month, Katsuya Okada "very frankly" told Chinese leaders that Japanese companies still faced "all kinds of obstacles" in doing business in China, citing the difficulty they faced winning cases in local courts and rampant intellectual property abuse.

Mr Okada said the fact that Chinese official unions did not always really speak for workers made it difficult for Japanese businesses to prevent labour trouble. "I said I wanted them to work hard to resolve this," the minister told journalists.

However, Chinese leaders have appeared unmoved by such lobbying. Japanese officials quoted Mr Wen as saying that the background to labour unrest at foreign companies was that the wages they paid were "relatively low".

While Mr Xi mostly stuck to Beijing's official position that things were not getting harder for foreigners, he adopted a conciliatory and sympathetic approach to the concerns of international investors.

"As China's open economy continues to develop, foreign investment in China will surely enjoy an even broader space and generate even higher profits," he said.

His comments echo the tone adopted by Wen Jiabao, premier, last week when he admitted the government had some work to do but that he wanted to create an environment that encouraged investment.

Mr Wen and other officials have highlighted official statistics that show foreign direct investment (FDI) in China has been growing rapidly this year and is expected to exceed US$100 billion this year, up from around US$90 billion last year.

But 60 percent of foreign investment to China last year came through Hong Kong and analysts say these figures provide little guidance about the international appetite for investing in China.

That is partly because a large portion is money being moved onshore by the overseas subsidiaries of large state-owned Chinese companies while another chunk is most likely "hot money" coming into the country disguised as FDI to evade capital controls.

Foreign-invested enterprises account for 22 percent of tax revenues, 28 percent of added industrial value, 55 percent of foreign trade and 45 million jobs in China, Mr Xi said.

"Many foreign-invested enterprises in China have become the growth engine and profit centre for their parent companies' global business," he added.

But foreign companies have been losing market share to domestic Chinese competitors across most sectors, according to foreign business groups in China.

In the past few months, a number of executives, including the chief executives of industrial multinationals General Electric, Siemens and BASF, have made comments on the tougher operating environment for foreign businesses in China.

[Source: Financial Times](http://www.ft.com/cms/s/0/0880387e-ba34-11df-8804-00144feabdc0.html) ([see archive](China_vows_to_treat_foreign_business_fairly.pdf))

### Official calls for laws against international graft

Bribery involving transnational companies should be included in the Criminal Law when it is next amended, said the Ministry of Supervision.

Kong Xiangren, deputy director of the foreign affairs bureau of the ministry, said the push is based on the fact that more and more Chinese officials and international companies have been found involved in commercial bribery.

According to statistics from the Ministry of Supervision, 69,223 cases of commercial bribery were investigated from August 2005 to December 2009, involving 13,914 civil servants.

"A lot of the cases, especially some cases of transnational business corruption, were first uncovered by the US and European governments, and then they directed our attention to related officials," said Kong during an interview by China Economic Weekly. "This is because most bribery is done very secretively."

"Also we found that more and more corruption and bribery cases were co-committed by officials from different departments," he said.

In the last few years, several renowned multinational companies have been involved in commercial bribery in China, including Wal-Mart, PepsiCo and Siemens.

In March, four employees of Australian mining giant Rio Tinto―including executive Stern Hu, an Australian citizen―were sentenced to between seven to 14 years in prison for taking bribes and stealing commercial secrets.

Kong said commercial bribery has been a common challenge for multinational companies, with hundreds of thousands of foreign companies doing business in China, and "more and more Chinese companies going abroad."

Experts think a major reason that multinational companies can commit commercial bribery is that China has no specific laws supervising and punishing transnational business bribery.

In the current Criminal Law, charges related to commercial bribery include taking or giving bribes, assisting in bribery, and bribing non-government workers, without any specific item on transnational commercial bribery.

"It is very necessary to take measures on transnational commercial bribery," said Fan Chongyi, a law professor from China University of Political Science and Law, who agreed with putting the charge into the Criminal Law.

With the development of a market economy, lots of multinational corporations are springing up across the country, which brings benefits but also nurtures corruption, Fan said.

"As the initiator and the member of the UN Convention Against Corruption, we have the duty to regulate the phenomenon," Fan said, adding that there is no legal basis for handling transnational commercial bribery in China.

Cheng Baoku, a law professor from Nankai University, suggested that a specific law against transnational commercial bribery should be created.

Zhao Jun, director of government and public relations for Ericsson China, told China Economic Weekly that multinational companies should set up internal systems to supervise and prevent commercial bribery, and the government should try to maintain a fair social environment.

"A fair market is especially important to prevent commercial bribery. Once fairness is broken, companies tend to bribe to do business," said Kong.

[Source: China Daily](http://www.chinadaily.com.cn/business/2010-09/08/content_11274553.htm) ([see archive](Official_calls_for_laws_against_international_graft.pdf))

### China Life to buy into bank

China Life Insurance Company, the country's largest insurer, said it plans to acquire a controlling stake in a bank, as part of its efforts to be a financial conglomerate and better compete with peers.

