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 Advisory Division

—Policy Issues for Foreign Exchange Administration—

Mizuho China Business Express

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State Administration of Foreign Exchange implements a pilot reform on voluntary settlement of foreign exchange capital funds in 16 regions

On July 4, 2014, the State Administration of Foreign Exchange (SAFE) issued the [Circular on Relevant Issues concerning Implementation of the Pilot Reform on an Administrative Approach for the Settlement of Foreign Exchange Capital Funds of Foreign-invested Enterprises in Certain Areas](#) (Huifa [2014] No. 36; hereinafter referred to as “Circular No. 36”). The Circular provides for **the implementation of measures approved for the China (Shanghai) Pilot Free Trade Zone** (hereinafter referred to as the “Shanghai FTZ”) **regarding the voluntary settlement of foreign exchange capital funds in the 16 designated pilot regions of China**. As with the measures for the Shanghai FTZ, however, enterprises are required to **deposit settled foreign exchange capital funds into an account for foreign exchange funds settled and to be paid and may only use such funds according to the actual business operational requirements**. Circular No. 36 is **effective as of August 4, 2014**.

❑ **Expanded application of Shanghai FTZ policy**

Under current foreign exchange administration regulations, with the exception of settlements for reserve funds (which should not exceed the equivalent of USD 50,000 per transaction and the equivalent of USD 100,000 per month), foreign-invested enterprises are only permitted to settle foreign exchange capital funds on an as-needed basis and may only settle the exact amount required. Circular No. 36 gives enterprises in the 16 designated pilot regions (see box below) discretions over their foreign exchange capital fund settlements, thereby expanding a policy being implemented in the Shanghai FTZ.

Pilot Regions for Voluntary Settlement of Foreign Exchange Capital Funds

Tianjin Binhai New Area, Shenyang Economic Zone, Suzhou Industrial Park, Donghu National Self-Innovation Demonstration Zone (Wuhan), Nansha New District (Guangzhou), Hengqin New District (Zhuhai), Chengdu High-Tech Industrial Development Zone, Zhongguancun National Self-Innovation Demonstration Zone (Beijing), Liangjiang New Area (Chongqing), Heilongjiang Frontier Development Zone for the Foreign Exchange Pilot Reform, Wenzhou Pilot Region for Comprehensive Financial Reform, Pingtan Comprehensive Pilot Zone (Fuzhou), China-Malaysia Qinzhou Industrial Park (Guangxi), Guiyang Comprehensive Bonded Zone, Qianhai Shenzhen-Hong Kong Modern Services Cooperation Zone (Shenzhen), and Qingdao Pilot Zone for Comprehensive Reform on Wealth Management and Finance

Enterprises undertaking voluntary settlement are required to open an account for foreign exchange funds settled and to be paid corresponding to their existing foreign exchange capital fund accounts with their account bank and, having deposited settled foreign exchange funds into such account, may only use such funds according to the actual business operational requirements (Article 2). As in the past, enterprises are permitted to make direct payment using the required amount of capital funds from the foreign exchange capital fund account when needing settlement. In such instances, however, it is not allowed to process the settlement through the account for foreign exchange funds settled and to be paid. In addition, existing provisions limiting the use of RMB funds from the voluntary settlement of foreign exchange to within the business scope of enterprises remain in place, and the use of such funds for securities investment, entrusted loans, inter-enterprise borrowings, repayments of bank loans refinanced to a third party, and/or for the purchase of domestic real estate that is not for company use (except by real estate enterprises) is prohibited (Article 3).

□ Use of settled foreign exchange capital funds for equity investment admissible

When using funds in an account for foreign exchange funds settled and to be paid, enterprises are required to provide certifying documents regarding authenticity of the underlying transaction and must additionally submit an **“Order for Payments with Funds in Accounts Related to Direct Investments,”** provide assurance on transaction authenticity and on compliance with the regulations on the use of such funds (Article 5, paragraph 1). Where, however, such funds are being used for reserve funds, **the equivalent of RMB 600,000 may be used per month without submitting certifying documents** (Article 5, paragraph 3). Moreover, since each account for foreign exchange funds settled and to be paid is linked to a foreign exchange capital fund account, **the transfer of funds between accounts for foreign exchange funds settled and to be paid in the same name is not permitted** (though the transfer of funds between foreign exchange capital fund accounts in the same name is permitted) (Article 2). In addition, RMB funds in accounts for foreign exchange funds settled and to be paid may not be used to purchase foreign exchange and **transferred back into a foreign exchange capital fund account** without approval by the SAFE.

