

SAFE Released New Regulation over Centralized Management of Cross-border Funds

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On 15th March, the State Authority of Foreign Exchange (hereinafter "SAFE") promulgates "Provisions on the Centralized Operation and Management of Cross-border Funds by Multinational Companies (hereinafter "MNCs")" (Huifa [2019] No.7)¹ (hereinafter "Circular No.7"), taking effect from the same date. Circular No. 7 adjusted and relaxes based on Circular No.36² which was released on 5th August 2015. At the same time, Circular No.36 is terminated along with the release of Circular No.7. This report picks up some significant areas and gives a brief introduction over the contents.

BACKGROUND

[Table 1: the Regulations over Centralized Management Business of FCY Funds]

Effective Date	Notice	Content
28 th Feb 2014	"Implementation Measures of Foreign Exchange Management for Supporting the Development of China (Shanghai) Pilot Free Trade Zone (hereinafter "PFTZ")" (Shanghaihuifa [2014] No.26)	✓ Company that registered in Shanghai PFTZ shall carry out centralized management business of FCY funds as a host company
1 st Jun 2014	"Notice concerning Centralized Management Business of Foreign Exchange Fund for MNCs" (Haihuifa [2014] No.23) ³	✓ Company(including financing company) shall carry out centralized management business of FCY funds as a master company
5 th Aug 2015	"Provisions on the Centralized Operation and Management Business of Foreign Exchange Funds by MNCs" (Haihuifa [2015] No.36)	✓ FCY cross-border pooling shall be under foreign debt quota management ✓ "Haihuifa [2014] No.23" is terminated and part of contents are adjusted
15 th Mar 2019	"Provisions on the Centralized Operation and Management Business of Cross-border Funds by MNCs" (Haihuifa [2019] No.7)	✓ "Haihuifa [2015] No.36" is terminated and part of contents are adjusted and relaxed, being unified with centralized management business of RMB funds

¹ SAFE 15th Mar 2019. Retrieved from: <http://m.safe.gov.cn/safe/2019/0318/12717.html>

² SAFE 5th Aug 2015. Retrieved from: <https://www.safe.gov.cn/beijing/2015/0910/502.html>

³ SAFE 18th Apr 2014. Retrieved from: <http://m.safe.gov.cn/safe/2014/0425/8762.html>

Main Content

Circular No.7 relaxes by a large range compared to Circular No.36, especially regarding the contents below. For details, please refer the below graph.

<ul style="list-style-type: none"> ✓ To simplify and unify the registration process of foreign debt and overseas lending regarding cross-border pooling ✓ To adjust the quota of foreign debt and overseas lending (For foreign debt: twice of owner's equity; overseas lending: 30% of owner's equity) ✓ To further facilitate the FCY income conversion under capital account ✓ For domestic master account(including RMB account), there is neither currency restriction nor account number limit ✓ The restriction of maximum three settlement banks is cancelled ✓ International master account is cancelled, instead NRA(Non-resident Account) is allowed to be used ✓ MNCs' centralized management business of cross-border funds shall be allowed to stop after filing in SAFE

[Table 2: the Comparison between Circular No.7 and Circular No.36]

Item	Circular No.36 (Terminated)	Circular No.7
Filing of foreign debt & overseas lending	<ul style="list-style-type: none"> ✓ The host company shall respectively conduct filing process of foreign debt or overseas lending according to different kinds of currencies and debt owner or creditor 	<ul style="list-style-type: none"> ✓ Enterprises shall register foreign debt and/or overseas lending in one time based on the centralized quota ✓ The host company no longer needs to respectively conduct filing process of foreign debt or overseas lending according to different kinds of currencies and debt owner or creditor
Foreign debt quota	<ul style="list-style-type: none"> ✓ Either owners' equity of each domestic member company or investment gap model 	<ul style="list-style-type: none"> ✓ Twice of the Owners' equity of each domestic member company
Foreign debt quota centralization	<ul style="list-style-type: none"> ✓ In case that the host company centralizes all the foreign debt quota, member company shall not borrow foreign debt since the date that host company submits application ✓ In case that the host company centralized some of the foreign debt quota, member company shall borrow foreign debt with the rest part of the quota 	<ul style="list-style-type: none"> ✓ Member company shall not borrow foreign debt since the date that host company submits application ✓ In case that the member company borrows foreign debt by itself before the host company submits application, the quota of member company shall not be counted
Overseas lending quota	<ul style="list-style-type: none"> ✓ Owners' equity of each domestic member company × 50% 	<ul style="list-style-type: none"> ✓ Owners' equity of each domestic member company × 30%
Overseas lending quota centralization	<ul style="list-style-type: none"> ✓ The host company can centralize member companies' overseas lending quota 	<ul style="list-style-type: none"> ✓ Member company shall not be allowed to carry out overseas lending business since the date that host company submits application ✓ In case that member company carries out overseas lending business by itself

		before the host company submits application, the quota of member company shall not be counted
FCY income conversion under capital account	/	✓ No need to provide evidence in advance when making payment under capital account via domestic master account
International master account	✓ Available to open an account upon needs	<ul style="list-style-type: none"> ✓ The international master account shall be cancelled ✓ NRA is available for centralizing overseas members' funds
Domestic master account	✓ The currency is limited to FCY without restriction on account number	✓ For domestic master account(including RMB account), there is neither currency restriction nor account number limit
Registration/termination process	/	<ul style="list-style-type: none"> ✓ Filing notice shall be effective within one year since releasing ✓ MNCs can terminate centralized management business of cross-border fund after conducting filing in SAFE
Settlement bank	✓ Maximum three settlement banks in principle	✓ No restriction

COMMENTS

Overall, Circular No.7 relaxes compared to Circular No.36. However, for those companies who are in high needs of conducting centralized management business of FCY funds, the requirement that "the total business revenue of previous year shall be over USD 100 mil" remains unchanged. Moreover, regarding overseas lending, the limit is reduced to 30% of domestic member companies' owners' equity from 50% of that of Circular No.36, which means the amount repaying to overseas decreases.

On the other hand, in terms of the foreign debt quota management, a lot of points still remain unclear and yet to figure out. For example, whether "investment gap model" is still working or not, how to calculate foreign debt quota of special industry such as financing leasing company, whether the RMB cross-border pooling and centralized management business of RMB funds via domestic master account would be separately managed etc. We will keep an eye on practical interpretation which is expected to release later on.

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