

国家发展和改革委员会将再次修订《境外投资项目核准和备案管理办法》，放宽境外投资项目核准要求。

为了支持科技创新创业企业发展，中国银行业监督管理委员会、科学技术部、中国人民银行发布《关于支持银行业金融机构加大创新力度 开展科技企业投贷联动试点的指导意见》，鼓励试点银行业金融机构对符合条件的科技创新创业企业开展投贷联动业务。

中国人民银行发布《在全国范围内实施全口径跨境融资宏观审慎管理的通知》，将本外币一体化的跨境融资宏观审慎管理试点扩大至全国范围，中资及外资金融机构和企业凭自身资本实力可能获得更丰富的融资渠道。

一、国家发展和改革委员会将再次修订《境外投资项目核准和备案管理办法》

为了进一步便利境外投资，2016 年 4 月 13 日，国家发展和改革委员会（以下简称“国家发改委”）公布《关于就修订〈境外投资项目核准和备案管理办法〉向社会公开征求意见的公告》，对 2014 年 5 月 8 日起施行的《境外投资项目核准和备案管理办法》（以下简称“9 号令”）进行修订，并向社会公开征求意见。

（一）背景

9 号令按照投资主体、金额、地点及行业对于境外投资项目分别实行核准和备案两种管理方式。

中方投资额 10 亿美元及以上的境外投资项目，由国家发改委核准；涉及敏感国家和地区、敏感行业的境外投资项目不分限额，由国家发改委核准；其中，中方投资额 20 亿美元及以上，并涉及敏感国家和地区、敏感行业的境外投资项目，由国家发改委提出审核意见报国务院核准。敏感国家和地区包括：未建交和受国际制裁的国家，及发生战争、内乱等国家和地区。敏感行业包括：基础电信运营；跨境水资源开发利用；大规模土地开发；\，输电干线、电网；及新闻传媒等行业。

除上述项目外，其他境外投资项目实行备案管理，并按照投资主体、金额划分备案机关。中央管理企业实施的境外投资项目、地方企业实施的中方投资额 3 亿美元及以上境外投资项目，由国家发改委备案；地方企业实施的中方投资额 3 亿美元以下境外投资项目，由省级政府投资主管部门备案。

2014 年 10 月 31 日，国务院发布《政府核准的投资项目目录（2014 年本）》简化了境外投资项目的核准要求，涉及敏感国家和地区、敏感行业的项目，由国务院投资主管部门核准。前款规定之外的中央管理企业投资项目和地方企业投资 3 亿美元及以上项目报国务院投资主管部门备案。

2014 年 12 月 27 日，国家发改委根据《政府核准的投资项目目录（2014 年本）》将 9 号令有关核准权限的规定修订为：涉及敏感国家和地区、敏感行业的境外投资项目，由国家发改委核准。其中，中方投资额 20 亿美元及以上的，由国家发改委提

出审核意见报国务院核准。

2016 年 4 月 13 日，国家发改委公布 9 号令的修订征求意见稿，对 9 号令的七个条款进行修订，其中包括再次修订有关项目核准的规定。

（二）法律点评

9 号令的修订征求意见稿最大的亮点是简化项目核准程序。

首先，征求意见稿取消了中方投资额 20 亿美元及以上的项目报国务院核准的要求，将核准权限的规定简化为：涉及敏感国家和地区、敏感行业的境外投资项目，由国家发展改革委核准。由于 9 号令仅规定了国家发改委的核准期限，未规定国务院的核准期限，因此无法预计由国务院核准的项目所需的核准期限。取消国务院核准的要求后，国家发改委最长不得超过 30 个工作日内完成项目核准，这使得核准期限可以预计。征求意见稿还相应地删除了 9 号令涉及由国家发展改革委提出审核意见报国务院核准的规定。