Table. Major Provisions on Accounts for Foreign Exchange Funds Settled and to be Paid

Scope of deposits	<ul style="list-style-type: none"> ✓ Funds from foreign exchange settlement as transferred from the corresponding capital fund accounts, domestic accounts for the realization of assets, or accounts for domestic reinvestments ✓ Funds returned after transfer from these accounts pursuant to the regulations ✓ Funds returned due to the revocation of transactions ✓ Received RMB interest income ✓ Other receipts registered or approved by the SAFE
Scope of withdrawals	<ul style="list-style-type: none"> ✓ Expenditures within the business scope ✓ Payments of RMB security deposits ✓ Transfers to the special accounts for centralized fund management ✓ Repayments of fully utilized RMB loans ✓ Repayments of foreign debt (foreign exchange purchases and payments therefor) ✓ Capital reductions or withdrawals by foreign investors (foreign exchange purchases and payments therefor) ✓ Current item expenditures (foreign exchange purchases and payments therefor) ✓ Other capital item expenditures registered or approved by the SAFE

Prohibited uses for RMB funds in the account	<ul style="list-style-type: none"> ✓ Use beyond the business scope of the enterprise ✓ Securities investment ✓ Execution of entrusted loans (except where such is permitted by the business scope) ✓ Repayments of inter-enterprise borrowings (including third-party advances) ✓ Repayments of bank loans refinanced to a third party ✓ Purchases of domestic real estate not for company use (except by real estate enterprises)
Other administrative provisions	<ul style="list-style-type: none"> ✓ Use of RMB funds is subject to submission of an “Order for Payments with Funds in Accounts Related to Direct Investments.” ✓ RMB funds may not be used to purchase foreign exchange and returned to a foreign exchange capital fund account (without approval by the SAFE). ✓ Transfers to an account for foreign exchange funds settled and to be paid in the same name are not permitted. ✓ The equivalent of RMB 600,000 per month may be used for reserve funds.

(Compiled by the Advisory Division from Circular No. 36)

Enterprises such as foreign-funded investment companies that using foreign exchange capital funds for reinvestment are allowed to transfer settled RMB funds into an account for foreign exchange funds settled and to be paid opened by the target enterprise (Article 4). Where, however, such investment companies are to use capital funds for purposes other than equity investment, the settlement of foreign exchange shall be made according to the principle of actual business operational requirements.

It should be noted that Circular No. 36 provides a **percentage for the voluntary settlement** of foreign exchange capital funds by enterprises in the pilot regions (Article 1). Whilst this is set at 100 percent meaning that foreign exchange capital funds may be settled in its entirety, the Circular gives the SAFE the right to adjust such percentage in due time on the basis of the international balance of payments situation in China. Moreover, whilst foreign exchange funds in domestic accounts for the realization of assets and accounts for domestic reinvestments opened by domestic enterprises are likewise available for voluntary settlement, settlement of foreign exchange funds in the foreign investors’ accounts for preliminary expenses shall be made according to the principle of actual business operational requirements (Article 6).

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The provisions of Circular No. 36 essentially duplicate the institutional design provided for the Shanghai FTZ, meaning that the goal of achieving “replicability elsewhere in the nation” for the Shanghai FTZ model is a step closer to being achieved.

A provisional translation of Circular No. 36 together with the original Chinese document is presented below for further reference.

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(Provisional Translation)

State Administration of Foreign Affairs

Huifa [2014] No. 36

Circular on Relevant Issues Concerning Implementation of the Pilot Reform on an Administrative Approach for the Settlement of Foreign Exchange Capital Funds of Foreign-invested Enterprises in Certain Areas

The SAFE branches and foreign exchange administrative departments in Tianjin, Liaoning, Jiangsu, Hubei, Guangdong, Sichuan, Beijing, Chongqing, Heilongjiang, Zhejiang, Fujian, Guangxi, and Guizhou province (autonomous regions and municipalities directly under the Central Government), and the SAFE branches in Shenzhen and Qingdao:

For the purpose of further deepening the reform of the foreign exchange administration system, and better satisfying and facilitating the requirements for business and fund operations of foreign-invested enterprises (FIEs), the State Administration of Foreign Exchange (SAFE) has decided to implement a pilot reform on an administrative approach for the settlement of foreign exchange capital funds of FIEs in certain areas (Tianjin Binhai New Area, Shenyang Economic Zone, Suzhou Industrial Park, Donghu National Self-Innovation Demonstration Zone, Guangzhou Nansha New District, Hengqin New District, Chengdu High-Tech Industrial Development Zone, Zhongguancun National Self-Innovation Demonstration Zone, Chongqing Liangjiang New Area, Heilongjiang Frontier Development Zone for the Foreign Exchange Pilot Reform, Wenzhou Pilot Region for Comprehensive Financial Reform, Pingtan Comprehensive Pilot Zone, China-Malaysia Qinzhou Industrial Park, Guiyang Comprehensive Bonded Zone, Shenzhen Qianhai Shenzhen-Hong Kong Modern Services Cooperation Zone, and Qingdao Pilot Zone for Comprehensive Reform on Wealth Management and Finance). The relevant issues are hereby notified as follows:

1. Voluntary Settlement of Foreign Exchange Capital Funds of Foreign-invested Enterprises

Voluntary settlement of foreign exchange capital funds of FIEs means that foreign exchange capital funds in the FIE capital fund accounts, recognized by the local foreign exchange bureau as the rights and interests of capital contributions, can be settled in banks according to the actual business operational requirements. The provisional percentage for the voluntary settlement of foreign exchange capital funds of FIEs registered/incorporated in the pilot regions shall be 100 percent. The SAFE may adjust the aforementioned percentage in due time according to the international balance of payments situation.

