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Mizuho Bank (China), Ltd.

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—Policy Issues for Foreign Exchange Administration—

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**China's Ongoing Foreign Exchange Administration Reforms
—Confirmation of Administrative Procedures for
Direct Investment and Foreign Debt—**

The State Administration of Foreign Exchange (SAFE) has recently released two documents: [*Measures for Administration of External Debt Registration*](#) (Huifa [2013] No. 19; hereinafter referred to as the “Measures”) and [*Regulations on the Foreign Exchange Administration of Onshore Direct Investment by Foreign Investors*](#) (Huifa [2013] No. 21; hereinafter referred to as the “Regulations”), in a bid to simplify and coordinate the administrative procedures involved with foreign debt and direct investment by foreign investors, respectively. These reforms are an extension of the changes that were introduced by the November 2012 [*Circular on Further Improving and Adjusting the Policies on Foreign Exchange Administration of Direct Investments*](#) (Huifa [2012] No. 59), and herald a major shift in China's foreign exchange administration policy of capital account transactions, from approval-based “ex-ante regulation” to a system of “ex-post regulation” that focuses on registration and monitoring.

The administrative procedures that need to be completed with the SAFE and banks in connection with foreign exchange have been tabulated for the purposes of this article on the basis of the “Measures” and the “Regulations” and other relevant provisions.

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- * The “application documents” refer to the minimum documentary requirements provided for in the SAFE regulations, and the SAFE and/or banks may require submission of additional documentation to verify the authenticity and/or rationality of the underlying transactions depending on the procedure involved.
- * The State Administration of Foreign Exchange is abbreviated as SAFE in the tables.

Fig. 1: Capital contribution procedure following FIE establishment

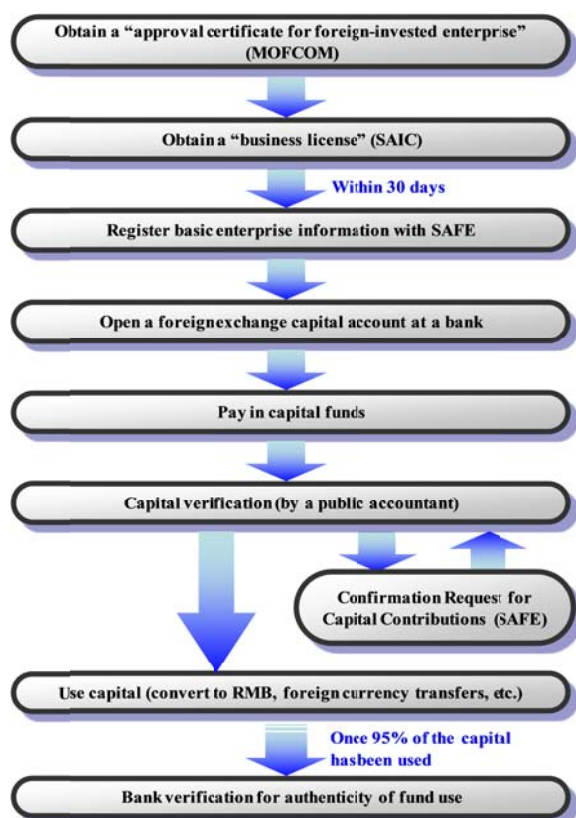
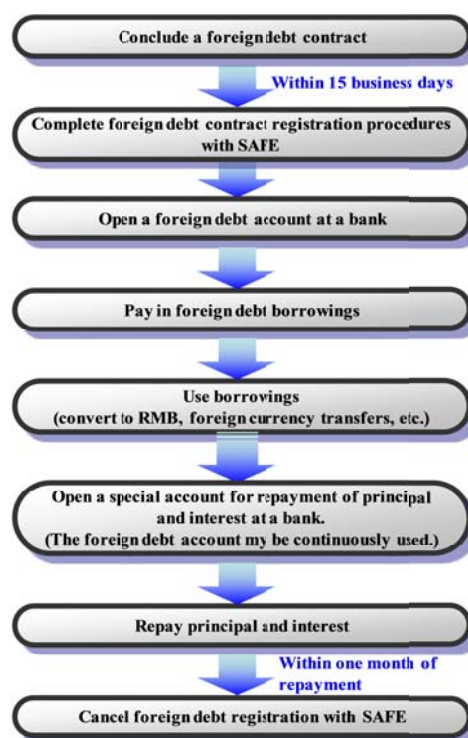


