

## **5.1 Control over Foreign Exchange of Foreign-Invested Enterprises**

### 5.1.1 Registration of Foreign Exchange of Foreign-Invested Enterprises

#### (a) Documentation Required for Application for Registration

Within 30 days after being issued a Corporate Legal Person Business Licence, a foreign-invested enterprise (FIE) must apply for registration of foreign exchange with the State Administration of Foreign Exchange (SAFE) at the place of its business registration by presenting its FIE Background Information Registration Form, official approval documents and approval certificate of establishment of FIE (copies), Corporate Legal Person Business Licence issued by the State Administration for Industry and Commerce and copy, approved valid contracts and articles of association (copies), and other documents as required by SAFE.

#### (b) Use of Foreign Exchange Registration Certificate

When applying to SAFE for permission to open a foreign exchange account and opening the account with a financial institution, the FIE has to present its Foreign Exchange Registration Certificate and other documents. Upon opening the account, the designated foreign exchange bank would put down the name of the bank, currency type, account number, type of account, and date of opening of account on the foreign exchange registration certificate, complete with its official seal.

#### (c) Annual Inspection of Foreign Exchange Registration Certificate

SAFE inspects the foreign exchange registration certificate annually. FIEs passing the inspection will have their foreign exchange registration certificate validated for another year. FIEs failing to undergo the annual inspection for two consecutive years will have their foreign exchange registration certificate invalidated. FIEs whose foreign exchange registration certificate is revoked

are not allowed to carry out foreign exchange receipt and payment transactions at designated banks without SAFE approval.

Should there be any change in the name, address, business scope of the FIE, or any transfer, capital increase or merger subsequent to the issuance of the foreign exchange registration certificate, the relevant documents have to be submitted promptly to SAFE for filing, to be followed by application for change in particulars or a new certificate.

Upon expiry of the operation term or cessation of business and with approval from the original approving authority, the FIE should within 30 days of cessation, apply for revocation of its foreign exchange registration, surrender the foreign exchange registration certificate, and cancel its foreign exchange account.

For FIEs which have completed foreign exchange registration at the place of business registration, their branch operations elsewhere in the mainland or outside China are not required to go through foreign exchange registration separately.

(d) Registration of Special Types of FIEs

Foreign investors or foreign-funded investment enterprises acquiring the shares of mainland enterprises should, at the time of making payment for the shares, complete the registration procedure for foreign capital payment by foreign investor in share transfer.

FIEs with less than 25% foreign shareholding will be issued an FIE establishment approval certificate and business licence stating "foreign equity ratio less than 25%". This type of FIEs will be subject to SAFE's existing foreign exchange administration system for FIEs and should duly complete FIE foreign exchange registration as well as capital checking.

### 5.1.2 Control Over the Current Account of Foreign-Invested Enterprises

#### (a) Foreign Exchange Receipts under the Current Account

Upon approval by SAFE, an FIE can open a foreign exchange settlement account with a designated bank by presenting its Foreign Exchange Registration Certificate and other supporting documents. For foreign exchange received under the current account, the FIE may retain a certain amount of it within the limit prescribed by SAFE. Any excess portion has to be sold to designated banks.

#### (b) Foreign Exchange Payments under the Current Account

When an FIE has to make external payments within its business scope, it may draw the required amount from its foreign exchange settlement account and any shortage can be made up for by purchasing foreign exchange with renminbi at designated banks. Details are as follows: (1) remittance of after-tax profits and bonuses to the foreign party of an FIE can be made from the foreign exchange account or at designated banks by presenting the board of directors' profit distribution resolution; (2) the after-tax wages and other legitimate incomes in renminbi of an FIE's foreign, overseas Chinese, Hong Kong, Macau and Taiwanese employees may be converted into foreign currency and remitted at designated banks upon presentation of relevant supporting documents; (3) after-tax dividends payable in foreign exchange may be remitted from the foreign exchange account or at designated banks upon presentation of the board of directors' profit distribution resolution.

Enterprises making advance payment for imports to their head office (or parent company) located outside the mainland, or to the subsidiaries or companies invested by or controlled by their offshore head office (or parent company) in a foreign country or region (including Hong Kong, Macau and Taiwan), are not required to submit a letter of guarantee for the advance payment. The FIE can directly complete the foreign exchange purchase and payment procedures at a designated bank by presenting

the relevant proofs such as import contract, import foreign exchange payment verification and cancellation form, proforma invoice, FIE foreign exchange registration certificate and proof of the companies concerned.