其次，征求意见稿取消了省级发展改革部门对上报国家发改委的境外投资项目核准初审的要求，将由国家发改委核准的地方企业的境外投资项目的核准程序简化为：地方企业直接向所在地的省级政府发展改革部门提交项目申请报告，由省级政府发展改革部门报送国家发改委。

9 号令的修订征求意见稿另一个亮点是不再将资金筹措等属于企业经营自主权范围内的事项作为境外投资项目的核准的前置条件，提交境外投资项目申请报告时无需再提交银行出具的融资意向书。

（三）关注要点

9 号令的修订征求意见稿于 2016 年 5 月 13 日结束意见征集，9 号令的修订进程值得关注。

二、鼓励试点银行业金融机构对符合条件的科技创新创业企业开展投贷联动业务

2016 年 4 月 21 日，中国银行业监督管理委员会（以下简称“银监会”）、科学技术部、中国人民银行（以下简称“央行”）共同发布《关于支持银行业金融机构加大创新力度 开展科创企业投贷联动试点的指导意见》（以下简称“《投贷联动指导意见》”），鼓励包括外资银行在内的试点银行业金融机构对符合条件的科技创新创业企业（以下简称“科创企业”）开展投贷联动业务。这是对《商业银行法》所规定之“商业银行不得向非银行金融机构和企业投资”的重大突破，预计会对银行业金融机构未来的业务发展模式产生较大影响。

（一）背景

1995 年的《商业银行法》规定，商业银行在中华人民共和国境内不得向非银行金融机构和企业投资。2003 年修订《商业银行法》时，为了给商业银行投资渠道留有余地，修订后的《商业银行法》在“商业银行不得向非银行金融机构和企业投资”后增加了“但是，国务院另有规定的除外”，将商业银行在境内对非银行金融机构和企业的投资行为的裁量权赋予国务院。

2015 年 3 月 13 日，国务院在《关于深化体制机制改革加快实施创新驱动发展战略的若干意见》中提出完善商业银行相关法律。选择符合条件的银行业金融机构，探索试点为企业创新活动提供股权和债权相结合的融资服务方式，与创业投资、股权投资机构实现投贷联动。

2016 年 4 月 21 日，银监会、科学技术部、央

行共同发布《投贷联动指导意见》，鼓励试点银行业金融机构对符合条件的科创企业开展投贷联动业务。首批投贷联动试点选取了 5 个地区的自主创新示范区和 10 家试点银行业金融机构。

（二）法律点评

投贷联动是指银行业金融机构以“信贷投放”与其设立的具有投资功能的子公司“股权投资”相结合的方式，通过相关制度安排，由投资收益抵补信贷风险，实现科创企业信贷风险和收益的匹配，为科创企业提供持续资金支持的融资模式。

投贷联动试点适用于试点银行业金融机构面向试点地区的符合条件的科创企业开展投贷联动业务。

首批 5 个试点地区是从国务院批复的 14 家自主创新示范区中精选而出的，分别落户北京、武汉、上海、天津和西安，具体是北京中关村国家自主创新示范区、武汉东湖国家自主创新示范区、上海张江国家自主创新示范区、天津滨海国家自主创新示范区和西安国家自主创新示范区。

试点银行业金融机构的选择则是在确定试点地区的基础上进行的。首批 10 家试点银行业金融机构覆盖了政策性银行（即国家开发银行）、国有商业银行（即中国银行）、股份制商业银行（即恒丰银行）、民营银行（即上海华瑞银行）、试点地区的城市商业银行（即北京银行、汉口银行、上海银行、天津银行、西安银行）、以及专注于服务科创企业的外资银行浦发硅谷银行。以上机构中，国家开发银行、中国银行、恒丰银行等全国性银行可根据其分支机构设立情况在上述 5 个国家自主创新示范区开展试点；浦发硅谷银行可在现有机构和业务范围开展试点；5 家城市商业银行可在设有机构