Fig. 2: Foreign debt procedure



(Compiled by the Advisory Division from related materials)

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Table 3: Procedure for registration of basic information with SAFE

	Application documents	Precautions
Registration of basic information on pre-operating expenses	(1) Service application form for registration of basic information on onshore direct investments (2) Notification of prior approval of enterprise name and/or the relevant certificate issued by the competent administrative department	✓ File the paperwork with the SAFE in the planned location of enterprise establishment. ✓ As a general rule, the upper limit on deposits is US\$300,000. (SAFE approval is required where this limit will be exceeded.)
Registration of basic information on newly-established FIEs	(1) Service application form for registration of basic information on onshore direct investments (2) Copies of the organization code certificate and business license (3) Approval certificate for foreign-invested enterprise or other document approving enterprise establishment (4) The original tax clearance certificate (where establishing using RMB income lawfully obtained in China)	✓ File the paperwork with the SAFE in the place of registration after obtaining a business license, to obtain a “Proof of transaction consultation.” ✓ Registration of basic information is not required for foreign-invested enterprises established through reinvestment by a foreign-invested holding company. (Though registration formalities must be completed for a joint venture between an invested holding company and its Japanese parent company, etc.) ✓ Funds withdrawn from a pre-operating expense account and converted into RMB for use may be included in the subscription.
Registration of basic FIE information on mergers and acquisitions of domestic entities by foreign investors	(1) Service application form for registration of basic information on onshore direct investments (2) Copies of the organization code certificate and business license following conversion to foreign-invested enterprise (3) Approval certificate for foreign-invested enterprise or other document approving enterprise establishment (4) The original tax clearance certificate (where the merger or acquisition is being financed by RMB income lawfully obtained in China)	✓ Enterprises that become foreign-invested as the result of a merger or acquisition should file the paperwork with the SAFE in the place of registration after obtaining a business license, to obtain a “Proof of transaction consultation.”
Modification and cancellation of registered basic FIE information	* Modifying a registration for changes in equity (capital increase/decrease, equity transfers, etc.) (1) Service application form for registration of basic information on onshore direct investments (2) Approval certificate for foreign-invested enterprise or other approving document (3) The original tax clearance certificate (where foreign investors are making a capital increase using RMB income lawfully obtained in China, or external payments arising from an equity transfer) * Changing the place of enterprise registration (relocation due to eviction) (1) Service application form for registration of basic information on onshore direct investments (2) Approval certificate for changes to enterprise structure * Other changes to registered information (1) The post-modification approval certificate or relevant filing document (2) A copy of the post-modification business license or other modification certificate	✓ Where a foreign-invested enterprise makes changes to its enterprise name, authorized business scope, legal representative, address, registered capital, total investment, method of financing, registered currency, investors or investor subscriptions, etc., or is merged, spun off or evicted, it must modify its registration with the SAFE in the place of registration having been approved or filed with the competent department.

	Application documents	Precautions
	<p>* Cancellation of registered basic information</p> <p>(1) Service application form for registration of basic information on onshore direct investments</p> <p>(2) The liquidation announcement as required by the provisions of the Company Law (where liquidating on the advent of the prescribed time limit), the approval document for liquidation or business closure issued by the competent department (for accelerated liquidations or special liquidations that have been approved by the competent department), the announcement of business license cancellation issued by the competent industry and commerce department or certification documents issued by a People's Court regarding the corporate dissolution ruling (or other form of liquidation)</p> <p>(3) Certificate of tax registration cancellation</p> <p>(4) A liquidation accounting assessment report issued by a public accountant (ordinary liquidations) or liquidation report checked by the competent department (special liquidations)</p>	<p>✓ Where a foreign-invested enterprise is cancelling its enterprise registration due to bankruptcy, dissolution, the expiration of its prescribed time limit, merger or spin-off, etc., it must complete basic enterprise information registration cancellation formalities with the SAFE in the place of registration at the end of the prescribed period for liquidation announcements.</p>
Registration and modification of basic information on domestic reinvestment receipts	<p>(1) Service application form for registration of basic information on onshore direct investments</p> <p>(2) The approval reply (where approval from the competent department is required) or investment consultation document (where no approval is required)</p>	<p>✓ File the relevant paperwork upon receipt of foreign exchange capital from a foreign-invested holding company, etc.</p>
Registration of basic information on foreign exchange account holders	<p>* Registration/modification of basic information on a special foreign exchange guaranty account openings</p> <p>* Registration/modification of basic information on the assignor in a cross-border asset purchase transaction</p> <p>* Registration/modification of basic information on other account openings</p> <p>(1) Service application form for registration of basic information on onshore direct investments</p> <p>(2) Documents attesting to the necessity for account opening by the domestic entity</p>	<p>✓ Where there are special circumstances associated with an onshore direct investment, the SAFE will send an electronic approval certificate to the bank once the related party (account holder) has completed basic information registration formalities with the SAFE.</p>

