

State Administration of Foreign Exchange (SAFE) Guangdong and Shenzhen Branches to Conduct Trial Reform of Foreign Debt Management by Consolidated Registration

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On March 30, 2020, the branches of the State Administration of Foreign Exchange (SAFE) in Guangdong and Shenzhen jointly issued a circular regarding foreign debt management to encourage the development of the Guangdong-Hong Kong-Macao Greater Bay Area (GBA) and the Shenzhen pilot demonstration area (Yuehuifa [2020] No. 15, hereinafter “Circular No. 15”), announcing a series of measures to facilitate the handling of foreign debt. One measure of note is the introduction of consolidated registration of external debt.

Key Takeaways

- A company that meets certain conditions may now apply to have the registration of their external debt consolidated.
- A company that is allowed to use consolidated registration of external debt is no longer required to register each case individually.

1. Background of the Policy

In October 2019, SAFE released the Circular Regarding Further Promotion of the Facilitation of Cross-Border Trade and Investment (Huifa [2019] No. 28, hereinafter “Circular No. 28”), declaring that obligatory individual registration of corporate foreign debt in the GBA and Hainan would be eliminated.

In February 2020, the SAFE branch in Hainan released a circular regarding policy for encouraging Hainan Free Trade Port to build foreign exchange innovation business (Qionghuifa [2020] No.1) to take the initiative in conducting a trial for eliminating individual registration of corporate foreign debt.

This Circular No. 15 aims to realize the policies of Circular No. 28 in the GBA. This article will focus on the trial for eliminating individual registration of corporate foreign debt.

2. Main Contents

Eliminating individual registration of corporate foreign debt involves enabling a non-financial corporation that satisfies certain requirements to have its foreign debt registered at its local SAFE branch in a consolidated manner according to a simplified registration process. This eliminates the need to register each foreign debt individually.

[Fig. 1] Consolidated Registration of Foreign Debt

Applicant's registration location	✓ Companies within the jurisdiction of the SAFE branches in Guangdong and Shenzhen
Conditions for application	✓ A company that has been established and operating for one year or more and currently procures foreign loans through the Full-caliber Macro-Prudential

	<p>Management Model for cross-border financing.</p> <ul style="list-style-type: none"> ✓ The company has no record of administrative penalty for violating foreign currency regulations in the past three years (or since its establishment for a company established within the past three years) ✗ The trial in these guidelines does not apply to real-estate firms, government lending platforms, guarantee companies, retail loan companies, pawn shops, financial leasing companies, commercial factoring companies, organizations for regional asset management or similar, or companies employing the Investment Gap Model for foreign loans.
<p>Maximum amount of foreign debt registration</p>	<ul style="list-style-type: none"> ✓ The maximum amount for consolidated registration of foreign debt by a company on this trial shall not exceed the risk-weighted maximum balance for cross-border financing. ✓ (Risk-weighted maximum balance for cross-border financing) = (Net assets) × (Cross-border financing leverage ratio) × (Macro-prudential policy parameter) ✓ The cross-border financing leverage ratio shall initially be set as 2. The macro-prudential policy parameter shall initially be set as 1. ✓ In the case where a company on the trial already has foreign loans, SAFE must subtract the contract amount of foreign debt already registered individually from the company’s maximum amount for consolidated registration of foreign debt. After repayment of an individually registered loan, the company can apply to SAFE to increase the maximum amount for consolidated registration of foreign debt.
<p>Foreign debt not eligible for consolidated registration</p>	<ul style="list-style-type: none"> ✓ Foreign debt registration at the local SAFE will be required each time the company returns funds involving outbound guarantees to China as foreign debt, issues bonds offshore, or registers foreign debt with an outbound guarantee. SAFE must reduce the company’s maximum amount of collective registration for foreign debt according to the contract amount of individually registered debt.
<p>Documents for Application</p>	<ul style="list-style-type: none"> ✓ Application form (with basic information, the planned amount individually registered foreign debt, a statement confirming no record of penalty for violating foreign currency regulations in the past three years, etc.). ✓ Business permit. ✓ The latest annual, audited financial report.
<p>Benefit policy</p>	<ul style="list-style-type: none"> ✓ Upon consolidated registration of foreign debt, a company on this trial opens a bank account for foreign loans to conduct loan transactions and execute foreign-to-domestic/domestic-to-foreign currency swaps within the maximum amount based on its registration certificate.
<p>Requirements for loan use</p>	<ul style="list-style-type: none"> ✓ The use of foreign loans must be consistent with the foreign debt contract and permissions granted by foreign debt management regulations. ✓ A company on this trial must store, and have ready for inspection, evidentiary documents concerning relevant foreign debt contracts, foreign-currency-to-RMB swaps, use of loans, etc. for five years.
<p>Validity period of application</p>	<ul style="list-style-type: none"> ✓ In the event that the company on this trial does not receive any foreign loans within one year from the consolidated registration based on these guidelines,

	SAFE reserves the right to adjust the company’s maximum amount to zero.
Change in net assets	✓ In the event that the company’s current fiscal year’s net assets change by 20% or more, either positively or negatively, compared to the previous year’s audited net assets, the company on this trial has to actively communicate with its local SAFE branch about applying to adjust the maximum amount for consolidated registration of foreign debt.

3. Impact on Companies

The trial for consolidated registration of foreign debt is currently practiced in limited number of regions. Now that companies within the jurisdiction of the SAFE branches in Guangdong or Shenzhen which satisfy the relevant conditions have been given priority for the trial, foreign loan procedures have been greatly simplified, benefitting companies with cash-flow challenges in particular.

As companies employing the Investment Gap Model are not eligible for this guideline, such companies can apply for consolidated registration after appropriately switching to the Macro-Prudential Management Model. Meanwhile, as Circular No.15 makes no mention of a “foreign loan risk-weighted balance,” it is anticipated that a loan’s term or currency will not have an impact on the calculation of the participating company’s foreign debt balance for consolidated registration, unlike the conventional Macro-Prudential Management Model. We recommend that you consult your local SAFE branch prior to registration.

We will continue to follow up on relevant information and share the details as they come.

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