(c) Verification and Cancellation of Foreign Exchange Receipts on Exports

The requirement for submitting the verification and cancellation form to SAFE prior to receiving remittances has been cancelled. FIEs are now allowed to complete the procedures for verification and cancellation of foreign exchange receipts on exports in one go on a monthly basis, and can submit the documents online via the e-port system after export declaration instead of going to SAFE in person to submit the hard copies. Upon receipt of foreign exchange, the FIE can go to SAFE and complete the verification and cancellation procedures in one go by presenting the supporting documents including foreign exchange receipts on exports verification and cancellation forms, export declarations, invoices, and counterfoils of the foreign exchange receipts on exports verification and cancellation forms.

5.1.3 Control Over the Capital Account of Foreign-Invested Enterprises

(a) Management of Receipts under the Capital Account

Receipts under the capital account

- Capital fund in foreign exchange contributed by the foreign and Chinese parties to an FIE;
- External debts, external debts-turned-loans, and foreign exchange loans extended by domestic financial institutions in the mainland to an FIE;
- Foreign exchange revenues derived from an FIE's share issue and other foreign exchange receipts under the capital account.

### Management of Capital Fund

- The foreign investor may remit equity capital to an FIE from his foreign exchange account opened in the mainland as a non-resident individual, or from his offshore account with a designated bank authorised by PBOC to conduct offshore business.
- Apart from freely convertible currencies, imported equipment and materials, intangible assets and profits in renminbi, other forms of capital contribution to an FIE are also acceptable upon SAFE approval. These include the development fund and reserve fund (or capital provident fund and surplus provident fund) of the FIE as increased capital of the enterprise; the profit prior to distribution, payable dividend and payable interest thereof of the foreign party as increased capital of the FIE; and the capital contributed to the FIE by a foreign investor in an existing FIE with recovered investment, proceeds from liquidation, share transfer and reduced investment.
- The FIE can open a foreign exchange capital fund account for the capital fund in foreign exchange contributed by the foreign party. Upon approval by SAFE, the account can be used for settlement purpose. Any foreign investor who has not established an FIE in the mainland but is involved in direct investment or in activities related to direct investment may apply to the local SAFE office to open under his name a special foreign exchange account for foreign investors.
- The settlement of the capital fund of a foreign investment project (i.e. the maximum limit as approved by SAFE of foreign exchange capital in an FIE capital fund account) is directly examined and handled by designated foreign exchange banks authorised by SAFE. In other words, based on certain criteria, SAFE delegates the approval power over the settlement of the capital fund of foreign investment projects to qualified banks. Such banks are charged with the responsibility of examining, monitoring and recording all settlement activities. SAFE indirectly

monitors the settlement of capital fund of foreign investment projects through these banks. SAFE approval remains mandatory for the settlement of other foreign exchange transactions under the capital fund account.

- The foreign exchange in the capital fund account may be drawn to pay for the FIE's foreign exchange payments under the current account. With SAFE approved, it can also be used for foreign exchange payments under the capital account.

#### Management of external debts

- For FIEs seeking international commercial loans, prior approval is not required. However, the sum of accumulated medium- to long-term external debts and the balance of short-term external debts must not exceed the difference between the total investment of the project approved and the registered capital of the FIE. The FIE can raise external debts so long as the amount is within the said difference. Should the amount exceed the difference, a new approval of the total investment of the project has to be sought from the original approval authority.
- For FIEs whose total investment amount has changed without permission from the original approval authority, SAFE will not approve the registration and settlement of the capital from the excess portion of the external debt concerned. If the external debt remitted to the account of the FIE has already exceeded the prescribed limit, the FIE concerned should seek approval from the original approval authority to change the total investment amount. Under such circumstances, SAFE will allow the FIE to keep the excess fund for three months. If no approval is granted upon expiry of this period, SAFE will notify the bank where the account is opened to return the excess fund to the original sender.
- After signing an external loan agreement, the FIE should promptly register with SAFE the external debt

on a periodic or per case basis before it can use the foreign exchange obtained. It should also report to SAFE upon actual utilisation of the foreign exchange. The borrower may repay external debts with its own foreign exchange or it may, with SAFE approval, purchase foreign exchange with renminbi to make repayment. All payment of principal and interest on external debts must be approved by SAFE (except in the case of banks).

- Enterprises borrowing external debts, external debts-turned-loans, and foreign exchange loans offered by domestic financial institutions in the mainland can open a special loan account. Deposits of foreign exchange into this account can only be the external debt, external debt-turned-loan or foreign exchange loan in the amount as stipulated in the external loan agreement. Payments made from this account for purposes stipulated in the loan agreement do not require SAFE approval.