的国家自主创新示范区开展试点。

试点银行业金融机构应在境内设立具有投资功能的子公司，由其子公司开展股权投资。子公司应当以自有资金向科创企业进行股权投资，不得使用负债资金、代理资金、受托资金以及其他任何形式的非自有资金。投资功能子公司投资单一科创企业的比例不超过子公司自有资金的 10%。子公司应当作为财务投资人，可选择种子期、初创期、成长期的非上市科创企业进行股权投资，分享投资收益、承担相应风险。

试点银行业金融机构还应按照《中资商业银行专营机构监管指引》设立服务科创企业的科技金融专营机构及其分支机构（以下简称“**科技金融专营机构**”），专司与科创企业股权投资相结合的信贷投放。除发放贷款外，科技金融专营机构可以向科创企业提供包括结算、财务顾问、外汇等在内的一站式、系统化金融服务。银行开展科创企业信贷投放时，贷款来源应当为表内资金，不得使用理财资金、委托资金、代理资金等非表内资金。

（三）关注要点

《投贷联动指导意见》仅就银行试点投贷联动业务进行了原则性规定，试点地区所在省（市）银监局应依据《投贷联动指导意见》制定辖区内试点银行业金融机构开展投贷联动业务的具体实施方案，试点银行业金融机构也应向监管部门报送试点方案。对于银行如何新设投资功能子公司，外资银行是否亦须参照《中资商业银行专营机构监管指引》设立科技金融专营机构，银行设立之投资功能性子公司的投资范围和领域是否可进一步再放开等具体问题，尚须持续关注银监会和各地银监局日后出台的进一步细化试点方案及行政许可操作指引。

三、全口径跨境融资宏观审慎管理试点扩大至全国范围

央行于 2016 年 4 月 29 日发布《在全国范围内实施全口径跨境融资宏观审慎管理的通知》（以下简称“《通知》”），在总结前期区域性、地方性试点的基础上，将全口径跨境融资宏观审慎管理政策推广至全国范围。《通知》为国家管理资本流动、调控跨境融资总量提供了宏观审慎工具。同时，在《通知》的管理框架下，中资及外资金融机构和企业凭自身资本实力可能获得更丰富的融资渠道，更低的融资成本。

（一）背景

我国政府主管部门多年来对境内机构的跨境融资活动实施本币、外币区别管理，并且按照融入资金的市场主体性质、融资周期等要素不同，划分多种管理模式。在原有的管理体系下，大多数境内机构自境外融资的渠道受限，而多种管理模式并存的情况也不利于主管部门把握与宏观经济热度、整体偿债能力和国际收支状况相适应的跨境融资水平。

2015 年 2 月，央行上海总部发布《中国（上海）自由贸易试验区分账核算业务境外融资与跨境资金流动宏观审慎管理实施细则（试行）》（银总部发[2015]8 号，以下简称“《实施细则》”）。根据《实施细则》，上海自贸区内的境内企业和金融机构可以根据自身的经营需要，通过自由贸易账户自主从境外融入资金，而不再需要事前向央行和国家外汇管理部门申请外债额度。在《实施细则》单一地区试点的基础上，央行于 2016 年 1 月 22 日发布《中国人民银行关于扩大全口径跨境融资宏观审慎管理试点的通知》（银发[2016]18 号，以下简称“18 号文”），将面向 27 家金融机构和注册在上海、天津、

广州、福建四个自贸区的企业和金融机构扩大本外币一体化的全口径跨境融资宏观审慎管理试点。

（二）法律点评

《通知》的发布，进一步将 18 号文的全口径跨境融资宏观审慎管理试点推向全国，改变了现行跨境融资逐笔审批、核准额度的前置管理模式，为每家金融机构和企业设定与其资本或净资产挂钩的跨境融资风险加权余额上限。央行和外汇管理部门将通过对跨境融资杠杆率、宏观审慎调节参数、各类风险转换因子等加权系数的调整，达到对跨境融资总量和结构的调控，从而控制系统性金融风险。

