

## State Administration of Foreign Exchange Promotes Further Facilitation of Cross-Border Trade and Investment

China Business Solution Office  
RMB Internationalization Business Promotion Office

On October 25, 2019, the State Administration of Foreign Exchange (SAFE) released the Circular Regarding Further Promotion of the Facilitation of Cross-Border Trade and Investment (Huifa [2019] No. 28, hereinafter “Circular No. 28”). The circular contains 12 facilitation measures and entered into effect upon the day of its release.

### Summary

- Measures including allowing all foreign-invested enterprises (FIEs) to make Chinese domestic equity investments using capital funds and banks to process the deregistration of companies’ foreign debt will be implemented nationwide.
- The scope of the trial to simplify incoming payments under the capital account will be expanded.
- Trials will be conducted in some areas to eliminate the obligation to register each drawing of foreign debt.

### 1. Background of the Policy

On October 23, 2019, the State Council Executive Meeting approved a plan which would promote the optimization of foreign exchange management and the facilitation of cross-border trade and investment in order to improve the business environment and contribute to the development of the real economy. On October 25, 2019, SAFE officially released the aforementioned plan as Circular No. 28. The circular includes 12 measures for facilitation, with six measures each related to the current account and the capital account. Following on from the business environment optimization regulations recently released by China, Circular No. 28 is a policy that favors ideas such as the facilitation of trade and investment and the simplification of administrative procedures. It aims to entice new foreign enterprises to make inroads into the Chinese market and enterprises already doing business in China to boost their operations there.

### 2. Main Contents of This Announcement

**[Figure 1] The 12 Measures and their Scope of Implementation**

Current Account (6 Measures)		Scope of Implementation
1. Expansion of trial to facilitate foreign exchange receipts and payments	Trade in goods	Other areas which fulfill the criteria (nationwide)
	Trade in services	
2. Simplification of receipt and payment procedures for small-scale cross-border e-commerce for trade in goods		Nationwide
3. Improvement of reporting methods for foreign exchange operations for trade in goods	Elimination of export/import reporting by companies in designated period	Nationwide
	Online reporting for matters relating to trade credit, etc.	Nationwide To enter effect from January 1, 2020
4. Easing of requirements for opening separate accounts for export revenue		Nationwide

pending assessment		
<b>5. Facilitation of registration for branch organizations of companies</b>		Nationwide
6. Permission for prime construction contractors to utilize centralized management of overseas funds		Nationwide
<b>Capital Account (6 Measures)</b>		<b>Scope of Implementation</b>
<b>1. Removal of restriction on non-investment FIEs to invest capital as equity within China</b>		Nationwide
<b>2. Expansion of the trial to simplify incoming payments under the capital account</b>		18 Free Trade Zones (FTZs) + all of Shanghai Municipality
<b>3. Easing of usage restrictions on foreign exchange funds under the capital account after conversion into RMB</b>	<b>Elimination of usage restrictions regarding funds in domestic asset cash realization accounts</b>	Nationwide
	<b>Elimination of usage restrictions on foreign investor bid bonds</b>	
<b>4. Reform of corporate foreign debt registration management</b>	<b>Handling of foreign debt deregistration by banks</b>	Nationwide
	<b>Trial for elimination of the registration for each drawing of foreign debt</b>	Guangdong-Hong Kong-Macao Greater Bay Area (GBA), Hainan
5. Removal of restrictions on the number of foreign exchange accounts under the capital account		Nationwide
6. Trial promotion of foreign transfer of domestic loan assets		GBA, Hainan

Below, we will outline the specifics of the measures above that are in boldface.

➤ **Expansion of Trial to Facilitate Foreign Exchange Receipts and Payments**

<b>[Figure 2] Expansion of Trial to Facilitate Foreign Exchange Receipts and Payments</b>	
<b>Trade in Goods</b>	<ul style="list-style-type: none"> <li>✓ A trial program for the facilitation of foreign exchange receipts and payments for trade in goods is already under way in regions including GBA, Shanghai, and Zhejiang since the start of 2019. It comprises (1) improvements to document screening, (2) elimination of the registration of special foreign exchange refund operations, and (3) simplification of foreign exchange payments for imports.</li> <li>✓ Companies that wish to apply to be included in the above trial must be of a certain size. For example, the participation criteria in GBA stipulates a foreign exchange balance for trade in goods in the prior fiscal year of USD 1 billion or higher, while Shanghai requires USD 400 million or higher.</li> <li>✓ According to the SAFE press secretary (hereinafter, the “Press Secretary”), Circular No. 28 will expand the trial to “other regions which satisfy the criteria.” It is expected that specific rules related to the implementation for each area will be revealed at a later date.</li> </ul>
<b>Trade in Services</b>	<ul style="list-style-type: none"> <li>✓ Circular No. 28 details an expansion of the scope of the trial to include trade in services in addition to trade in goods.</li> <li>✓ Previously, based on the official announcement from the State Administration of Taxation and SAFE on issues concerning the filing of tax for external payments for</li> </ul>

