

## Higher Level of Opening Up for Cross-border Trade and Investment in Selected Areas in China

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On 4<sup>th</sup> Jan 2022, the State Administration of Foreign Exchange (hereinafter “SAFE”) promulgated a “Pilot Scheme of Higher Level of Opening Up for Cross-border Trade and Investment in Shanghai Pilot Free Trade Zone – Lingang New Area and Other Selected Areas” (Huifa [2021] No.35) (hereinafter “Circular No.35”).

Furthermore, implementation rules under Circular No.35 were issued respectively before Lunar New Year by SAFE branches of 4 selected pilot areas, have drawn public’s attention on the bold reform. The 4 selected pilot areas are Nansha New Area of the Guangdong Pilot Free Trade Zone (FTZ) (scheme released on 25<sup>th</sup> Jan), Yangpu Economic Development Zone of the Hainan Free Trade Port (scheme released on 27<sup>th</sup> Jan), Lingang New Area of the Shanghai Pilot FTZ (scheme released on 29<sup>th</sup> Jan), and Beilun District of Ningbo, Zhejiang Province (scheme released on 29<sup>th</sup> Jan).

### BACKGROUND

The Chinese government has been pushing forward foreign exchange reforms in recent years. For instance, easing restrictions on foreign debt under capital account for the convenience of cross-border trade (e.g.: introduction of Macro-prudential management mode), overseas lending (e.g.: expansion of the lending quota) and multi-currency cross-border pooling have been carried out. Nevertheless, some bottlenecks remain practically. Further improvements on the regulations are thus expected for creating a more business-friendly environment.

Lately, with the slowdown of China’s domestic economic growth, the expansion and revitalization of cross-border trade and investment between China and overseas have become an increasingly important issue for the Chinese government, which aims to strike a balance between domestic-international dual circulation. To support the development of corporates and the real economy, there is a growing need to adjust the essential fields of foreign exchange management such as settlement, investment and lending, financing and utilization of multinational business funds.

The SAFE issued Circular No.35 against such background. Given the difficulties to open up all fields nationwide at the same time, 4 areas with relatively active investment, trade and business have been designated as pilot areas to perform demonstration. When the scheme achieves exemplary results, it might be expanded nationwide in the future. By reducing the conventional regulatory barriers as many as possible through bold reform and opening up, Circular No.35 is considered as an unprecedented policy relaxation that can make contribution to the development of corporates and the real economy.

### MAIN CONTENT (EXTRACT)

The implementation rules on 4 pilot areas are very similar. The table below takes Nansha New Area of the Guangdong Pilot FTZ as an example to explain the details. Including 7 appendices, the Guangdong SAFE issued “Implementation Rules on New Foreign Exchange Management for Higher Level of Opening Up for Cross-border Trade and Investment in Nansha New Area of the Guangdong FTZ” (Yuehuifa [2022] No.1) on 25th Jan 2022. This chapter concentrates on polices about current and capital accounts that draw public’s attention.

## 【CURRENT ACCOUNT】

<b>LIBERALIZE AND FACILITATE CROSS-BORDER TRADE AND INVESTMENT</b>	
<b>CONTENT</b>	<p><u>Scope</u></p> <ul style="list-style-type: none"> <li>■ “Quality companies” which registered and operate in Nansha New Area of the Guangdong FTZ. The standards of “quality companies” can be defined by pilot banks. (Article 5 of appendix 1)</li> </ul> <p><u>Simplification of the process of foreign exchange receipts and payments</u></p> <ul style="list-style-type: none"> <li>■ Based on companies’ instructions of fund transfer to pilot banks, after conducting due diligence, “quality companies” are allowed to conduct foreign exchange receipts and payments under current accounts. (Article 5 of appendix 1)</li> </ul> <p><u>New type of international trade settlement</u></p> <ul style="list-style-type: none"> <li>■ Depends on the strategic positioning and industrial characteristics of the pilot areas, pilot banks can innovate financial services to carry out foreign exchange receipts and payments for international trade that are in compliance and suitable for companies in pilot areas. (Article 6 of appendix 1)</li> <li>■ Pilot banks are allowed to self-determine the supporting evidence for checking. (Article 9 of appendix 1)</li> <li>■ Definition of new type of international trade: Includes but not limited to cross-border e-commerce, repair for bonded goods, trade in goods and services under new type of offshore international trade (including offshore resale, global procurement, offshore consignment processing, overseas procurement of goods for contract projects, etc.) (Article 18 of appendix 1)</li> </ul> <p><u>Settlement Netting</u></p> <ul style="list-style-type: none"> <li>■ Companies in the pilot area are allowed to conduct cross-border settlement netting. (Article 7 of appendix 1)</li> <li>■ Pilot banks are allowed to self-determine the evidence for checking. (Article 9 of appendix 1)</li> <li>■ Definition of settlement netting: A method to consolidate multiple amounts receivable and payable between companies in the pilot areas and offshore trade parties and offsets the cash flows into a single payment. The offshore trade parties include a single corporate, offshore fund centralised management organization and etc. (Article 18 of appendix 1)</li> </ul> <p><u>Special refunds for trade in goods</u></p> <ul style="list-style-type: none"> <li>■ Instead of registration with SAFE, pilot banks are allowed to accept registration for special refunds for trade in goods*. (Article 8 of appendix 1) *In case refund could not be finished by using the original payment route or the payment period is over 180 days.</li> <li>■ Pilot banks are allowed to self-determine the evidence for checking. (Article 9 of appendix 1)</li> </ul>
<b>COMMENT</b>	<ul style="list-style-type: none"> <li>■ Similar to cross-border RMB, the convenience of foreign currency settlement is expected to be significantly improved. Since foreign currency receipts and payments can be conducted at the bank’s own discretion without submitting multiple pieces of evidence, which was required in the past, the operational burden of companies is presumed to be reduced.</li> </ul>