"It is a must-do move for us and we have got permission from the China Banking Regulatory Commission," said China Life Chairman Yang Chao.

Chinese insurers have of late been acquiring stakes in lenders. Ping An Insurance recently said it plans to acquire an additional 32 percent stake in Shenzhen Development Bank (SDB) for 29.1 billion yuan (US$4.3 billion) through a private placement. After the deal, Ping An will hold a 52.39 percent stake in SDB, becoming its controlling shareholder.

The acquisition also increased Ping An's total assets to 1.6 trillion yuan, exceeding China Life's 1.3 trillion yuan at the end of June.

From this perspective, a merger or acquisition is essential for China Life to maintain its leadership in the industry, analysts said.

Currently, China Life is the single-largest shareholder of Guangdong Development Bank and Minsheng Banking Corporation, besides having stakes in some other banks.

"But most of these investments are for financial purposes and not strategic deals", Yang said.

Earlier reports said China Life may consider acquiring a controlling stake in Minsheng Banking Corporation. But Liu Jiade, China Life's vice-president, said the insurer has so far not held any discussions with the top management of Minsheng Bank.

According to Yang, China Life would like to take a controlling stake in a bank that has good growth potential. The stake purchase should also benefit its life, non-life and annuity businesses and boost profitability, he said.

The insurer has also charted plans to strengthen its investment in real estate and unlisted companies.

"China Life has invested 10 billion yuan in unlisted companies, with the annual return of most projects being above 9 percent," said Liu.

The company's return from its investment in Guangdong Development Bank was close to 13 percent during the first six months of the year, much higher than its overall investment return of 2.51 percent during the same period.

In the real estate sector, China Life has displayed keen interest in building retirement homes through its projects arm China Life Real Estate Company Limited.

The insurer will also spend 100 billion yuan to set up retirement homes in Langfang, Hebei province. It will start the project with an initial investment of around 10 billion yuan.

It also holds a nearly 25 percent stake in property developer Sino-Ocean Land for financial investment purposes.

According to the China Insurance Regulatory Commission, insurers are allowed to invest up to 10 percent of their assets in real estate, but are forbidden from investing in the commercial residential sector, or getting involved in property development and becoming the controlling investor in a property developer.

[Source: China Daily](http://www.chinadaily.com.cn/business/2010-09/10/content_11284199.htm) ([see archive](China_Life_to_buy_into_bank.pdf))

### Foreign banks apply to invest in yuan bonds

Several overseas banks including HSBC Holdings Plc, Standard Chartered Plc and the Bank of East Asia have already submitted their applications for investment quotas on the mainland's interbank market, the Shanghai Securities News reported.

China's central bank is receiving applications and may release the list of the first batch of overseas banks that are allowed to invest in yuan bonds after the National Day holidays, according to the paper.

The People's Bank of China (PBOC) said on 17th August that it would let overseas financial institutions invest yuan holdings in the nation's interbank bond market to promote greater use of the yuan in global trade and finance.

Overseas banks involved in yuan cross-border trade settlement and central bank can make use of their renminbi funds to conduct trading in the mainland's interbank bond market. They must first apply for investment quotas, the PBOC said. Foreign institutions should also disclose funding sources and investing plans.

[Source: China Daily](http://www.chinadaily.com.cn/business/2010-09/08/content_11274500.htm) ([see archive](Foreign_banks_apply_to_invest_in_yuan_bonds.pdf))

### Trust firms required to keep net capital above 200m yuan

China trust companies are required to keep their net capital above 200 million yuan, the China Securities Journal reported.

The China Banking Regulatory Commission issued measures on management of trust firms' net capital, in a bid to ensure the sufficiency of trust firms' fixed assets and liquidity.

The measures also require that net capital of trust companies should not less than 100 percent of the sum of their total risky capital, and not less than 40 percent of their net assets.

The measures are trying to restrict blind expansion by trust companies through connecting their assets scale with net capital, and to prevent systematic risks by controlling trust firms' leverage ratio, the report said, citing analysts.

[Source: China Daily](http://www.chinadaily.com.cn/business/2010-09/08/content_11276198.htm) ([see archive](Trust_firms_required_to_keep_net_capital_above_200m_yuan.pdf))

**This newsletter is for information purposes only.**

Its contents do not constitute legal advice and it should not be regarded as a substitute for detailed advice in individual cases.

Transmission of this information is not intended to create and receipt does not constitute a lawyer-client relationship between Charltons and the user or browser.

Charltons is not responsible for any third party content which can be accessed through the website.

If you do not wish to receive this newsletter please let us know by emailing us at unsubscribe@charltonslaw.com

**Charltons - China News Alerts Newsletter - Issue 351 - 10 September 2010**