	<p>trade in services (Official Announcement No. 40, 2013), if a company makes any single overseas payment in foreign currency funds for trade in services of USD 50,000 or above, it must submit documents to the relevant national tax authority where the company is located, then make the payment through the bank after the bank screens the supplied “tax filing form.” Under Circular No. 28, the bank making the foreign currency payment can now “complete the screening electronically through the sharing of information.”</p>
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➤ **Improvement of Reporting Methods for Foreign Exchange Operations for Trade in Goods**

**[Figure 3] Improvement of Reporting Methods for Foreign Exchange Operations for Trade in Goods**

<p><b>Elimination of Export/Import Reporting by Companies in Designated Period</b></p>	<ul style="list-style-type: none"> <li>✓ Following a circular by SAFE titled Printing and Distributing Relevant Issues Concerning the Regulations for Foreign Exchange Administration for Trade in Goods (Huifa [2012] No. 38, hereinafter “Circular No. 38”), SAFE designated a training period for trading companies of “90 days from the first trade-related foreign exchange transaction,” and stipulated that “within 10 business days after the end of the training period, the company must submit a written report to SAFE detailing all cargo imports and exports occurring within the designated period and the status of each trade receipt and payment.”</li> <li>✓ Circular No. 28 removes the requirement to report the above, and modifies the supervisory method to enable SAFE to perform monitoring through electronic systems.</li> </ul>
<p><b>Online Reporting for Matters Relating to Trade Credit, etc.</b></p>	<ul style="list-style-type: none"> <li>✓ According to Circular No. 38, a company is obligated to provide SAFE with reports in writing in cases including the following:                     <ol style="list-style-type: none"> <li>(1) Trade credit: When a company has not reported to SAFE through the monitoring system within 30 days from the date of an advance deposit or pre-payment with an advance period of 30 days or more.</li> <li>(2) Trade finance: When a company has not reported to SAFE through the monitoring system within 30 days from the date of import of cargo which was imported using trade finance such as a usance letter of credit of 90 days or more or payment via an overseas proxy.</li> </ol> </li> <li>✓ According to the Press Secretary, “all reporting relating to special operations for trade credit will be completed online.” However, this excludes cases in which there is a discrepancy with the actual trade. Furthermore, as an upgrade to the foreign exchange monitoring system for trade in goods will be required, these operations will begin on January 1, 2020.</li> </ul>

➤ **Facilitation of Registration for Branch Organizations of Companies**

**[Figure 4] Facilitation of Registration for Branch Organizations of Companies**

	<ul style="list-style-type: none"> <li>✓ On December 7, 2018, the General Administration of Customs released the Announcement of Relevant Matters on Further Optimizing the Registration Management of Customs Declaration Entities (Official Announcement No. 191, 2018), removing the ban on import/export customs clearance operations by branch organizations from February 1, 2019. Subsequently, SAFE offices in each region started handling applications, modifications, and deletions for the “registry for goods trading companies” for branch organizations of companies. However, the main corporate entity was required to submit its business license</li> </ul>
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for this.

- ✓ Circular No. 28 removes this requirement and allows branch organizations to submit their own business license, providing either the original or a copy.

➤ **Removal of Restriction on Non-Investment FIEs to Invest Capital as Equity within China**

**[Figure 5] Removal of Restriction on Non-Investment FIEs to Invest Capital as Equity Within China**

- ✓ On July 10, 2019, the Shanghai Branch of SAFE released the Fourth Version of the Detailed Rules on Foreign Exchange Administration Reform in the China (Shanghai) Pilot FTZ. FIEs in the Shanghai Pilot FTZ whose primary business activity is not investment were permitted to make domestic equity investments using foreign exchange capital. Domestic equity investments include the establishment of new subsidiaries and the absorption through mergers of other companies in China.
- ✓ According to Circular No. 28, when a non-investment FIE makes a domestic equity investment using foreign capital, according to regulations the entity receiving the investment must register a domestic reinvestment, open a designated capital fund account, and deposit the capital in there. However, it is not necessary to register the cash investment. When a non-investment FIE performs a domestic equity investment using converted RMB, according to regulations the entity receiving the investment must register receipt of the domestic reinvestment, open a “capital account for RMB settlements and pending payments” and deposit the funds in there.
- ✓ Circular No. 28 expands this policy to cover all of China. According to the Press Secretary, of the 370,000 FIEs registered in China, fewer than 3,000 are designated for investment, so this change will benefit 99% of the FIEs.