Source: Compiled by the Advisory Division based on the *Operating Guidelines for the Domestic Direct Investment Service* and other relevant regulations.

Table 4: Regulations on the handling of foreign exchange accounts for pre-operating expenses

	Application documents, details of regulations, etc.	Precautions
Documents required for verification at account opening	<ul style="list-style-type: none"> (1) Proof of transaction consultation (issued by the SAFE following basic information registration) (2) Pre-operating expense inflows control spreadsheet (printed out by the bank from the relevant SAFE operating system) 	<ul style="list-style-type: none"> ✓ The account is to be opened in the name of the foreign investor in the planned location of establishment. ✓ Newly-establishing foreign-invested enterprises are only permitted to open one (pre-operating expense) account. ✓ Accounts are valid for six months. (Though may be extended for a further six months where there are objective reasons for such.)
Scope of deposits	<ul style="list-style-type: none"> ✓ Pre-operating expenses deposited from abroad by foreign investors to facilitate enterprise establishment 	<ul style="list-style-type: none"> ✓ Confined to deposits from abroad. (Non-resident deposit accounts and offshore accounts are deemed to be overseas.) ✓ Deposits may be made up to the amount registered with the SAFE. ✓ Cash deposits are not permitted.
Scope of withdrawals	<ul style="list-style-type: none"> ✓ Funds may be converted into RMB for domestic use pursuant to the principles of foreign capital conversion administration. ✓ External payments under the current account following verification of authenticity ✓ Offshore refunds via the original route ✓ Fund transfers into the foreign exchange capital account of a newly-established foreign-invested enterprise ✓ Capital account payments that have been registered and/or approved by the SAFE 	<ul style="list-style-type: none"> ✓ Refer to the regulations on the administration of foreign exchange capital accounts for further information on RMB conversion. ✓ The use of borrowed funds to pledge collateral or execute an entrusted loan is not permitted.
Documents required for verification of fund transfers	<ul style="list-style-type: none"> (1) Application form (2) The approval of establishment certificate and approval document for the newly-established foreign-invested enterprise 	<ul style="list-style-type: none"> ✓ Fund transfers may only be made into the foreign exchange capital account of a newly-established foreign-invested enterprise. ✓ The foreign investor executing the transfer must be an equity participant (capital investor) in the newly-established foreign-invested enterprise.

Source: Compiled by the Advisory Division based on the *Operating Guidelines for the Domestic Direct Investment Service* and other relevant regulations.