	<ul style="list-style-type: none"> <li>■ With the opening up of new type of international trade settlement, a wide range of offshore trade schemes will be available in the future. Companies are more likely to enjoy profits from new businesses.</li> <li>■ Lifting restriction of cross-border settlement netting of individual companies is supposed to facilitate the settlement efficiency with offshore trade parties such as the head office in Japan, as well as to improve financial management.</li> </ul>
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## 【CAPITAL ACCOUNT】

1. FOREIGN DEBT	
<b>CONTENT</b>	<p><u>Scope of foreign debt facilitation and its quota</u></p> <ul style="list-style-type: none"> <li>■ Foreign debt quota for eligible companies is lifted to the equivalent of USD 5 million based on actual needs. Eligible pilot companies refers to companies with independent intellectual property rights, advanced technologies, good market prospects and small scale in net assets that are registered in Nansha New Area of the Guangdong Pilot FTZ. (Article 3 of appendix 2)</li> </ul> <p><u>Criteria (Article 4 of appendix 2)</u></p> <ol style="list-style-type: none"> <li>i. Registered and operating in Nansha new area of the Guangdong Pilot FTZ that are not financial institution (except real estate companies, government financing platforms, finance leasing companies, finance guarantee companies, commercial factoring companies, local asset management companies, microfinance companies, pawn shops, and other institutions).</li> <li>ii. Meet the requirements of the “Administrative Measures for the Determination of High and New Tech Enterprises (Guoke Fahuo [2016] No.32)” and certified by related authorities.</li> <li>iii. Class A in foreign exchange management classification for trade in goods</li> <li>iv. No records of administrative penalties for foreign exchange violations in the past two years</li> </ol> <p><u>Notes</u></p> <ul style="list-style-type: none"> <li>■ Pilot companies that are approved for the scheme of foreign debt facilitation cannot borrow foreign debts through the macro-prudential management method or the investment gap model method. The balance of unpaid foreign debt borrowings consumes debt quota of the foreign debt facilitation scheme. (Article 5 of appendix 2)</li> <li>■ After being approved for joining the scheme of foreign debt facilitation, pilot companies have to withdraw foreign debt within 1 year. Otherwise, SAFE has the authority to adjust the foreign debt facilitation quota to 0. (Article 7 of appendix 2)</li> </ul> <p><u>Prohibited Uses of Fund</u></p> <ul style="list-style-type: none"> <li>■ The fund borrowed by the pilot companies, shall not be directly or indirectly used for expenditures outside the business scope or prohibited by the national laws or regulations.</li> <li>■ It should also not be used for securities investment, purchase or construction of real estate that is not for own use, investment on real estate companies or government lending platforms, and financing. (Article 8 of appendix 2)</li> </ul>