During the course of implementing the voluntary settlement of foreign exchange capital funds, the FIEs can still choose the existing settlement procedures against payments for the use of foreign exchange capital

funds. For each foreign exchange settlement transaction of enterprises, based on the principle of foreign exchange settlement against payments, the banks shall examine and verify the authenticity and compliance in the use of the funds for prior transactions of foreign exchange settlement (including voluntary settlement of foreign exchange and foreign exchange settlement against payments).

Domestic remittances and transfers and cross-border outward payments of foreign exchange capital funds of FIEs shall be transacted pursuant to the relevant regulations on foreign exchange administration.

2. Administration of Bank Accounts for Foreign Exchange Funds Settled and to Be Paid with RMB Funds from the Voluntary Settlement of Foreign Exchange Capital Funds of FIEs

The FIEs shall open accounts for capital items – foreign exchange funds settled and to be paid (hereinafter referred to as “settlement and payment accounts”) for the deposits of RMB funds from the voluntary settlement of foreign exchange on a one-to-one corresponding basis, with their account banks for the foreign exchange capital funds and for transactions of various payments through these accounts. The RMB funds of FIEs from foreign exchange settlement against payments shall not be used for payments through the settlement and payment accounts.

The scope of the receipts in the FIE capital fund accounts includes: foreign exchange capital funds remitted from overseas or capital funds subscribed to and contributed by foreign investors (including contributions from non-resident deposit accounts, offshore accounts, and domestic foreign exchange accounts of foreign individuals); foreign exchange capital funds or capital funds subscribed to and contributed as transferred from the special accounts for security deposits of overseas remittances; funds returned after transfer from these accounts pursuant to the regulations; funds received from the capital fund account in the same name; funds returned due to the revocation of transactions; received interest income; and other receipts registered or approved by the foreign exchange bureau.

The scope of the payments from the capital fund accounts includes: foreign exchange settlement within the business scope; transfers through the foreign exchange settlement into the settlement and payment accounts; domestic transfers in the same currency to the special accounts for security deposits of domestic transfers, capital fund accounts in the same name, accounts for entrusted loans, special accounts for centralized fund management, special accounts for overseas lending, special accounts for domestic reinvestments, and special accounts for foreign debts; outward remittances owing to capital reductions or withdrawals by foreign investors; outward payments for current items; and other capital item expenditures registered or approved by the foreign exchange bureau.

The scope of the receipts in the settlement and payment accounts includes: funds from foreign exchange settlement as transferred from the corresponding capital fund accounts, domestic accounts for the realization of assets, or accounts for domestic reinvestments; funds returned after transfer from these accounts pursuant to the regulations; funds returned due to the revocation of transactions; received RMB interest income; and other receipts registered or approved by the foreign exchange bureau.

The scope of the payments from the settlement and payment accounts includes: expenditures within the business scope; payments of RMB security deposits; transfers to the special accounts for centralized fund management; repayments of fully utilized RMB loans; foreign exchange purchases and payments or direct outward repayments of foreign debts; foreign exchange purchases and payments or direct outward payments owing to capital reductions or withdrawals by foreign investors; foreign exchange purchases and payments or direct outward payments for current item expenditures; and foreign exchange purchases and payments or direct outward payments of other capital item expenditures registered or approved by the foreign exchange bureau.

RMB funds in the settlement and payment accounts shall not be transferred back to the capital fund accounts through foreign exchange purchases without approval by the foreign exchange bureau. The funds shall not be transferred between the FIEs' settlement and payment accounts in the same name. RMB funds transferred from the settlement and payment accounts for the purpose of guarantees or payments of other security deposits, unless in the case of execution of guarantee agreements or deductions owing to default, shall be returned to the settlement and payment accounts via the original route.

3. Utilization of FIEs' Capital Funds according to the Principles of Authenticity and Self-use within the Business Scope

FIE capital funds and RMB funds from their settlement shall not be used for the following purposes:

- (1) Directly or indirectly used for expenditures beyond the business scope or prohibited under the laws and regulations of the State;
- (2) Directly or indirectly used for securities investments, unless otherwise stipulated under the laws and regulations;
- (3) Directly or indirectly used for the supply of RMB entrusted loans (except where such is permitted by the business scope), repayments of inter-enterprise borrowings (including third-party advances), and repayments of RMB bank loans refinanced to a third party;
- (4) For payment of expenses relevant to the purchase of real estate not for company use (except by real estate enterprises).