Table. 5: Regulations on the handling of foreign exchange capital accounts

	Application documents, details of regulations, etc.	Precautions
Documents required for verification at account opening	(1) Proof of transaction consultation (issued by the SAFE following basic information registration) (2) Capital inflows control spreadsheet (printed out by the bank from the relevant SAFE operating system)	✓ The opening of accounts in places other than the place of registration and the opening of multiple accounts are acceptable.
Scope of deposits	✓ Foreign exchange capital and/or equity subscriptions deposited by the foreign investor (including funds withdrawn from a non-resident account, offshore account, or domestic foreign exchange account held by the foreign individual) ✓ Capital and/or equity subscriptions transferred by the foreign investor from a special account for guarantees paid in from overseas sources ✓ Returns of funds transferred from such account into a special account for domestically-transferred guarantees, entrusted loan account, special account for centralized fund management, overseas lending special account, or guarantee-of-principal bank funds special account ✓ Fund transfers from a capital account in the same name ✓ Other income approved or registered with the SAFE (fund transfers from a current account or foreign debt account, etc.)	✓ Banks will complete deposit formalities on the basis of the inflow quota given on the capital inflows control spreadsheet. ✓ Where a deposit exceeds the inflow quota due to exchange rates or the need to pay transaction charges, etc., a cumulative overrun of up to US\$30,000 is admissible. ✓ Cash deposits are not permitted.
Scope of withdrawals/ fund transfers	✓ Funds may be converted into RMB for use within the authorized business scope pursuant to the regulations. ✓ Domestic foreign exchange fund transfers pursuant to the regulations (special accounts for domestically-transferred guarantees, capital accounts in the same name, entrusted loan accounts, special accounts for centralized fund management, overseas lending special accounts, guarantee-of-principal bank funds special accounts, special domestic reinvestment accounts) ✓ External payments under the current account following verification of authenticity ✓ Capital account payments that have been registered or approved by the SAFE	✓ Use of account funds (RMB conversion, domestic fund transfers, payments, etc.) prior to the completion of capital verification is not permitted.
Documents required for verification at RMB conversion	(1) Payment order for RMB funds obtained through conversion (of foreign exchange capital) (2) Documents attesting to the use of RMB funds obtained through conversion (3) Invoices and other vouchers on external payments made on the basis of payment orders for RMB funds obtained from a previous conversion, a printout of the results from the tax department's online invoice authenticity inquiry system imprinted with the official seal or treasury seal of the enterprise and statements on the use of such funds (4) A capital contribution confirmation registration form	✓ Conversion of account funds into RMB for cash reserves is permitted up to US\$50,000 per transaction with a monthly ceiling of US\$100,000. ✓ The documents listed under (2) and (3) do not need to be presented for conversions of account funds into RMB for cash reserves. ✓ Interest on capital accounts may be converted into RMB on the basis of a bank-issued interest statement.

	Application documents, details of regulations, etc.	Precautions
Bans on the use of RMB funds obtained following conversion	<ul style="list-style-type: none"> ✓ For purposes not included in the enterprise's authorized business scope ✓ For equity contribution to a domestic enterprise (unless there are separate provisions) ✓ For the repayment of unused RMB loans ✓ For purchases of domestic property not for company use (except by real estate companies) ✓ For entrusted loans ✓ For repayment of inter-company loans or bank loans on-lent to a third party ✓ For guaranty payments of any kind 	<ul style="list-style-type: none"> ✓ RMB conversion is not permitted where an enterprise has failed the joint annual examination on foreign-invested enterprises. ✓ Where the equity contribution is being made by a foreign-invested holding company, etc., the fund transfer should be made in foreign exchange to the special domestic reinvestment account of the destination enterprise. ✓ Portfolio investments should be executed in accordance with the relevant state regulations.
Documents required for verification of fund transfers	* Fund transfers into a capital account in the same name (1) Application form (2) Capital verification report	<ul style="list-style-type: none"> ✓ This applies to fund transfers between different banks.
	* Fund transfers into a special account for domestically-transferred guarantees (1) Application form (2) Capital verification report (3) Documents attesting to the use of such funds for guaranty	<ul style="list-style-type: none"> ✓ This applies to participation in bids for onshore direct investments.
	* Fund transfers into a special domestic reinvestment account (1) Application form (2) Capital verification report (3) Documents attesting to the use of such funds for domestic reinvestment	<ul style="list-style-type: none"> ✓ This applies to foreign exchange subscriptions to a subsidiary by a foreign-invested holding company and the acquisition of Chinese-owned equity in a domestic enterprise.

Source: Compiled by the Advisory Division based on the *Operating Guidelines for the Domestic Direct Investment Service* and other relevant regulations.