<b>COMMENT</b>	<ul style="list-style-type: none"> <li>Due to the expansion of financing methods, it is a good news for small and high-tech companies with funding needs.</li> </ul>
<b>2. THE USE OF CAPITAL ACCOUNT (FUND, FOREIGN DEBT, ETC)</b>	
<b>CONTENT</b>	<p><u>Scope of usage of capital account</u></p> <ul style="list-style-type: none"> <li>Broaden the scope of use of capital account (capital, foreign debt, funds raised by offshore listing, etc.) and cancel the restrictions on lending entrusted loans to non-related companies. (Article 16 of main text)</li> </ul> <p><u>Elimination of RMB payment pending accounts</u></p> <ul style="list-style-type: none"> <li>After the funds* in capital account are converted into RMB, it is not necessary to be transferred to the RMB payment pending account. Instead, the fund can be transferred directly to RMB account under the same account name. The scope of use of funds remains unchanged. The existing RMB payment pending account can still be used. (Article 16 of main text)</li> </ul> <p>* Foreign currency funds for onshore re-investment are not eligible.</p>
<b>COMMENT</b>	<ul style="list-style-type: none"> <li>Financial support to non-group companies (such as supply chain companies) will become possible as entrusted loan to non-related companies is allowed.</li> </ul>
<b>3. OVERSEAS LENDING</b>	
<b>CONTENT</b>	<p><u>Ceiling on overseas lending</u></p> <ul style="list-style-type: none"> <li>The overseas lending quota is raised from 50% to 80% of net assets. (Article 8 of main text)</li> </ul>
<b>COMMENT</b>	<ul style="list-style-type: none"> <li>It allows diversified means of fund outflow due to the increase of overseas lending quota.</li> </ul>
<b>4. BUSINESS REGISTRATION RELATED</b>	
<b>CONTENT</b>	<p><u>Registration for onshore re-investment</u></p> <ul style="list-style-type: none"> <li>Registration is not required for foreign-invested companies to carry out onshore re-investment. Investee companies or share capital transferors are exempted from registering acceptance for onshore re-investment. (Article 14 of main text)</li> </ul> <p><u>Businesses that bank can directly accept and process under capital account</u></p> <ul style="list-style-type: none"> <li>Eligible non-financial companies can register foreign exchange businesses (such as offshore lending, foreign debt, cross-border guarantee, overseas listing, employee's incentive plan, offshore hedging and etc.) to banks located in Gaungdong. The evidence required can thus be simplified. (Article 15 of main text)</li> </ul> <p><u>Alleviation of restriction on currency consistency of the cross-border inflow and outflow</u></p> <ul style="list-style-type: none"> <li>By easing the restriction on currency of cross-border inflow and outflow for foreign debt, cross-border guarantee, offshore lending, ODI and other businesses, non-financial companies in pilot areas are allowed to choose currency for each contract inflow and outflow based on actual needs. (Article 17 of main text)</li> </ul>

<p><b>COMMENT</b></p>	<ul style="list-style-type: none"> <li>■ Transaction items under capital account were required to apply to the authorities previously. After transferring the registration procedures to banks, it is expected to simplify the procedures, shorten time required for drawdown and relax the difficulty of application.</li> <li>■ Reduction on foreign exchange risks and improvement on fund management mobility can be expected as companies can choose currency of cross-border inflow and outflow.</li> </ul>
<p><b>5. INTERGRATED DOMESTIC AND FOREIGN CURRENCY CROSS-BORDER POOLING</b></p>	
<p><b>CONTENT</b></p>	<p><u>Criteria (Article 5 of appendix 6)</u></p> <ul style="list-style-type: none"> <li>■ Multinational companies which carry out pooling have to meet the following criteria: <ul style="list-style-type: none"> <li>i. The total amount of operating profit of domestic member companies is more than RMB 10 billion in the previous year. The total balance of receipts and payments in RMB and foreign currency is more than RMB 7 billion in the previous year.</li> <li>ii. The total amount of operating profit of overseas member companies is more than RMB 2 billion in the previous year.</li> <li>iii. The domestic and overseas member companies have not violated the United Nations Security Council resolutions.</li> <li>iv. There has been no severe violations of cross-border operations in the past 2 years. Foreign exchange management classification for trade in goods should be in Class A. On top of it, the companies have not been included in the list of companies under key supervision for cross-border RMB settlement.</li> <li>v. Overseas member companies have not been fallen under restrictions or prohibitions of “Guiding Opinions on Further Directing and Regulating the Direction of Overseas Investments (Guobianfa [2017] No.74)”.</li> </ul> </li> <li>■ Multinational companies that only conduct centralised settlement or settlement netting under current accounts have to meet the above criteria iii &amp; iv.</li> </ul> <p><u>Quota of cross-border pooling (Article 10 of appendix 6)</u></p> <ul style="list-style-type: none"> <li>■ The upper limit of overseas lending to group companies is increased. (Concentration amount of overseas lending = owners’ equities of pool’s members x 80%) The upper limit of foreign debt remains unchanged. (Concentration amount of foreign debt = owners’ equities of pool’s members x 2)</li> </ul> <p><u>Bank account management</u></p> <ul style="list-style-type: none"> <li>■ The master account of domestic fund can be changed to multi-currency account (including RMB). Daylight or overnight overdrafts can be set. (Article 12 of appendix 6)</li> <li>■ After RMB is converted in master (or sub) account of domestic fund, it is not necessary to transfer to RMB payment pending account, but can be transferred directly to RMB master (or sub) account. (Article 13 of appendix 6)</li> <li>■ The foreign debt borrowed by pool header through master account of domestic fund can be transferred from master account of domestic fund to member companies’ own accounts directly. The transaction is exempted from the framework of entrusted loan. (Article 14 of appendix 6)</li> <li>■ Although the ban on free foreign currency conversion within a certain limit will be lifted, funds from foreign currency conversion should be credited to the master account of domestic fund and used preferentially for external payments. (Article 16 of appendix 6)</li> </ul> <p><u>Notice</u></p> <ul style="list-style-type: none"> <li>■ Member companies participating in the concentration quota of foreign debt or overseas lending are forbidden to engage individual foreign debt or overseas lending that is out of the cash pool. (Article 10 of appendix 6)</li> </ul>