《通知》是对跨境融资管理的重大改革，其建立了一套与机构资本实力动态挂钩、总量调控的跨境融资宏观审慎管理体系。如能贯彻执行，将为全国范围内的企业和金融机构从非居民融入本币、外币资金带来更大的自主权和更宽松的行政监管环境。《通知》的主要亮点体现在：

- 1、中资金融机构和企业进行跨境融资不再需要事先审批额度。根据《通知》的规定，企业应在跨境融资合同签约后但不晚于提款前三个工作日，向外汇局的资本项目信息系统办理跨境融资情况签约备案。金融机构首次办理跨境融资业务前，应计算跨境融资风险加权余额和跨境融资风险加权余额上限，并将计算的详细过程报送央行和外汇局。
- 2、相较于现行相关跨境融资规定，《通知》规定以企业净资产或金融机构资本为基数计算企业/金融机构的跨境融资风险加权余额上限。在该上限内进行跨境融资，可能大幅度增加企业和金融机构融资限额。

- 3、企业融入外汇资金可以按需结汇使用，将拓宽融入资金的用途。金融机构融入外汇资金在外汇局批准的情况下，也可结汇使用。
- 4、《通知》将多种跨境债务纳入统一管理，减轻企业和金融机构管理成本。同时，央行和外汇管理部门根据被监管市场主体性质不同明确划分管理范围，也有利于改善现行监管机构的职责划分不明给企业和金融机构带来的困扰。

（三）关注要点

我们可以预期，外汇局作为《通知》项下监管

机构之一，将会发布相应的规定。尤其是，根据央行和外汇局在《通知》中对于不同主体的权责划分，企业按照《通知》要求办理跨境融资业务，具体细节还有待外汇局另行发布细则明确，而在此之前，企业只能按照央行和外汇局现行相关规定办理借取外债等跨境融资业务。另外，虽然《通知》中未规定外汇局须就除央行直接管理的 27 家银行业机构以外的金融机构实施跨境融资业务另行发布细则，但是外汇局是否会发布相应细则以及是否会对《通知》规定做出补充，也值得关注。

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The National Development and Reform Commission proposed to re-modify the Administrative Measures for the Approval and Record-filing on Outbound Investments Projects to relax approval requirements for outbound investment projects.

To support the development of technology start-ups, the China Banking Regulatory Commission, the Ministry of Science and Technology and the People's Bank of China jointly released the Guiding Opinions on Supporting the Banking Financial Institutions in Strengthening Innovation and Carrying out "Investment and Loan Linkage Mechanism" Pilot Programs on Technology Start-ups to encourage banking financial institutions joining the pilot programs to launch the "investment and loan linkage mechanism" with qualified technology start-ups.

The People's Bank of China issued the Circular on Implementing Overall the Macro-prudential Management System on Nationwide Cross-border Financing, where the pilot programs for overall macro-prudential management system on cross-border financing denominated in RMB and foreign currency have been extended nationwide. Domestic and foreign-invested financial institutions and non-financial enterprises are allowed to access more financing channels and lower their financing costs by virtue of their

own capital strength.

1. NDRC Proposes to Re-modify the Administrative Measures for the Approval and Record-filing on Outbound Investments Projects

To further facilitate outbound investments, on April 13, 2016, the National Development and Reform Commission (the "NDRC") published a consultation paper seeking public comment on the amendments proposed for the Administrative Measures for the Approval and Record-filing on Outbound Investments Projects ("**Regulation No. 9**") which have been enforced since May 8, 2014.

