

金融法律热点问题

中国人民银行发布上海自贸区金融支持政策

2013年12月2日,中国人民银行(以下简称“央行”)发布了《关于金融支持中国(上海)自由贸易试验区建设的意见》(以下简称“《意见》”)。央行《意见》旨在着力推进上海自贸区在人民币跨境使用、人民币资本项目可兑换、利率市场化以及外汇管理等领域的改革试点。

尽管《意见》没有制定有关细则出台的时间表。但在《意见》出台后的第二天,央行上海总部就非正式地向媒体介绍了初步的时间规划,即三个月内落实大部分政策措施,半年时间初步探索总结改革经验,一年左右的时间基本形成可复制和可推广的金融管理模式。

《意见》要点概述

以下总结了《意见》中的主要政策要点:

自由贸易账户

《意见》的核心之一是建立特别的账户管理体系,以使得自贸区的公司和个人可以利用特别的账户开展《意见》所允许的投融资创新业务,

- 自贸区的居民可以开立居民自由贸易账户,而非居民可以开立非居民自由贸易账户。居民自由贸易账户与境外账户、境内区外的非居民账户、非居民自由贸易账户以及其他居民自由贸易账户之间的资金可以自由划转,而居民自由贸易账户与其境内区外的银行结算账户之间产生的资金流动仍受限于现有跨境资金流动管理体系。

- 上海地区的商业银行可以通过设立分账核算单元的方式为其符合条件的自贸区客户开立自由贸易账户。

跨境投融资

值得重点关注的是《意见》中有关跨境投资的规定。在这方面,《意见》应和了中国证监会在2013年9月29日公布的《资本市场支持促进中国(上海)自由贸易试验区若干政策措施》。

- 自贸区内“就业”并符合“条件”的个人可按“规定”开展包括证券投资在内的各类境外投资,并将其在区内获得的合法所得完税后向外支付。同样的,自贸区内“就业”并符合“条件”的境外个人可按“规定”开展包括证券投资在内的各类境内投资。
- 自贸区内金融机构和企业可按“规定”进入上海地区的证券和期货交易所进行投资和交易。
- 符合“条件”的自贸区企业可以按“规定”开展境外证券投资和境外衍生品投资业务。

遗憾的是,《意见》仍然过于原则,没有涉及具体的资格条件等细节。央行究竟在多大程度上能够对二级市场的资金进出放行还有待观察。

人民币跨境使用

- 上海地区的商业银行可以在“了解你的客户”、“了解你的业务”和“尽职调查”三原则基础

上，凭客户(仅限于不在出口货物贸易人民币结算企业重点监管名单上的企业)指令办理经常项下和直接投资项下的跨境人民币结算业务。这一改革的核心在于通过实施金融宏观审慎管理促进人民币在跨境投资和贸易结算领域的运用。

- 允许自贸区金融机构和企业从境外借用人民币资金，但借用的人民币资金不得用于投资有价证券、衍生产品，也不得用于委托贷款。

资金流动的动态监控

- 《意见》指出，央行将对自贸区内资金流动进行动态的监控，根据情况适时加强对自贸区短期投机性资本流动的监管，直至采取临时性管制措施。

我们的观察

- 我们认为，央行此次推出的改革措施是对国务院今年 9 月 27 日颁布的总体方案中有关金融改革内容的细化。央行《意见》一方面给出了促进人民币跨境使用以及人民币资本项目放开的金融改革路线图，但另一方面也在某种程度上框定了自贸区金融改革的边界。

在放松管制的同时，央行的立场也十分清楚，即其不会允许自贸区成为规避长期资本管理的后门，而且会持续密切关注自贸区与境内区外的资金流动。

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Shanghai Pilot Free Trade Zone

PBOC Announced Financial Support Policies on Shanghai Pilot Free Trade Zone

On December 2, 2013, the People's Bank of China (“PBOC”) released its Opinions on the Financial Support of the Development of the China (Shanghai) Pilot Free Trade Zone (“FTZ”) (the “Opinions”, in Chinese: 中国人民银行关于金融支持中国(上海)自由贸易试验区建设的意见). The Opinions committed to the promotion of reforms and pilots in the FTZ in the sectors of cross-border RMB usage, RMB capital account convertibility, interest rate liberalization and foreign exchange administration.