4. Facilitation of Domestic Equity Investments by FIEs with Funds from Foreign Exchange Settlement

Except for transfers in the original currency owing to equity investments, it is acceptable for FIEs with investment as their main business (including foreign-funded investment companies, foreign-funded venture capital enterprises, and foreign-funded equity investment enterprises) to transfer the foreign exchange capital funds after direct settlement into the accounts of the invested enterprises according to the actual scale of investment, provided that the domestic investment project is authentic and compliant with the regulations. The settlement of capital funds other than the aforementioned enterprise equity investment funds shall be handled according to the principles of settlement against payment.

When ordinary FIEs other than the aforementioned enterprises invest in domestic equities with capital funds in the original currency, the existing regulations on domestic reinvestments shall apply. When funds from foreign exchange settlement are used for domestic equity investments, the invested enterprise shall first register for a domestic reinvestment with the local foreign exchange bureau and open a corresponding settlement and payment account, prior to the transfer of the RMB funds from the foreign exchange settlement by the investing enterprise, according to the actual scale of investment, to the settlement and payment account opened by the invested enterprise. When the invested enterprise continues to invest in domestic equities, the aforementioned principles shall apply.

5. Standardizing the Administration of Payments with Funds from Foreign Exchange Settlement

- (1) Foreign investors, FIEs, and other applicant entities shall provide, on an accurate and authentic basis and according to the regulations, the relevant certifying documents regarding authenticity to the foreign exchange bureau and the banks, and complete the “Order for Payments with Funds in Accounts Related to Direct Investments” (see the Appendix) when applying for payments with RMB funds from the settlement of capital funds (including direct payments with foreign exchange capital funds).
- (2) The banks shall, according to the principles of “know your customers,” “know your businesses,” and “due diligence reviews,” be responsible for verification of the authenticity of outward payments with capital funds and payments with RMB funds from the foreign exchange settlement by the FIEs. When handling each payment transaction with such funds, the authenticity and compliance of the certifying documents with respect to the prior payment transactions shall be examined and verified. The banks shall keep the certifying documents relevant to the settlement and use of the foreign exchange capital funds of the FIEs for five years for future reference.

The banks shall report the data, including the accounts related to the capital fund accounts and the settlement and payment accounts (account nature code: 2113), cross-border receipts and payments, domestic transfers, foreign exchange settlement and sales within the accounts, on a timely basis and according to the *Circular of the State Administration of Foreign Exchange on the Issuance of Foreign Exchange Transaction Data Collection Rules for Financial Institutions* (version 1.0) (Huifa [2014] No. 18). In the case of transfers of funds between the settlement and payment accounts and other RMB accounts, the information on the domestic transfers shall be reported by filling in the documents for domestic receipts and payments and indicating the fund purpose code under the “invoice number” column (according to “7.10: Code of Purpose for Foreign Exchange Settlement” in Huifa [2014] No. 18). The transaction code for other transfers shall be indicated as “929070,” except for payments under verification of goods trade.

- (3) When enterprises fail to provide certifying documents for current special reasons, the banks may make the relevant payments for the enterprises, provided that the obligation of due diligence review has been performed and the authentic background of the transactions has been verified, and may file with the foreign exchange bureau through its relevant business system with respect to the special items on the date of payment. The banks shall collect and examine the full set of relevant certifying documents resubmitted by the enterprises within 20 working days upon completion of the payment and report to the foreign exchange bureau through its relevant business system with respect to the resubmission of the certifying documents on the authenticity of the filing of special items.

When FIEs use capital funds for the purpose of reserve funds, the banks need not request them to submit the aforementioned certifying documents regarding authenticity. The cumulative amount of payments for reserve funds by a single enterprise in one month shall not exceed the value equivalent to RMB 600,000.

When FIEs apply for settlement against payments with all the foreign exchange capital funds on a one-off basis, or payments with all the RMB funds for the settlement and payment account, but fail to provide the relevant certifying documents on the authenticity, the banks shall not handle for them the foreign exchange settlement and payments.

6. Administration of the Settlement and Utilization of Funds in the Foreign Exchange Accounts under Other Direct Investment Items

Settlement of foreign exchange funds in domestic accounts for the realization of assets and accounts for

domestic reinvestments opened by domestic institutions shall be made with reference to the administrative regulations regarding the FIE capital fund accounts.

Settlement of foreign exchange funds in the domestic accounts for the realization of assets and accounts for domestic reinvestments opened by domestic individuals and overseas accounts for the realization of assets opened by domestic institutions and individuals shall be made directly through the banks, against the relevant transaction documents registered with the foreign exchange bureau.

Settlement of foreign exchange funds in the foreign investors' accounts for preliminary expenses shall be made by the banks according to the principles of settlement against payments.

Foreign exchange funds in the special accounts for security deposits of overseas remittances and special accounts for security deposits of domestic transfers shall not be used through foreign exchange settlement. In cases of execution of guarantee agreements or deductions owing to default, the relevant security deposits shall be transferred into the other foreign exchange accounts for capital items of the recipients of the deposits that have been approved or registered by the foreign exchange bureau, and shall be used according to the relevant regulations.

