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Legal Commentary



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Clarified Operating Rules for RMB Settlement Business in Relation to Foreign Direct Investment

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On October 13, 2011, the People's Bank of China promulgated the Measures for Administration of RMB Settlement Business in Relation to Foreign Direct Investment (the People's Bank of China Circular [2011] No. 23) (the “**Measures**”), to regulate the RMB settlement business operated by financial institutions in the banking industry in relation to foreign direct investment. On June 14, 2012, PBOC promulgated the Notice of Clarified Operating Rules on RMB Settlement Business in Relation to Foreign Direct Investment (Yin Fa [2012] No. 165) (the “**Operating Rules**”) to further clarify the rule in relation to the Measures. This article introduces and summarizes these operating rules.

Firstly, the Operating Rules clarify the opening, deposit and use of certain common accounts for RMB capital funds in foreign direct investment.

#	Use of Capital Funds	Measures	Operating Rules
1.	Upfront Expenses	<p>Under the principle of dedicated account for special use, a dedicated deposit account for upfront expenses in RMB shall be opened for depositing RMB funds used to pay for upfront expenses relating to the investment project and such account may not be used for the receipt and payment of cash.</p>	<p>One overseas investor may only open one dedicated deposit account for upfront expenses in RMB, the name of which shall be the name of the depositor plus “upfront expenses”, and such account shall be a current account.</p> <p>If the overseas investor is an overseas individual, such individual may apply to open an RMB bank settlement account for individuals for the dedicated deposit of upfront expenses.</p> <p>The capital funds in the above dedicated accounts for upfront expenses in RMB shall not be used in the bidding, auction and listing of a piece of land or in the real estate industry</p>
2.	Registered Capital	<ul style="list-style-type: none"> • Under the principle of dedicated account for special use, a dedicated deposit account for RMB capital funds shall be opened to deposit the RMB registered capital remitted by the overseas investor or the RMB capital contribution paid by the overseas investor, and such account may not be used for the receipt and payment of cash. • If an overseas investor makes capital contribution with both RMB fund and fund in foreign exchange, the exchange rate between RMB and the foreign currency shall be the central parity rate of RMB published by PBOC on 	<ul style="list-style-type: none"> • A newly established foreign-invested enterprise shall, upon presentation of its incorporation approvals issued by the competent commercial authority, open a dedicated deposit account for RMB registered capital with a local bank. One set of incorporation approvals may only be relied on for the opening of one dedicated deposit account for RMB registered capital, the name of which shall be the name of the depositor plus “registered capital”. • A foreign-invested enterprise which intends to increase its registered capital shall, upon presentation of its registered capital alteration approvals issued by the competent commercial authority, open a dedicated deposit account for RMB registered capital with a local bank. One set of alteration approvals may only be relied on for the opening of one dedicated deposit account for RMB registered capital, the name of which shall be the name of the depositor

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		<p>the date of registered capital verification.</p> <ul style="list-style-type: none"> If a foreign investment company, a foreign-invested venture capital enterprise, a foreign equity investment enterprise or a foreign-invested partnership engaging in investment as its core business uses RMB to conduct investment activities in China in accordance with the law, the enterprise in which it invests shall apply to open a dedicated deposit account for RMB capital funds, to be used specifically for depositing RMB registered capital or contributed capital and handling the relevant fund settlement business, and such account may not be used for the receipt and payment of cash. 	<p>plus “registered capital”.</p> <ul style="list-style-type: none"> The above dedicated account is an current account, but the capital funds deposited into such account can be re-deposited as fixed deposit up to one year; The accrued debit amount of a foreign-invested enterprise’s RMB capital funds dedicated account shall not exceed the amount specified by relevant governmental approval or filing document; By reference to the regulations applicable to foreign-invested enterprises, a foreign-invested partnership shall open its RMB capital funds dedicated account with the company information brief issued by the competent registration authority or online request result print copy which records the partnership’s capital contribution subscribed for or actually paid in by its partners and was stamped by a request chop of the registration authority.
3.	Merger and Acquisition Capital	<p>If a foreign-invested enterprise is established through the merger or acquisition of a domestic enterprise by an overseas investor with RMB, the Chinese shareholder of the domestic enterprise that is merged or acquired shall apply to open a dedicated deposit account for the merger and acquisition conducted in RMB, to be used specifically for depositing the RMB funds remitted by the overseas investor for the merger or</p>	<ul style="list-style-type: none"> If a foreign-invested enterprise is established through the merger or acquisition of a domestic enterprise by an overseas investor with RMB, the Chinese shareholder of the domestic enterprise that is merged or acquired shall apply to open a dedicated deposit account for the merger and acquisition conducted in RMB by its incorporation approvals issued by the competent commercial authority. Each Chinese shareholder may only apply to open one such dedicated deposit account by one set of approvals, the name of which shall be the name of the depositor plus “merger and

