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**Enhancing Legal Certainties on Investor Protection
of China's Qualified Foreign Institutional Investor
(QFII) Regime**

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I undertake the sole responsibility for any inaccuracy in this declaration.

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ABSTRACT

In 2002, China adopted a financial innovation called Qualified Foreign Institutional Investor (QFII) regime in order to accommodate itself to the globalization of capital market. The QFII regime is mostly adopted by emerging markets and considered as a transitional arrangement when the currency and capital of a country are still restricted in an extent. Under the QFII regime, foreign investors are not allowed to invest to China's A-shares market directly but must through the qualified institutions as intermediaries. Qualified institutions open up securities account in CSD and become the nominal holders of the securities while the actual foreign investors are not recorded in the book. In essence, there is an indirect holding relation within QFII operation. However, the pace of legislation is much slower than the market innovation in China. Up to now, there are no formal legal instruments regulating the relations exist in QFII comprehensively and let alone the investors protection issues. Under this circumstance, the actual investors are facing several legal risks and in great need of regulations to safeguard their legal rights. This problem may become much more severe under the background of the most recent global financial crisis. This crisis brings a challenge to the legislators of every country to perfect the legislations because a better regulatory framework may help to secure the asset of investors as well as the whole market while regulatory failure may deteriorate the situation.

This thesis will firstly discuss the current situation of China's capital market and provide its legal framework as the background. Then, the QFII regime will be particularly analyzed and the investor protection issues will be mainly focused. Base on the aforementioned, this paper will argue that current legal arrangement is not beneficial enough for the investors and certain improvements should be made. Suggestion about the improvements will be made on the foundation of evaluating different practices in various countries which have a sound and comprehensive ideas on the similar problem. In spite of the practices in the states level, international organizations' effort will be taken into consideration and discussion as they also

provide irreplaceable experiences on the matter. There will be prospect made in the final of the thesis concerning about the future of the QFII regime and relating investor protection issues.

Keywords

QFII Regime, Investor Protection, Global Financial Crisis, Indirect Holding, CSD, Legal Uncertainty, Intermediated Risks, Security Entitlement, Equitable Proprietary Right, Corporate Governance, Insolvency, Functional Approach, PRIMA Rule



LIST OF ABBREVIATIONS

AIL	American Law Institution
BIS	Bank for International Settlements
CCP	Center Counter Party
CLRSG	Company Law Review Steering Group
CSD	Central Securities Depository
CSDCC	Securities Depository and Clearing Corporation Limited
CSRC	China Securities Regulatory Commission
DTC	Depository Trust Company
DVP	Delivery Versus Payment
ECC	European Clearing Center
FMLC	Financial Markets Law Committee
HCCH	Hague Conference on Private International Law
ICSD	International Central Securities Depository
IMF	International Monetary Fund
JASDEC	Japan Securities Depository Center
LCG	Legal Certainty Group
NCCUSL	National Conference of Commissioners on Uniform State Laws
QFII	Qualified Foreign Institutional Investor
SAFE	State Administration of Foreign Exchange
SCSC	State Council Securities Committee
SEC	Securities and Exchange Commission
SIPA	Securities Investor Protection Act 1970
SIPC	Securities Investor Protection Corporation
SOE	State-owned Company

STA	Securities Transfer Act
UCC	Uniform Commercial Code
UNIDROIT	International Institute for the Unification of Private Law
WB	World Bank Group
WTO	World Trade Organization



LIST OF DIAGRAMS

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