The interest income and investment income under direct investments in the above accounts can be settled and paid directly through the banks according to the relevant regulations on foreign exchange administration of current items.

7. Further Strengthening Post-mortem Supervision and Investigations of Irregularities by the Foreign Exchange Bureau

- (1) The foreign exchange bureau shall strengthen guidance and examination of the compliance of bank transactions, including foreign exchange settlement and utilization of FIE capital funds in accordance with the relevant regulations such as the *Regulations on the Control of Foreign Exchange of the People's Republic of China* and the *Regulations on Foreign Exchange Administration of Domestic Direct Investments by Foreign Investors*. The manner of examination includes submission of written explanatory and transaction documents by the relevant entities as requested, an interview with the persons in charge, field inspections or duplication of the relevant documents of the entities, and notification of any irregularities. With respect to banks with serious or malicious irregularities, their foreign exchange transactions under capital items shall be suspended according to the relevant procedures. With respect to FIEs with serious or malicious irregularities, their qualifications for voluntary settlement of foreign exchange shall be revoked. Prior to the submission of the written

explanatory documents and proper rectification, any other foreign exchange transactions under the capital items shall be prohibited.

- (2) For FIEs and banks with violations against this Circular with respect to foreign exchange settlement and utilization of FIE capital funds, the foreign exchange bureau shall investigate and treat them according to the *Regulations on the Control of Foreign Exchange of the People's Republic of China* and the relevant regulations.

8. Other Relevant Issues

This Circular shall take effect as of August 4, 2014. In cases of any discrepancies with prior regulations, this Circular shall prevail. The relevant requirements in the *Circular of the State Administration of Foreign Exchange on Operational Issues Concerning Foreign Exchange Payment and Settlement of FIE Capital Funds* (Huizongfa [2008] No. 142) and the *Supplementary Circular of the General Affairs Department of the State Administration of Foreign Exchange on Operational Issues Concerning Improvements in the Management of Foreign Exchange Payments and Settlement of FIE Capital Funds* (Huizongfa [2011] No. 88) are provisionally not applicable to the foreign exchange settlement of the capital funds of the FIEs in the pilot regions.

The sub-bureaus in the pilot regions and the foreign exchange administrative departments are requested to distribute this Circular to the central sub-bureaus, branch bureaus, and banks within the pilot regions as soon as possible. In cases of any problems arising during the course of implementation, feedback shall be provided to the Capital Account Management Department of the SAFE on a timely basis.

Appendix: Order for Payments with Funds in Accounts Related to Direct Investments

State Administration of Foreign Exchange

July 4, 2014

Appendix:

Order of Payments with Funds in Accounts Related to Direct Investments

_____ Bank (Bank code: _____):

The above-mentioned bank is requested to use the funds in the accounts related to direct investments of our company for the following purposes as indicated.

- ☐ Foreign exchange settlement and payment
☐ Payment with RMB funds from foreign exchange settlement
☐ Outward payment with foreign exchange funds

Type of payment account		Payment account number		Have the payment funds been recognized as the rights and interests for capital contributions?	
Payee	Industry category of payee	Amount and currency of the payment	Bank name of the payee account	Payee account number	Purpose of the funds for payment
Total					

Important notes: Accounts related to direct investments and RMB funds from foreign exchange settlement within these accounts shall not be used for the following purposes:

- (1) Directly or indirectly used for expenditures beyond the business scope or prohibited under the laws and regulations of the State;
- (2) Directly or indirectly used for purchase of investment and wealth management products other than principal-protected products or other negotiable securities, unless otherwise stipulated under the laws and regulations;
- (3) Directly or indirectly used for the supply of RMB entrusted loans (except where such is permitted by the business scope), repayments of inter-enterprise borrowings (including third-party advances), and repayments of RMB bank loans refinanced to a third party;
- (4) For payment of expenses relevant to the purchase of real estate not for company use (except by real estate enterprises).

Note: Complete the form according to the following instructions.

We hereby promise that we have carefully read and fully understand the important notes to the above table and the attached instructions, and the information we have completed in the **Order for Payments with Funds in Accounts Related to Direct Investments** is authentic and effective; and we ensure that the funds under this application for payments shall be used within the business scope and according to the laws and regulations. In cases of any change in the purpose of the funds for payment or false promises, we, as well as the legal representative of our company, shall be responsible for the legal consequences in accordance with the *Regulations on the Control of Foreign Exchange of the People's Republic of China* and the relevant laws and regulations.