1.1 Background

Regulation No. 9 adopts two separate management methods of approval and record-filing on outbound investments projects according to the identity of the investor, the amount of the investment, the country or region and the industry invested. Outbound investment projects where the amount of the investment by the Chinese investor is USD 1 billion or more are subject to approval by the NDRC; outbound investment projects involving sensitive countries and regions or sensitive industries, regardless of amount invested, are subject to approval by the NDRC; including if the amount of the investment by the Chinese investor is USD 2 billion or more as well as the outbound investment projects

involve sensitive countries and regions or sensitive industries, the NDRC will submit its opinion for the State Council to approve. "Sensitive countries and regions" include those having no diplomatic relations with China, those subject to international sanctions, and also those in wars, civil strife, and other disturbances. "Sensitive industries" include basic telecommunications operations, cross-border development and utilization of water resources, large-scale land development, main power transmission lines and power grids, and news media industries.

Except for the abovementioned projects, other outbound investment projects are subject to record-filing procedures, where the filing authorities are dependent on the identity of the investor and the amount of the investment. Projects undertaken by centrally-administered state-owned enterprises and projects undertaken by local enterprises where the amount of the investment by the Chinese investor is USD 300 million or more shall be filed with the NDRC; projects undertaken by local enterprises where the amount of the investment by the Chinese investor is less than USD 300 million shall be filed with the NDRC's provincial counterparts.

On October 31, 2014, the State Council published the Catalogue of Investment Projects Subject to Government Approval (2014 Edition) which simplified the approval requirements for outbound investment projects so that projects involving sensitive countries and regions are subject to approval by the competent investment department of the State Council. Other projects

undertaken by centrally-administered state-owned enterprises and projects undertaken by local enterprises where the amount of the investment by the Chinese investor is USD 300 million or more shall be filed with the competent investment department of the State Council.

On December 27, 2014, NDRC amended provisions relating to approval power in Regulation No. 9 according to the Catalogue of Investment Projects Subject to Government Approval (2014 Edition) so that outbound investment projects involving sensitive countries and regions and sensitive industries are subject to approval by the NDRC, among which, if the amount of the investment by the Chinese investor is USD 2 billion or more, the NDRC shall submit its opinion for the State Council to approve.

On April 13, 2016, NDRC published a consultation paper seeking public comment on the amendments proposed for Regulation No. 9, where seven articles are proposed to be revised, including rules concerning the approval of projects.

1.2 Legal Review

The most notable highlight of the amendments proposed for Regulation No. 9 is that the project approval procedures are simplified.

First of all, the consultation paper proposed to drop the requirement for projects where the amount of the investment by the Chinese investor is USD 2 billion or more are subject to State Council's approval. Such a provision on approval power has been simplified so that outbound investments projects involving sensitive countries,

regions and industries shall be approved by the NDRC. Given that the Regulation No. 9 merely stipulated the time limit for the NDRC to grant approval, without stipulating the time limit for State Council to grant approval, it was not previously possible to estimate the time needed for obtaining State Council's approval. Now that the requirement for State Council's approval has been dropped in the consultation paper and only the time limit requirement of 30 days for the NDRC to grant approval has been retained, it becomes possible to estimate the time needed for obtaining approval. Additionally, the consultation paper removed relevant provisions requiring the NDRC to submit its opinions for the State Council to approve.

Secondly, the consultation paper dropped the requirement for the NDRC's provincial counterparts to conduct preliminary review of the projects to be submitted for the NDRC's approval. The procedures have been simplified so that the local enterprises directly submit the project application to the NDRC provincial counterparts, and the NDRC provincial counterparts will submit the same for the NDRC's approval.

Another highlight of the amendments proposed for Regulation No. 9 is that business operations matters within the discretion of enterprises such as fundraising are no longer pre-conditions for obtaining outbound investments projects approval, which means a bank's letter of intent of fundraising is no longer required for submitting an application for outbound investments projects.

1.3 Next Steps

The consultation period for the amendments proposed for Regulation No. 9 ended on May 13, 2016. The progress in the amendment of Regulation No. 9 is worth our continued attention.