**Table 6: Regulations on the handling of special accounts
for the proceeds from the sale of disposable domestic assets**

	Application documents, details of regulations, etc.	Precautions
Documents required for verification at account opening	<ul style="list-style-type: none"> (1) Proof of transaction consultation (issued by the SAFE following basic information registration) (2) Equity transfer inflows control spreadsheet (printed out by the bank from the relevant SAFE operating system) 	<ul style="list-style-type: none"> ✓ The account is to be opened by the seller of the domestic equity. ✓ Only one account may be opened per deal. ✓ Such accounts may be opened in places other than the place of registration.
Scope of deposits	<ul style="list-style-type: none"> ✓ The consideration for the equity transfer paid in by the foreign investor (including deposits from non-resident accounts, offshore accounts, and foreign exchange accounts held by foreign individuals) ✓ The consideration for the equity transfer transferred by the foreign investor from a special account for domestically-transferred guarantees ✓ Returns of funds transferred from such account into a special account for domestically-transferred guarantees, entrusted loan account, special account for centralized fund management, overseas lending special account, or guarantee-of-principal bank funds special account ✓ Other income approved or registered with the SAFE 	<ul style="list-style-type: none"> ✓ Where a deposit exceeds the inflow quota due to exchange rates or the need to pay transaction charges, etc., a cumulative overrun of up to US\$30,000 is admissible. ✓ Cash deposits are not permitted.
Scope of withdrawals/fund transfers	<ul style="list-style-type: none"> ✓ Funds may be converted into RMB for use within the authorized business scope pursuant to the regulations. ✓ Domestic foreign exchange transfers pursuant to the regulations (special accounts for domestically-transferred guarantees, entrusted loan accounts, special accounts for centralized fund management, overseas lending special accounts, guarantee-of-principal bank funds special accounts, special domestic reinvestment accounts) ✓ External payments under the current account following verification of authenticity ✓ Capital account payments that have been approved or registered by the SAFE 	<ul style="list-style-type: none"> ✓ The use of funds for which capital contribution confirmation registration has not been made by the foreign investor relating to the acquisition of Chinese-owned equity is not permitted. ✓ Refer to the regulations on the administration of foreign exchange capital accounts for further information on RMB conversion.
Documents required for verification of fund transfers	* Fund transfers into a special account for domestically-transferred guarantees <ul style="list-style-type: none"> (1) Application form (2) A capital contribution confirmation registration form relating to the acquisition of Chinese-owned equity by a foreign investor (3) Documents attesting to the use of such funds for guaranty 	<ul style="list-style-type: none"> ✓ This applies to participation in bids for onshore direct investments.
	* Fund transfers into a special domestic reinvestment account <ul style="list-style-type: none"> (1) Application form (2) A capital contribution confirmation registration form relating to the acquisition of Chinese-owned equity by a foreign investor (3) Documents attesting to the use of such funds for domestic investment 	<ul style="list-style-type: none"> ✓ This applies to foreign-exchange subscriptions to a subsidiary by a foreign-invested holding company and the acquisition of Chinese-owned equity in a domestic enterprise.

Source: Compiled by the Advisory Division based on the *Operating Guidelines for the Domestic Direct Investment Service* and other relevant regulations.