Contact:

Contact No.:

Legal Representative of Company (signature)

_____ Company (seal)

Date: _____

Instructions for Completing the Form

1. Please check the box in front of the relevant option: “foreign exchange settlement and payment,” “payment with RMB funds from foreign exchange settlement,” or “outward payment with foreign exchange funds.” The option of “foreign exchange settlement and payment” refers to direct payments to the actual payee (including transfers to the settlement and payment account) after foreign exchange settlement of the funds in accounts related to direct investments; the option of “payment with RMB funds from foreign exchange settlement” refers to making payments with and using funds in the settlement and payment account (including foreign exchange purchases and payments with RMB funds); and the option of “outward payment with foreign exchange funds” refers to direct outward payments with foreign exchange capital funds. Only one option may be chosen for each form, and separate forms shall be completed if all three options are applicable.
2. The type of payment account refers to the type of account from which the funds for payment are transferred, including a capital fund account, account for domestic reinvestments, domestic account for the realization of assets, overseas account for the realization of assets, account for preliminary expenses, and settlement and payment account.
3. When filling in the column under the “purpose of the funds for payment,” please provide standard purposes (payment for goods, payment for engineering projects, payment for security deposits, payment for consulting fees, payment for other service fees, payment for taxes, payment for salaries, land-transfer fees, residential purchases, payment for equity transfers, repayment of principal and interest on bank loans, personal purposes, reserve funds, advances, purchase of other fixed assets, purchase of principal-protected investment products of banks, cross-border expenditures under capital items, cross-border expenditures under current items, domestic equity investments, financing leases, execution of guarantee agreements, petty loans, factoring facilities, transfers to the settlement and payment account, special filings, or other purposes). In case of advances or payments for other purposes, a separate explanation of the purpose of the funds for payment shall be submitted.
4. Different purposes of the funds for payment shall be provided separately.
5. A letter of authorization shall be provided separately if this form is completed by any third party duly authorized by the legal representative of the company.

（中国語原文）

国家外汇管理局

汇发[2014]36 号

关于在部分地区开展外商投资企业外汇资本金结汇管理方式改革试点有关问题的通知

国家外汇管理局天津、辽宁、江苏、湖北、广东、四川、北京、重庆、黑龙江、浙江、福建、广西、贵州省（自治区、直辖市）分局（外汇管理部），深圳、青岛市分局：

为进一步深化外汇管理体制改革的，更好地满足和便利外商投资企业经营与资金运作需要，国家外汇管理局决定在部分地区（天津滨海新区、沈阳经济区、苏州工业园区、东湖国家自主创新示范区、广州南沙新区、横琴新区、成都市高新技术产业开发区、中关村国家自主创新示范区、重庆两江新区、黑龙江沿边开发开放外汇管理改革试点地区、温州市金融综合改革试验区、平潭综合实验区、中国-马来西亚钦州产业园区、贵阳综合保税区、深圳前海深港现代服务业合作区和青岛市财富管理金融综合改革试验区）开展外商投资企业资本金结汇管理方式改革试点。现就有关问题通知如下：

一、 外商投资企业外汇资本金实行意愿结汇

外商投资企业外汇资本金意愿结汇是指外商投资企业资本金账户中经所在地外汇局办理出资权益确认的外汇资本金可根据企业的实际经营需要在银行办理结汇。试点区域内注册成立的外商投资企业外汇资本金意愿结汇比例暂定为 100%。国家外汇管理局可根据国际收支形势适时对上述比例进行调整。

在实行外汇资本金意愿结汇的同时，外商投资企业仍可选择现行支付结汇制使用其外汇资本金。银行按照支付结汇原则为企业办理每一笔结汇业务时，均应审核企业上一笔结汇（包括意愿结汇和支付结汇）资金使用的真实性与合规性。

外商投资企业外汇资本金境内原币划转以及跨境对外支付按现行相关外汇管理规定办理。

二、 外商投资企业外汇资本金意愿结汇所得人民币资金纳入结汇待支付账户管理

外商投资企业应在其资本金账户开户银行开立一一对应的资本项目-结汇待支付账户（以下简称结汇待支付账户），用于存放意愿结汇所得人民币资金，并通过该账户办理各类支付手续。外商投资企业按支付结汇原则结汇所得人民币资金不得通过结汇待支付账户进行支付。

外商投资企业资本金账户的收入范围包括：外国投资者境外汇入外汇资本金或认缴出资（含非居民存款账户、离岸账户、境外个人境内外汇账户出资），境外汇入保证金专用账户划入的外汇资本金

或认缴出资；本账户合规划出后划回的资金，同名资本金账户划入资金，因交易撤销退回的资金，利息收入及经外汇局登记或核准的其他收入。

资本金账户的支出范围包括：经营范围内结汇，结汇划入结汇待支付账户，境内原币划转至境内划入保证金专用账户、同名资本金账户、委托贷款账户、资金集中管理专户、境外放款专用账户、境内再投资专用账户、外债专用账户的资金，因外国投资者减资、撤资汇出，经常项目对外支付及经外汇局登记或核准的其他资本项目支出。

结汇待支付账户的收入范围包括：由对应的资本金账户、境内资产变现账户、境内再投资账户结汇划入的资金，由本账户合规划出后划回的资金，因交易撤销退回的资金，人民币利息收入及经外汇局登记或核准的其他收入。