2. Encouraging the Pilot Banking Financial Institutions to Carry out Investment and Loan Linkage Mechanism with Qualified Technology Start-ups

On April 21, 2016, the China Banking Regulatory Commission (the “**CBRC**”), the Ministry of Science and Technology, and the People's Bank of China (the “**PBOC**”) jointly released the Guiding Opinions on Supporting the Banking Financial Institutions in Strengthening Innovation and Carrying out “Investment and Loan Linkage Mechanism” Pilot Programs on the Technology Start-ups (“**Guiding Opinions on Investment and Loan Linkage**”) to encourage banking financial institutions including foreign-invested banks joining the pilot programs to launch the “investment and loan linkage mechanism” with qualified technology start-ups (“**Technology Start-ups**”). This is a major breakthrough for the existing rule that “commercial banks shall not invest in the non-banking financial institutions and enterprises” as prescribed in the Law of Commercial Banks and it is expected to have a great significance on the future business development model of banking financial institutions.

2.1 Background

According to the Commercial Bank Law of 1995, commercial banks shall not invest in the non-banking financial institutions and enterprises

in China. When the Commercial Bank Law was modified in 2003, an exception “unless otherwise provided by the State Council” was added to the rule “commercial banks shall not invest in the non-banking financial institutions or enterprises in China” for the purpose of leaving a door open for the commercial banks to have an alternative investment channel, and leaving the investment of commercial banks in non-banking financial institutions and enterprises in China to the State Council’s discretion.

On March 13, 2015, the State Council proposed in the Opinions on Deepening the Reform of Systems and Mechanisms to Accelerate the Implementation of Innovation-driven Development Strategies to improve the relevant commercial bank laws, select qualified banking financial institutions, explore pilot financing services models conjoining equity and debt for enterprises’ innovative activities, and carry out investment and loan linkage mechanism with venture capital and equity investment institutions.

On April 21, 2016, the CBRC, Ministry of Science and Technology, and PBOC jointly released the Guiding Opinions on Investment and Loan Linkage to encourage banking financial institutions joining the pilot programs to launch the “investment and loan linkage mechanism” with the Technology Start-ups. Five independent innovation demonstration zones in different districts and 10 pilot banking financial institutions were selected for the first batch of investment and loan linkage pilot projects.

2.2 Legal Review

The investment and loan linkage refers to the financing pattern that the banking financial institutions link the supply of credit with the equity investments made by their investment subsidiaries, through the relevant systematic arrangement of which, the investment income offsets the credit risk, the credit risks of the Technology Start-ups match the income of investment and the Technology Start-ups are provided with sustained funding support.

The investment and loan linkage pilot projects are adopted for the pilot banking financial institutions to carry out investment and loan linkage mechanism with qualified Technology Start-ups in the pilot zones.

The first batch of five pilot zones, namely Beijing Zhongguancun National Independent Innovation Demonstration Zone, Wuhan East Lake National Independent Innovation Demonstration Zone, Shanghai Zhangjiang National Independent Innovation Demonstration Zone, Tianjin Binhai National Independent Innovation Demonstration Zone, and Xi’an National Independent Innovation Demonstration Zone, located in Beijing, Wuhan, Shanghai, Tianjin and Xi’an respectively, were selectively chosen from the 14 independent innovation demonstrations zones approved by the State Council.

The selection of pilot banking financial institution is made upon the selection of pilot zones. The first 10 pilot banking financial institutions cover the policy bank (i.e. China Development Bank), state-owned bank (i.e. Bank of China), joint-equity commercial bank (i.e. HENGFENG

BANK), private bank (Shanghai Huarui Bank), city commercial banks situated in the pilot zones (Bank of Beijing, Bank of Hankou, Bank of Shanghai, Bank of Tianjin and Bank of Xi'an), and SPD Silicon Valley Bank, which is a foreign-invested bank focused on serving Technology Start-ups. Among the abovementioned institutions, those national banks like China Development Bank, Bank of China, and HENGFENG BANK can launch the pilot projects in the five national independent innovation demonstration zones as mentioned above according to their branch establishments; SPD Silicon Valley Bank can launch the pilot projects within its current business scope through its existing institutions; and five city commercial banks can launch the pilot projects in the national independent innovation demonstration zones where they have established institutions.