The Opinions did not offer a timetable for detailed implementing rules. On the second day after the Opinions were released, PBOC Shanghai branch informally gave a preliminary schedule to media: (1) most of the upcoming policy initiatives are expected to be implemented within the next three months; (2) those implementing rules would be subject to test and exploration for about half a year to gain experience; and (3) if the experiments work, the authorities expect to establish, within one year, a financial administration model that is copyable and extendable to other regions of China.

Summary of Policy Initiatives in the Opinion

We touch on a few of the significant policy initiatives in the Opinions below:

Free Trade Accounts

At the heart of the Opinions, PBOC establishes a specially tagged bank accounts system for use of such special accounts by companies and individuals in the FTZ in relation to those financial innovation activities allowed in the Opinion.

- Residents in the FTZ will be allowed to open Free Trade Accounts for Residents (“FTA”), while non-residents will be allowed to open Free Trade Accounts for Non-residents (“FTN”). Free fund transfers are only permitted for those between FTAs and offshore accounts, non-residents’ onshore accounts, FTNs and other FTAs, while the fund transfers between FTAs and other on-shore accounts are still subject to the current cross-border fund transfer restrictions.

- All commercial banks in the Shanghai area can open Free Trade Accounts for its FTZ qualified clients by way of setting up a unit using segregated-account management system.

Cross-border Investments and Financing

Among the most significant changes PBOC laid out are those that concern cross-border investment. In this area, the Opinions echo the “Specific Measures Supporting and Promoting the Development of the Pilot Free Trade Zone” released by the China Securities Regulatory Committee (“**CSRC**”) on September 29.

- “Qualified” Chinese individuals who are “working in” the FTZ will be allowed, in accordance with “relevant rules”, to invest in overseas securities market and transfer their after-tax income earned within the FTZ to offshore accounts. Similarly, “qualified” foreign individuals who are “working in” the FTZ can open non-resident individual domestic investment account to, in accordance with “relevant rules”, make investment in China including securities investment.
- Financial institutions and companies in the FTZ will be allowed to invest in the city of Shanghai’s securities market, in accordance with “relevant rules”.
- “Qualified” companies in the FTZ will be allowed to directly invest in overseas capital markets including the derivative markets in accordance with “relevant rules”.

However, various qualifiers and terms used in the Opinions are still short on specifics, and need to be fleshed out by PBOC in the implementing rules. It remains to be seen to what extent PBOC will lift its sharp limits on funds entering and leaving China for securities investments.

RMB Cross-Border Usage

- Commercial banks in the Shanghai area can directly process cross-border RMB settlement related to current accounts and direct investment transactions upon customers’ instructions, on the basis of “know your customer”; “know your business” and “due diligence review” principles, unless the instructing entity is on the “export trading RMB settlement entities watch list”. This reform aims to promote the usage of cross-border RMB in both investment and trade settlement by adopting a macro supervision system.
- PBOC permits financial institutions and companies in the FTZ to borrow RMB funds from offshore markets, but meanwhile, re-emphasizes that those funds cannot be invested in securities or derivatives, nor be used for trust loans.

Living Monitoring of Fund Flow

- PBOC will establish a living monitoring mechanism towards fund flow in the FTZ. PBOC may, at its discretion, put forth stronger supervision of short-term speculative fund flows in the FTZ, and even take temporary control measure against such fund flow.

Our Observations

The list of reforms unveiled by PBOC details the previous scope of reforms in the blueprint of FTZ issued by the State Council on September 27. The Opinions give a roadmap of financial reforms in terms of cross-border RMB usage and RMB capital account relaxation on one hand, but on the other hand lay out to some extent the boundary of financial reforms to be launched in the FTZ.

In relaxing some controls, PBOC also made clear that it would not let FTZ become a back door to circumvent long standing capital control. PBOC will continue to closely monitor the fund flows between the FTZ and the rest of China.

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