➤ **Expansion of the Trial to Simplify Incoming Payments under the Capital Account**

**[Figure 6] Expansion of the Trial to Simplify Incoming Payments under the Capital Account**

- ✓ A trial program which allows companies to handle incoming transactions under the capital account (including capital, foreign debt, and funds from overseas market listings) directly using the “Foreign Exchange Capital Account Payment Order” and drops the requirement for prior screening of each individual transaction, has been implemented in 12 FTZs including the Shanghai FTZ and the Tianjin FTZ. Circular No. 28 further expands the scope of the trial to include the six new FTZs established in 2019 as well as the entirety of Shanghai Municipality.

➤ **Easing of Usage Restrictions on Foreign Exchange Funds Under the Capital Account After Conversion into RMB**

**[Figure 7] Easing of Usage Restrictions on Foreign Exchange Funds Under the Capital Account After Conversion into RMB**

<p><b>Elimination of Usage Restrictions Regarding Funds in Domestic Asset Cash Realization Accounts</b></p>	<ul style="list-style-type: none"> <li>✓ Previously, when a company in China received foreign currency remitted directly by a foreign investor in exchange for the transfer of domestic equity, those funds would be managed as capital account foreign exchange funds after being deposited in a domestic asset realization account. Circular No. 28 removes this restriction, allowing the funds to be used after being converted into RMB directly by the bank upon receiving evidence of relevant operations on the part of the company transferring the domestic equity.</li> <li>✓ The above condition does not apply to payment for equity transfers made in foreign currencies within China. When a domestic enterprise receives equity transfer funds in</li> </ul>
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	<p>a foreign currency sent by a non-investment enterprise, the money must be deposited into a foreign currency capital fund account and the funds must be managed as capital account foreign exchange funds.</p>
<p><b>Elimination of Usage Restrictions on Foreign Investor Bid Bonds</b></p>	<p>✓ Previously, it was stipulated that with regard to bid bonds from foreign investors that “the use is limited to transaction guarantees, it cannot be converted to RMB, and it must exclude collateral with a right of pledge,” and “money must be transferred back to the original account regardless of the outcome of the bid.” With Circular No. 28, the requirement to have funds in a security deposit account not to be converted to RMB is lifted, and direct conversion into RMB is permitted in the event of a successful bid or the payment of compensation for a breach of contract. Circular No. 28 also negates the requirement for the bid bond funds to be paid back into the original remitting account, allowing upon closing of the deal for the bond amount to be used for lawful investment within China or for the payment of considerations in China or abroad.</p>

➤ **Reform of Corporate Foreign Debt Registration Management**

**[Figure 8] Reform of Corporate Foreign Debt Registration Management**

<p><b>Handling of foreign debt deregistration by banks</b></p>	<p>✓ The deregistration of foreign debt will now be handled directly by banks in place of SAFE. In addition, the trial removal of the time limit on companies for this process which has already been implemented in areas including the Shanghai FTZ will be implemented nationwide with Circular No. 28.</p>
<p><b>Trial for Elimination of the Individual Registration of Foreign Debt</b></p>	<p>✓ On January 13, 2017, the People’s Bank of China released the Circular on Implementing Macro-Prudential Management of Comprehensive Cross-Border Financing (Yinfa [2017] No. 9), in which a company’s allowed foreign debt quota was increased to two times the company’s net assets. However, it was necessary to complete the process of reporting the cross-border financing situation on SAFE’s capital account information system within 3 business days after signing a contract for foreign financing and before the contract execution date.</p> <p>✓ Circular No. 28 will trial the removal of the requirement to register the information each time the amount of foreign debt is drawn. Enterprises within the trial area will, upon registering foreign debt of two times their net assets with their local SAFE office, be allowed to procure foreign funds freely within the registered limit and deposit funds, withdraw funds, and convert funds to and from RMB directly at a bank. According to the Press Secretary, the trial area outlined in Circular No. 28 is defined as GBA (Guangdong, Hong Kong, and Macao) and Hainan.</p>

**3. Impact on Companies**

Circular No. 28 has provided measures that will further facilitate foreign investment in both the current account-related and capital account-related domains. For instance, the nationwide implementation of domestic reinvestment of foreign-currency capital by non-investment FIEs is considered to be a move that will stimulate more foreign enterprises to invest in China. The expansion of trial programs to ease regulations pertaining to the capital account and facilitate current account inflows and outflows, such as the processing of foreign debt deregistration by banks, reduces the operational workload on enterprises in carrying out their management activities. As some sections of Circular No. 28 still require clarification by SAFE with regard to the detailed

rules for implementation, we will continue to follow up on relevant information and share the details as they come.

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