The pilot banking financial institutions shall establish investment subsidiaries in China, through which the equity investment is made. The subsidiaries shall make equity investment in the Technology Start-ups using its own funds and are not allowed to use borrowed funds, agency funds, entrusted funds or any other forms of non-self-owned funds. The investments in a single Technology Start-up shall not exceed 10% of the self-owned funds of the investment subsidiary. The subsidiary shall play the role of financial investor to choose to make the equity investment in non-listed Technology Start-ups in the initial stage, growth stage and development stage, enjoy the investment returns, and bear the corresponding risks.

The pilot banking financial institutions shall also establish the technology specialized financial institutions and branches (**“Technology Specialized Financial Institutions”**) serving Technology Start-ups according to Regulatory Guidelines on Chinese Commercial Banks Specialized Institutions, dedicated to supplying credit to Technology Start-ups in connection with equity investment. Apart from granting loans, Technology Specialized Financial Institutions may also provide Technology Start-ups with one-stop and systematic financial services including settlement services, financial advisor services and foreign exchange services. When the banks offer credit to Technology Start-ups, the loans shall be from the on-balance-sheet asset rather than off-balance-sheet asset such as investing capital, entrusted funds and agency funds.

2.3 Next Steps

The Guiding Opinions on Investment and Loan Linkage merely provide principles on the investment and loan linkage mechanism for pilot banks. The provincial or municipal banking regulatory bureaus shall make specific plans for their governing pilot banking financial institutions to carry out the investment and loan linkage mechanism, and the pilot banking financial institutions shall also submit the pilot proposals to the regulatory authorities. In respect to specific issues such as how the banks establish new investment subsidiaries, whether foreign-invested banks shall also be subject to the Regulatory Guidelines on Chinese Commercial Banks Specialized Institutions when setting up Technology Specialized Financial Institutions, and

whether the investment scope and industry of the investment subsidiaries established by banks shall be further opened, close attention shall continue to be paid to the further details of the pilot plans and operation guidelines on administrative approval expected to be issued by the CBRC and the local banking regulatory bureaus.

3. The Pilot Program for Overall Macro-prudential Management System on Cross-border Financing Has Been Extended Nationwide

On April 29, 2016, PBOC issued the Circular on Implementing Overall Macro-prudential Management System on Nationwide Cross-border Financing (the “**Circular**”), where the policy for overall macro-prudential management system on cross-border financing has been extended nationwide, based on earlier experiences in implementing regional and local pilot programs. The Circular introduced macro-prudential management tools for the country to manage capital flow and control cross-border financing. Meanwhile, under the management framework as set out in the Circular, domestic and foreign-invested financial institutions and non-financial enterprises are allowed to access more financing channels and lower their financing costs by virtue of their own capital strength.

3.1 Background

For many years, Chinese regulatory authorities adopted separate approaches for managing domestic institutions’ cross-border financing

denominated in RMB and foreign currency, and established multiple management systems according to various factors, such as the nature of financing participants and financing cycle. Under the previous regulatory system, channels to obtain overseas funding for most domestic institutions were limited, and the co-existence of multiple management systems brought no benefits for regulatory authorities to gain knowledge of the level of cross-border financing which corresponds to the macroeconomic prosperity index, the overall debt-paying ability and the international balance of payment.