Table. 7: Regulations on the handling of special domestic reinvestment accounts

	Application documents, details of regulations, etc.	Precautions
Documents required for verification at account opening	<ul style="list-style-type: none"> (1) Proof of transaction consultation (issued by the SAFE following basic information registration) (2) Domestic reinvestment inflows control spreadsheet (printed out by the bank from the relevant SAFE operating system) 	<ul style="list-style-type: none"> ✓ The account is to be opened by the enterprise that is receiving foreign exchange capital or equity transfer payment from the foreign-invested holding company, etc. ✓ Only one account may be opened. ✓ Such accounts may be opened in places other than the place of registration.
Scope of deposits	<ul style="list-style-type: none"> ✓ Domestic reinvestment funds transferred from a foreign exchange capital account or account for the proceeds from the sale of disposable domestic assets ✓ Returns of funds transferred from such account into a special account for domestically-transferred guarantees, entrusted loan account, special account for centralized fund management, overseas lending special account, or guarantee-of-principal bank funds special account ✓ Other foreign exchange funds for domestic reinvestment that have been registered or approved by the SAFE 	<ul style="list-style-type: none"> ✓ Where a deposit exceeds the inflow quota due to exchange rates or the need to pay transaction charges, etc., a cumulative overrun of up to US\$30,000 is admissible. ✓ Cash deposits are not permitted. ✓ Capital contribution confirmation registration with the SAFE is not required.
Scope of withdrawals/fund transfers	<ul style="list-style-type: none"> ✓ Funds may be converted into RMB for use within the authorized business scope pursuant to the regulations. ✓ Domestic foreign exchange transfers pursuant to the regulations (special accounts for domestically-transferred guarantees, entrusted loan accounts, special account for centralized fund management, overseas lending special accounts, guarantee-of-principal bank funds special accounts) ✓ External payments under the current account following verification of authenticity ✓ Capital account payments that have been registered or approved by the SAFE 	<ul style="list-style-type: none"> ✓ Refer to the regulations on the administration of foreign exchange capital accounts for further information on RMB conversion.
Documents required for verification of fund transfers	* Fund transfers into a special account for domestically-transferred guarantees <ul style="list-style-type: none"> (1) Application form (2) Documents attesting to the use of such funds for guaranty 	<ul style="list-style-type: none"> ✓ This applies to participation in bids for onshore direct investments.
	* Fund transfers to a special domestic reinvestment account in another name <ul style="list-style-type: none"> (1) Application form (2) Documents attesting to the use of such funds for domestic investment 	<ul style="list-style-type: none"> ✓ This applies to foreign-exchange subscriptions to a subsidiary by a foreign-invested holding company and the acquisition of Chinese-owned equity in a domestic enterprise.
	* Funds transferred into the original capital account, special domestic reinvestment account or account for the proceeds from the sale of disposable domestic assets due to capital reduction, equity transfer, liquidation or other decrease in investment, or withdrawal from China <ul style="list-style-type: none"> (1) Application form (2) Documents attesting to the need to return such funds to the investor's original account 	

Source: Compiled by the Advisory Division based on the *Operating Guidelines for the Domestic Direct Investment Service* and other relevant regulations.

Table 8: Regulations on the handling of special guaranty foreign exchange accounts

	Application documents, details of regulations, etc.	Precautions
Documents required for verification at account opening	(1) Proof of transaction consultation (issued by the SAFE following basic information registration) (2) Control spreadsheet for guarantees paid in from overseas sources (printed out by the bank from the relevant SAFE operating system) (3) Account holder ID and documents attesting to the necessity for the account (where a special account for domestically-transferred guarantees is to be opened)	✓ Such accounts are to be opened by the guaranty recipient subject to basic information registration with the SAFE in the place of registration. ✓ Only one special account for guarantees paid in from overseas sources may be opened. ✓ Multiple special accounts for domestically-transferred guarantees are permitted. ✓ Accounts may only be opened in the place of registration of the account holder.
Scope of deposits	✓ Guaranty funds deposited for participation in a bid, etc., for an onshore direct investment	✓ Cash deposits are not permitted.
Scope of withdrawals/fund transfers	✓ Refunds via the original route ✓ Use by foreign investors for domestic subscription or payment of a consideration to a foreign or domestic account	✓ Funds may only be used for guarantees. ✓ RMB conversion is not permitted. ✓ The pledging of loan collateral is not permitted.
Documents required for verification of fund transfers	* Fund transfers into a domestic receiving account from a concluded deal (special account for guarantees paid in from overseas sources) (1) Application form (2) Documents attesting to the transfer of guaranty funds from a concluded deal to a domestic recipient	✓ Funds held in a special account for guarantees paid in from overseas sources may be transferred into a foreign exchange capital account or account for the proceeds from the sale of disposable domestic assets where the deal is concluded, or should be returned to the overseas account via the original route where the deal falls through. ✓ The document (2) refers to a document confirming completion of a land transaction issued by a land administration department or a document confirming transaction completion issued by a property exchange.
	* Return of funds into the original account due to a concluded or unconcluded deal (special account for domestically-transferred guarantees) (1) Application form (2) Documents attesting to the return of guaranty funds from a concluded or unconcluded deal to the original account	✓ Funds held in a special account for domestically-transferred guarantees must be returned to the original account whether the deal is completed or not.

Source: Compiled by the Advisory Division based on the *Operating Guidelines for the Domestic Direct Investment Service* and other relevant regulations.