结汇待支付账户的支出范围包括：经营范围内的支出，支付人民币保证金、划往资金集中管理专户，偿还已使用完毕的人民币贷款，购付汇或直接对外偿还外债，外国投资者减资、撤资资金购付汇或直接对外支付，购付汇或直接对外支付经常项目支出及经外汇局登记或核准的其他资本项目支出。

结汇待支付账户内的人民币资金未经外汇局批准不得购汇划回资本金账户。外商投资企业同名结汇待支付账户间的资金不得相互划转。由结汇待支付账户划出用于担保或支付其他保证金的人民币资金，除发生担保履约或违约扣款的，均需原路划回结汇待支付账户。

三、 外商投资企业资本金的使用应在企业经营范围范围内遵循真实、自用原则

外商投资企业资本金及其结汇所得人民币资金不得用于以下用途：

- （一） 不得直接或间接用于企业经营范围之外或国家法律法规禁止的支出；
- （二） 除法律法规另有规定外，不得直接或间接用于证券投资；
- （三） 不得直接或间接用于发放人民币委托贷款（经营范围许可的除外）、偿还企业间借贷（含第三方垫款）以及偿还已转贷予第三方的银行人民币贷款；
- （四） 除外商投资房地产企业外，不得用于支付购买非自用房地产的相关费用。

四、 便利外商投资企业以结汇资金开展境内股权投资

除原币划转股权投资款外，允许以投资为主要业务的外商投资企业（包括外商投资性公司、外商投资创业投资企业和外商投资股权投资企业），在其境内所投资项目真实、合规的前提下，按实际投资规模将外汇资本金直接结汇后划入被投资企业账户。上述企业股权投资款以外的资本金结汇按支付结汇原则办理。

上述企业以外的一般性外商投资企业以资本金原币划转开展境内股权投资的，按现行境内再投资规定办理。以结汇资金开展境内股权投资的，应由被投资企业先到所在地外汇局办理境内再投资登记并开立相应结汇待支付账户，再由开展投资的企业按实际投资规模将结汇所得人民币资金划往被投资企业开立的结汇待支付账户。被投资企业继续开展境内股权投资的，按上述原则办理。

五、进一步规范结汇资金的支付管理

- (一) 外国投资者、外商投资企业及其他相关申请主体应按规定如实向外汇局和银行提供相关真实性证明材料，并在办理资本金结汇所得人民币资金的支付使用（包括外汇资本金直接支付使用）时填写《直接投资相关账户资金支付命令函》（见附件）。
- (二) 银行应履行“了解客户”、“了解业务”、“尽职审查”等原则，在为外商投资企业办理资本金对外支付及结汇所得人民币资金支付时承担真实性审核责任。在办理每一笔资金支付时，均应审核前一笔支付证明材料的真实性与合规性。银行应留存外商投资企业外汇资本金结汇及使用的相关证明材料 5 年备查。

银行应按照《国家外汇管理局关于发布〈金融机构外汇业务数据采集规范（1.0 版）〉的通知》（汇发[2014]18 号文）的要求，及时报送与资本金账户、结汇待支付账户（账户性质代码 2113）有关的账户、跨境收支、境内划转、账户内结售汇等信息。其中，结汇待支付账户与其他人民币账户之间的资金划转，应通过填写境内收付款凭证报送境内划转信息，并在“发票号”栏中填写资金用途代码（按照汇发[2014]18 号文“7.10 结汇用途代码”填写）；除货物贸易核查项下的支付，其他划转的交易编码均填写为“929070”。

- (三) 对于企业确有特殊原因暂时无法提供真实性证明材料的，银行可在履行尽职审查义务、确定交易具备真实交易背景的前提下为企业办理相关支付，并应于办理业务当日通过外汇局相关业务系统向外汇局提交特殊事项备案。银行应在支付完毕后 20 个工作日内收齐并审核企业补交的相关证明材料，并通过相关业务系统向外汇局报告特殊事项备案业务的真实性证明材料补交情况。

对于外商投资企业以备用金名义使用资本金的，银行可不要求其提供上述真实性证明材料。单一企业每月备用金支付累计金额不得超过等值 60 万元人民币。

对于申请一次性将全部外汇资本金支付结汇或将结汇待支付账户中全部人民币资金进行支付的外商投资企业，如不能提供相关真实性证明材料，银行不得为其办理结汇、支付。

六、其他直接投资项下外汇账户资金结汇及使用管理

境内机构开立的境内资产变现账户和境内再投资账户内资金结汇参照外商投资企业资本金账户管理。

境内个人开立的境内资产变现账户和境内再投资账户，以及境内机构和个人开立的境外资产变现账户可凭外汇局相关业务登记凭证直接在银行办理结汇。

外国投资者前期费用账户资金结汇按支付结汇原则办理。

境外汇入保证金专用账户和境内汇入保证金专用账户内的外汇资金不得结汇使用。如发生担保履约或违约扣款的，相关保证金应划入接收保证金一方经外汇局核准或登记后开立的其他资本项目外汇账户并按照规定使用。