In February 2015, the Shanghai head office of the PBOC issued the Circular on Issuing the Implementing Rules for Macro-prudential Management of Overseas Financing and Cross-border Capital Flows in Separate Accounts in China (Shanghai) Pilot Free Trade Zone (for Trial) (Yin Zong Bu Fa [2015] No. 8, the “**Implementing Rules**”). According to the Implementing Rules, domestic non-financial enterprises and financial institutions within the Shanghai Pilot Free Trade Zone may receive overseas funding via the free trading accounts based on their own business demands, and are no longer required to first file an application for foreign debt quota with the PBOC and foreign exchange authorities. While the Implementing Rules apply in a single pilot region, the PBOC issued the Notice on Extending Pilot Regions for Implementing Overall Macro-prudential Management System on Cross-Border Financing on January 22, 2016 (Yin Fa [2016] No. 18, the “**Circular No. 18**”), where the overall

macro-prudential management system on cross-border financing which integrates management of RMB and foreign currency is extended to apply to (i) 27 specified financial institutions; and (ii) non-financial enterprises and financial institutions registered in four Pilot Free Trade Zones in Shanghai, Tianjin, Guangzhou and Fujian.

3.2 Legal Review

Publication of the Circular further extends the implementation of overall macro-prudential management system on cross-border financing, as set out in the Circular No. 18, to a national level and modifies the existing management system where each cross-border financing and its quota require prior approval, and sets a risk-assessed cross-border financing limit which is based on the capital and net assets of each financial institution and non-financial enterprise. The PBOC and foreign exchange authorities will adjust and control the volume and structure of cross-border financing by adjusting weighted coefficients, such as the cross-border financing leverage ratio, macro-prudential adjustment parameters and various risk factors, so as to control the systematic financial risks.

The Circular marks a significant reform of cross-border financing management, and establishes macro-prudential management system on cross-border financing which are based on the dynamic capital strength and adjustment of total volume. Once the Circular is carried out, non-financial enterprises and financial institutions nationwide will enjoy greater

discretion and a more relaxed administrative regulatory environment when receiving funding denominated in RMB or foreign currency. Highlights of the Circular include:

a. Cross-border financing of domestic financial institutions and non-financial enterprises no longer requires a pre-approved quota. According to the Circular, after signing contracts for cross-border financing and no later than 3 working days prior to withdrawals, enterprises shall submit a filing through the Information System of Capital Accounts with the State Administration of Foreign Exchange (the “SAFE”) to record the signing of a cross-border financing contract. Before conducting cross-border financing for the first time, financial institutions shall calculate the risk-assessed cross-border financing balance and risk-assessed cross-border financing limit and report the detailed calculation process to the PBOC and the SAFE.

b. Compared to the existing cross-border financing regulations, the Circular provides that the risk-assessed cross-border financing limit shall be calculated with the base of net assets of the non-financial enterprises or capital of financial institutions. If enterprises carry out cross-border financing within the limit, the financing quota of the non-financial enterprises and financial institutions could be greatly increased.

c. Non-financial enterprises may use foreign exchange funds after conducting foreign exchange settlements on the basis of actual demand, which will broaden the use of financed funds. Financial institutions may also use foreign

exchange funds after foreign exchange settlement subject to the SAFE approval.

d. The Circular adopts an integrated management of multiple cross-border debts, reducing management costs of non-financial enterprises and financial institutions. In the meantime, the scope of management of the PBOC and foreign exchange authorities will be clarified according to the regulated market participants, from which non-financial enterprises and financial institutions will benefit.

3.3 Next Steps

As the regulatory body under the Circular, the SAFE is expected to issue relevant regulations. In particular, the Circular distinguishes duties of the PBOC and the SAFE and enterprises are required to conduct cross-border financing

accordingly, details of which are to be specified in the SAFE's implementation rules in the future. Before issuance of such implementation rules, enterprises could only conduct certain cross-border financing, such as borrowing of foreign debts according to the current regulations of the PBOC and the SAFE. In addition, although the Circular did not specify whether the SAFE is required to issue further implementation rules on cross-border financing for financial institutions other than the 27 banks directly supervised by the PBOC, it is still worth noting whether the SAFE will issue relevant implementation rules and supplemental regulations to the Circular in the future.

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