#### Foreign exchange receipts from share issuance

- FIE deriving foreign exchange incomes from issuing shares should open a special securities account. Deposits in this account must be incomes from issuance of shares in foreign currency and payments from this account must be those for purposes stipulated in the prospectus approved by the securities regulatory departments. Foreign-invested joint-stock companies with offshore listing and organisations holding the domestic shares of mainland-controlled companies with offshore listing should complete the offshore listing and share issuance foreign exchange registration procedure at SAFE after the China Securities Regulatory Commission (CSRC) has approved the offshore issuance and listing of shares (including increased issuance).

(b) Management of Payments under the Capital Account

In accordance with the *Regulations for Foreign Exchange Control of the People's Republic of China*, all foreign exchange payments under the capital account have to be approved by SAFE.

- Payments from the capital account
  - Repayment of loan principal, and provision of external guarantee in relation to contract compliance;
  - Increase, assignment or other forms of disposal of capital fund in foreign exchange of FIEs;
  - Remittance of capital upon liquidation of FIEs in accordance with relevant regulations;
  - Increased investment or reinvestment within the mainland by the foreign party to an FIE with profits received;
  - Increased investment within the mainland by investment companies with foreign exchange capital.
- Repayment of loans: China adopts an approval system in managing external debts. SAFE will not approve any repayment of external debt unless it has been properly registered. When applying to SAFE for approval to make repayment of external debt principal, interest and related fees, an FIE should present proof of external debt registration, the external loan agreement, and notice by creditor on repayment of principal and interest (the notice should state the respective amounts of principal and interest, interest rate, method of interest computation, and number of interest-bearing days, etc). Upon approval by SAFE, the FIE may make payment through its foreign exchange account or at designated banks. For repayment of foreign exchange loan principal, interest and related fees to domestic financial institutions in the mainland, the FIE may, upon approval by SAFE, proceed to the financial institution where it has an account with to complete the necessary procedures by presenting the required documents such as the foreign exchange-loan



registration certificate, notice by creditor on repayment of principal and interest, and loan agreement.

- External guarantee: The provision of external guarantee has to be approved by SAFE, with the relevant registration procedures completed at the local foreign exchange administration. External guarantee in relation to contract compliance also has to be approved by SAFE.
- Offshore investment: For investment abroad, the source of funds has to be examined by SAFE before an application is filed with the competent approval authority. Upon approval granted, the funds may be remitted out of the country in accordance with the relevant regulations.
- Termination of FIE: When an FIE is liquidated and after all taxes have been paid in accordance with the relevant regulations, the amount that goes to the foreign party may, with approval from SAFE, be remitted through designated banks or carried in person out of the country. However, foreign exchange that goes to the Chinese party should be sold to designated banks in full.
- Reinvestment: Should the foreign party to an FIE wish to reinvest its profits in renminbi or foreign exchange in China, it has to apply to the local foreign exchange administration by submitting the relevant documents. Upon verification, the local foreign exchange administration will issue a certifying document with which the reinvested enterprise can apply for business registration and for credit checking by certified public accountants. Upon presentation of valid proofs from SAFE, the reinvesting enterprise can make payment from its foreign exchange account or capital fund account with the bank.
- The foreign party to an FIE wishing to remit its legitimate share of profits in renminbi out of China may complete the remittance procedure at the bank (by drawing from its own foreign exchange account or by purchasing the required foreign exchange) by

presenting the necessary documents. Alternatively, upon SAFE approval, it can reinvest its renminbi profits in China and enjoy the treatment of foreign exchange investment.

- Increased investment: Should the foreign party to an FIE wish to increase its investment in China, it has to apply to the local SAFE office by submitting the relevant approval documents from the competent departments and other materials.
- Foreign-funded investment companies: Should these companies invest their foreign exchange funds in China, approval has to be sought from SAFE.
- Increase, assignment or other forms of disposal of registered capital: Should an FIE wish to increase, assign or dispose of its registered capital in other ways, approval by SAFE is required. By presenting the “FIE foreign exchange investment capital domestic transfer approval letter” issued by SAFE, the FIE can transfer its foreign exchange at designated banks.

(c) Fund Transfer

- Transfer of foreign exchange is prohibited between a non-investment FIE and the companies they invest in, as well as among the different companies invested by the non-investment FIE. Should special circumstances warrant such transfer, SAFE approval must be sought.