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Regulations on Foreign Debts Borrowing Relaxed in Shanghai

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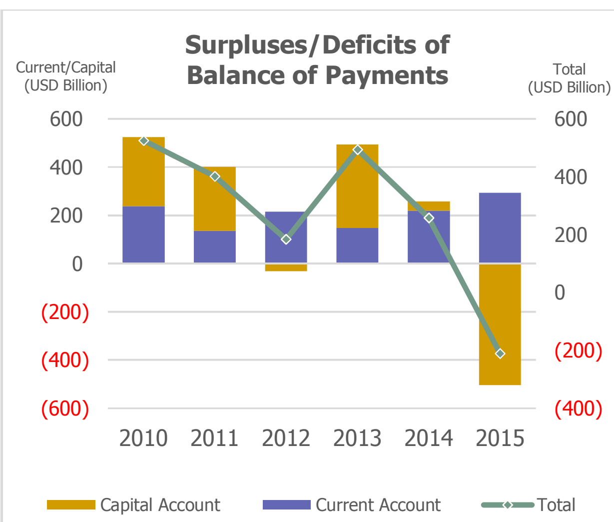
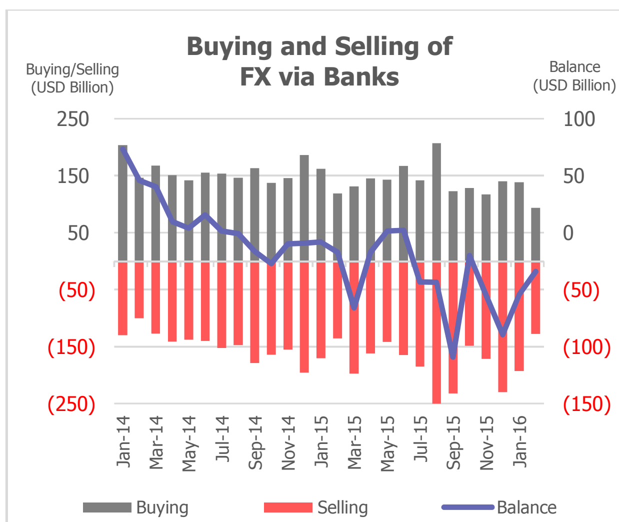
The Shanghai Branch of the State Administration of Foreign Exchange (hereinafter "Shanghai SAFE") promulgated a "Circular on the Relevant Issues Concerning Recent Credit Business" (hereinafter the "New Circular") on 8 March 2016. For Chinese and foreign-invested enterprises that meet the requirements in the whole Shanghai area, regulations on foreign debts borrowing have been relaxed and/or additional foreign debt quota can be applied with prior approval from the Shanghai SAFE.

BACKGROUND

Balance of payments in China turned from surplus to deficit in 2015, with a slight increase in surplus under the current account and a sharp decline to deficit under the capital account. Other than the increasing overseas direct investments and foreign stocks and bonds investments, the repayments of foreign debts by the banks and enterprises in response to the foreign exchange (hereinafter "FX") fluctuations was also a major factor. In dollar terms, the deficit between buying and selling of FX via banks reached approximately $466 billion, with an annual decrease of 9% in buying side and 24% increase in selling side. Great volatility could be seen in the second half of 2015 and capital outflows eased somewhat in early 2016.

Under such background, Shanghai, China's financial centre that has always been the pilot of financial reform, has introduced the New Circular in order to facilitate cross-border capital inflows and restore the balance.





Source: Produced based on the data disclosed by the State Administration of Foreign Exchange

HIGHLIGHTS

Corporations with rational commercial needs are allowed to apply for foreign debts, as long as the financing activities are conducive for adjustments on the FX balance guided by the state lately, and also in line with the tendency of reform. Applications will be approved by the Shanghai SAFE on a case-by-case basis.

Chinese Enterprises

- Short-term foreign debt borrowings are no more subject to the previous regulations.
- Foreign debts in foreign currencies can be converted to RMB.

Foreign-invested Enterprises

- Foreign-invested companies limited by shares, and foreign-invested enterprises with no remaining foreign debt quota, are allowed to borrow foreign debts within their net asset value[1].
- For foreign-invested enterprises implementing "investment gap model"[2], medium and long-term foreign debts can be managed by balance in case the foreign debt quota is insufficient.

Others

- Financial leasing companies (financial leasing companies under banking institutions) are allowed to convert the foreign currency denominated foreign debts to RMB.
- Domestic companies with foreign debt quota are allowed to transfer funds under "onshore guarantees for offshore loans"[3] back to Mainland China in the form of foreign debts borrowing.

COMMENTS

Introduction of the New Circular has enabled Shanghai enterprises with insufficient foreign debt quota, or those which were difficult to borrow foreign debts previously to raise funds from overseas. However, as prior approval must be obtained from the Shanghai SAFE with no exceptions, time consumed and complexity of application remains unknown. Furthermore, as the New Circular is for the purpose of restoring the FX balance, it is very likely to have a time limit or be subject to change in contents in the future. We will keep an eye on the new trends in reform in Shanghai and other places if any.

[1] Refer to the foreign debt quota for non-financial enterprises registered in the Pilot Free Trade Zones based on the "Circular on the Expansion of Pilot Areas Implementing Macro-prudential Management of Comprehensive Cross-border Financing" (Yinfa [2016] No.18), details could be referred to News Focus No.2 2016 published by BTMU, Hong Kong Branch. http://rmb.bk.mufg.jp/files/topics/306_ext_02_en_0.pdf

[2] A foreign debt management model using the gap between total investment and registered capital as the foreign debt quota.

[3] One kind of cross-border guarantees.