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		<p>acquisition, and such account may not be used for the receipt and payment of cash.</p>	<p>acquisition capital”.</p> <ul style="list-style-type: none"> • If the Chinese shareholder is a domestic individual, such Chinese shareholder may apply to open an RMB bank settlement account for individuals for the dedicated deposit of merger and acquisition capital in RMB. • After the merger or acquisition deal, the capital funds deposited into the above dedicated deposit account for merger and acquisition capital in RMB may be used in accordance with the law, and there is no need to report the details of the domestic uses of such capital funds for filing purpose.
4.	Foreign-invested Enterprise’s Equity Transfer Payment	<p>If an overseas investor pays the consideration for equity transfer in RMB to the Chinese shareholder of a foreign-invested enterprise in China, the Chinese shareholder shall apply to open a dedicated deposit account for equity transfer conducted in RMB, to be used specifically for depositing the RMB funds remitted by the overseas investor as the consideration for equity transfer, and such account may not be used for the receipt and payment of cash.</p>	<ul style="list-style-type: none"> • If an overseas investor pays the consideration for equity transfer in RMB to the Chinese shareholder of a foreign-invested enterprise in China, each Chinese shareholder shall apply to open a dedicated deposit account for equity transfer conducted in RMB by its capitalization alteration approvals issued the competent commercial authority. Each Chinese shareholder may only apply to open one such dedicated deposit account by one set of approvals, the name of which shall be the name of the depositor plus “equity transfer”. • If the Chinese shareholder is a domestic individual, such Chinese shareholder may apply to open an RMB bank settlement account for individuals for the dedicated deposit of equity transfer payment in RMB. • After the equity transfer, the capital funds deposited into the above dedicated

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			<p>deposit account for equity transfer conducted in RMB may be used in accordance with the law, and there is no need to report the details of the domestic uses of such capital funds for filing purpose.</p>
5.	Overseas Loan	<ul style="list-style-type: none"> • A foreign-invested enterprise shall, upon presentation of the RMB loan contract, apply to open a general RMB deposit account, to be used specifically for depositing the RMB funds borrowed from abroad. • If a foreign-invested enterprise uses RMB to repay the principal and interest of its overseas RMB loans, it may directly process the repayment through the bank upon presentation of such materials as the loan agreement, the letter of payment order and the evidence on tax payment. • The amount of RMB and foreign exchange loans borrowed by a foreign-invested enterprise from its overseas shareholders, its affiliated enterprises within the same group and overseas financial institutions shall be combined for calculating the total scale of the loans. 	<ul style="list-style-type: none"> • A foreign-invested enterprise shall not borrow RMB funds from abroad until after its registered capital has been fully and timely paid in. The interest rate of such loans shall be voluntarily determined by and between the borrower and lender in accordance with the business principle and within a reasonable range. However, a foreign-invested real estate enterprise cannot borrow RMB funds from abroad. • For a foreign-invested enterprise, one overseas RMB loan may only open one general RMB deposit account to be used for the receipt and payment of funds, and such account shall be a current account. • Except for a foreign-funded investment company, a foreign-invested financing leasing company and other special foreign-invested enterprises, the total scale of the loans borrowed by a foreign-invested enterprise shall not exceed the difference between its total investment amount and registered capital as approved by competent national authority. • The total scale of the overseas RMB loans borrowed by a foreign-invested enterprise shall be calculated according to the actual accrued amount. If the term of an overseas RMB loan borrowed by a foreign-invested enterprise is extended, the first extension shall not be included in calculating the enterprise's total scale of overseas RMB loans, while the following

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			<p>extensions shall all be included. As for the guarantees extended by overseas institutions or individuals to domestic banks which list a foreign-invested enterprise as the beneficiary, the actually performed part of the RMB loan shall be calculated into the total scale of overseas RMB loans. If a foreign-invested enterprise increases its capital converted from overseas RMB loans, such loans shall not be calculated into the total scale of overseas RMB loans.</p> <ul style="list-style-type: none"> • When combining and calculating the total amount of RMB loans and foreign exchange loans, the exchange rate shall be the central parity rate of RMB published by PBOC on the date of the loan agreement.
6.	Reinvestment Capital	If an overseas investor uses the RMB funds acquired through RMB profit distribution, early recovery of investment, liquidation, reduction of capital, equity transfer, etc. to reinvest in China or to increase the registered capital, the overseas investor may deposit the RMB funds into the dedicated deposit account for the use of RMB for reinvestment.	The name of the dedicated deposit account for RMB investment capital opened by an overseas investor shall be the name of the depositor plus "reinvestment capital".

Secondly, the Operating Rules also stipulate that the use of RMB funds deposited into a dedicated deposit account for RMB capital funds and a general deposit account for overseas RMB loans by a foreign-invested enterprise shall fall within the approved business scope, and shall not be used for the investment in securities and financial derivatives, entrusted loans, or purchase of financial management products or non owner-occupied property. For a non investment foreign-invested enterprise, the RMB funds may not be used for re-investment in China. However, RMB funds deposited into a dedicated deposit account for RMB capital funds and a general deposit account for overseas RMB loans may be used for repayment of domestic or overseas loans.

Additionally, capital funds deposited into a dedicated deposit account for RMB capital funds and a general deposit account for overseas RMB loans shall not be transferred to an RMB deposit account of the same name, except for payment as salaries and enterprise's fund of disbursement for travelling, small amount of purchase and expenses.

Lastly, the Operating Rules further specify the bank's duty of supervision in RMB settlement business in relation to foreign direct investment. The Operating Rules explicitly stipulate that the bank shall submit relevant RMB receipt and payment information to the RMB cross-border receipt and payment information management system within five (5) working days after handling the RMB settlement business relating to foreign direct investment and in a timely, accurate and complete manner. At the same time, the Operating Rules require that the PBOC and State Administration of Foreign Exchange establish an information sharing mechanism for relevant business of foreign direct investment.

Important Announcement

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