上述直接投资项下账户内利息收入和投资收益均可按照经常项目外汇管理有关规定直接在银行办理结汇及支付。

七、 进一步强化外汇局事后监管与违规查处

- （一） 外汇局应根据《中华人民共和国外汇管理条例》、《外国投资者境内直接投资外汇管理规定》等有关规定加强对银行办理外商投资企业资本金结汇和使用等业务合规性的指导和核查。核查的方式包括要求相关业务主体提供书面说明和业务材料、约谈负责人、现场查阅或复制业务主体相关资料、通报违规情况等。对于严重、恶意违规的银行可按相关程序暂停其资本项目下外汇业务办理，对于严重、恶意违规的外商投资企业等可取消其意愿结汇资格，且在其提交书面说明函并进行相应整改前，不得为其办理其他资本项下外汇业务。
- （二） 对于违反本通知办理外商投资企业资本金结汇和使用等业务的外商投资企业和银行，外汇局依据《中华人民共和国外汇管理条例》及有关规定予以查处。

八、 其他相关问题

本通知自 2014 年 8 月 4 日起实施。此前规定与本通知内容不一致的，以本通知为准。试点地区外商投资企业外汇资本金结汇暂不适用《国家外汇管理局综合司关于完善外商投资企业外汇资本金支付结汇管理有关业务操作问题的通知》（汇综发[2008]142 号）和《国家外汇管理局综合司关于完善外商投资企业外汇资本金支付结汇管理有关业务操作问题的补充通知》（汇综发[2011]88 号）的有关要求。

请各试点分局、外汇管理部尽快将本通知转发试点区域内中心支局、支局和银行。执行中如遇问题，

请及时向国家外汇管理局资本项目管理司反馈。

附件：直接投资相关账户资金支付命令函（略）

国家外汇管理局

2014年7月4日

附表：

直接投资相关账户资金支付命令函

_____银行（_____行号）：

请贵行将本公司直接投资相关账户资金，按照以下要求进行：

☐ 结汇支付 ☐ 结汇所得人民币支付 ☐ 对外付汇

支付账户类型		支付账户账号		支付资金是否已 办理出资权益确认	
收款人	收款人所 属行业	支付金额及 币种	收款人开户 银行名称	收款人账号	支付资金用途
合计					
<p>重要提示：直接投资相关账户及其结汇所得人民币资金不得用于以下用途：</p> <p>（一）不得直接或间接用于企业经营范围之外或国家法律法规禁止的支出；</p> <p>（二）除法律法规另有规定外，不得直接或间接用于购买银行保本型产品之外的投资理财产品或其他有价证券；</p> <p>（三）不得直接或间接用于发放人民币委托贷款（经营范围许可的除外）、偿还企业间借贷（含第三方垫款）以及偿还已转贷予第三方的银行人民币贷款；</p> <p>（四）除外商投资房地产企业外，不得用于支付购买非自用房地产的相关费用。</p>					

注：请按填表说明填写。

本公司承诺：本公司已认真阅读并完全理解上表中重要提示和所附填表说明的内容，本公司所填写《直接投资相关账户资金支付命令函》各项内容真实有效，并保证合法合规在经营范围内使用此次申请支付的资金。如擅自改变支付用途或虚假承诺，依照《中华人民共和国外汇管理条例》及相关法律法规，本公司及其法定代表人将承担相应的法律责任。

联系人：_____ 联系电话：_____

公司法定代表人签章：

_____公司（盖章）

年 月 日

填表说明

1. 请在“结汇支付”、“结汇所得人民币支付”或“对外付汇”前的方框中打钩，“结汇支付”指相关直接投资账户内资金结汇后直接支付给实际收款人（含划入结汇待支付账户）；“结汇所得人民币支付”指将结汇待支付账户内的资金支付使用（含人民币资金购汇支付）；“对外付汇”是指资本金直接对外付汇。本选项只能单选，如同时包括三种情况请分别填表。
2. 支付账户类型是指划出支付资金的账户类型，包括：资本金账户、境内再投资账户、境内资产变现账户、境外资产变现账户、前期费用账户、结汇待支付账户。
3. 填写支付资金用途时，请按标准用途填写（支付货款、支付工程款、支付保证金、支付咨询费、支付其他服务费用、支付税款、支付工资、土地出让金、购房、支付股权转让款、偿还银行贷款本息、个人、备用金、预付款、购买其他固定资产、购买银行保本型投资产品、资本项下跨境支出，经常项下跨境支出、境内股权投资、融资租赁、担保履约、小额贷款、保理业务、转入结汇待支付账户、特殊备案、其他（选择“预付款或其他”的，请另行提交资金用途说明）。
4. 支付资金用途不同需分开填写。
5. 公司法人代表授权委托他人填写本表的，另需提供授权委托书。

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