	<ul style="list-style-type: none"> <li>■ The currency of cross-border inflows and outflows should be consistent for cross-border pooling under capital account. (Article 18 of appendix 6)</li> <li>■ In principle, multinational companies engaged in pooling are forbidden to engage in other cross-border pooling including quota concentration or operation business. (Article 22 of appendix 6)</li> </ul>
<b>COMMENT</b>	<ul style="list-style-type: none"> <li>■ Policy relaxation (such as lifting the ban on free foreign currency conversion within a certain limit, relaxing the rules on direct connection with existing accounts of domestic member companies and etc.) is expected to bring great convenience to companies.</li> <li>■ The increase of cross-border funding efficiency and treasury management sophistication among group companies can be achieved by enhancing the cross-border pooling function.</li> </ul>

## COMMENTS

- By improving convenience in various aspects, companies are encouraged to explore possibilities to utilize the pilot policy. For instance, companies which find difficulties in obtaining funding could consider making use of foreign debt related rules, while enterprises with surplus funds could apply overseas lending related rules to perform intercompany loans to their parent companies. Besides, under a wider scope of usage of capital account and foreign debts, the policy is also useful for companies which need financial supports to deal with suppliers. Furthermore, trading companies which handle high volume of cross-border settlements are able to enjoy simplified settlement process by submitting fewer supporting evidence. Cross-border pooling policies are being upgraded for multinational companies as well. Generally, the pilot policy is possible for companies to facilitate business using a great variety of measures.
- Only 4 pilot areas are included at this moment. Yet, a part of or the whole part of the pilot policy could possibly be expanded nationwide in the future. For companies with business needs which would like to immediately enjoy the policy, moving to pilot areas or setting up new companies in pilot areas would be an option. However, it is recommended to make prior confirmation as the recognition that whether being considered as a “pilot company” is made according to the standard of banks in pilot areas. On the other side, for companies that currently are not eligible to make full use of the policy, grasping the policy development trend is vital as well. In the future, the trial policy can be utilized for business development when it is expanded nationwide. Therefore, it is wise to keep an eye on the pilot policy trend from now on.
- There are two underlying principles of this policy. One is to entrust authorities procedures and business decisions to banks. Another is to provide convenience to companies with high credibility. To companies with sound and well-developed internal control, the authorities encourage banks to provide quality financial services conveniently and effectively. Meanwhile, instead of relying on authorities’ and banks’ instructions, the pilot policy also implies the importance of companies taking initiative in strengthening internal management mechanism to strive to be “quality companies” in order to enjoy preferential treatment.
- In order for companies to execute daily settlement, investment and financing smoothly, SAFE promulgated this policy to greatly optimise and simplify the existing regulations of current and capital accounts. In addition, with the implementation of RCEP, it is presumed that Chinese subsidiaries can be further utilized and the expansion of Chinese business can even be expected in the future (e.g. to expand business under Belt and Road initiative while enjoying the benefits of “relaxation of regulation” and “enforcement of RCEP”). In such regard, seizing this chance to start planning the establishment of China local financial center, trade center, and operation center is crucial in formulating corporate growth strategies for expanding the business in China.

We will keep an eye closely on related policy trend and update the development accordingly.

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