Table 9: Procedure for foreign debt borrowing by foreign-invested enterprises

	Procedure	Application documents	Precautions
Registration of the foreign debt contract	Register with the local SAFE within 15 business days after the conclusion of a foreign debt contract to receive a “foreign debt contract status chart for domestic entities.”	(1) Application form (2) The original foreign debt contract and a copy of the major provisions of such agreement (with a Chinese translation of the latter if the original is in a foreign language) (3) The approval certificate for FIEs and the business license (4) Documents attesting to the amount of capital paid in by foreign shareholders (5) Other documents necessary to supplement the above	✓ A registration of alteration must be filed with the SAFE if there are any amendments to the foreign debt contract.
Opening of a foreign debt account	Procedures are undertaken at a bank following registration of the foreign debt contract with the SAFE.	(1) Application form (2) A foreign debt registration certificate issued by the SAFE and proof of transaction consultation from the Capital Account Information System (3) Other documents necessary to supplement the above	✓ A maximum of two “special accounts for foreign debt” are permitted per foreign debt contract, but only one “special account for repayment of principal and interest” may be opened where appropriate. ✓ Approval from the local SAFE is required for the opening of remote accounts. ✓ Approval from the SAFE is required when opening more than the prescribed number of accounts.
Conversion of loan proceeds	Procedures are undertaken at a bank.	(1) Application form [#] (2) The foreign debt contract status chart for domestic entities (3) Documents attesting to the use of loan proceeds that have been converted into RMB (agreements, consultation documents, invoices, receipt notices, payment orders, etc.) (4) Other documents deemed necessary by the bank	✓ The requirement for SAFE approval on the conversion of loan proceeds into RMB has been removed. ✓ Converted loan proceeds may not be used to service RMB loans from a domestic financial institution. ✓ Loan proceeds must be transferred to the recipient within five business days of their conversion into RMB (except where such are being appropriated for cash reserves, etc.)
Repayment of principal and interest	Foreign currency conversion and external payment procedures are undertaken at a bank.	(1) Application form (2) The foreign debt contract status chart for domestic entities (3) The notice of principal and interest repayment issued by the debtor (4) Other documents deemed necessary by the bank	✓ The requirement for SAFE approval of principal and interest repayments has been removed.

	Procedure	Application documents	Precautions
Cancellation of foreign debt registration	Procedures are undertaken at the local SAFE within one month of the final repayment of principal and interest.	(1) Application form (2) The foreign debt contract status chart for domestic entities (3) Other documents necessary to supplement the above	<ul style="list-style-type: none"> ✓ This procedure should be undertaken within one month of the final repayment of principal and interest when the account balance of unpaid foreign debt becomes zero and the debtor will not draw any more funds under the loan agreement. ✓ The relevant foreign debt accounts and special accounts for repayment of principal and interest should be closed in advance.
Domestic debt with foreign security	Foreign-invested enterprises may enter into direct agreements with the overseas institution or individual providing guaranty and with the domestic financial institution that is extending the loan.		<ul style="list-style-type: none"> ✓ Foreign debt registration is to be completed at the local SAFE when the guarantor is performing its obligations under the guarantee. ✓ The guaranty amount is included in the foreign-invested enterprise's foreign debt borrowing gap quota as short-term foreign debt. ✓ Where the borrowing gap is exceeded when the guarantor is performing its obligations under the guarantee, the matter will be handled by the inspection department following foreign debt registration.
Guaranty commissions on external payments	Prior approval from the SAFE is required.	(1) Application form (2) A notice of payment of guaranty expenses issued by the guarantor (3) Guaranty agreement (4) The master loan contract for the guaranty (5) Foreign debt registration certificate (6) Other documents necessary to supplement the above	<ul style="list-style-type: none"> ✓ Commission rates are agreed upon by the parties in accordance with industry standards.

The use of RMB funds obtained from the conversion of such foreign loans must correspond to the use stated on the application form, and the debtor must agree to accept all liability for any conflict between stated and actual use.

Source: Compiled by the Advisory Division based on the *Measures* and the *Operating Guidelines for the Measures for Administration of External Debt Registration*.

**Table 10: Key details of regulations on
foreign exchange administration relating to foreign debt borrowing**

	Details of regulations
Administration of the borrowing gap, scale of foreign debts	<ul style="list-style-type: none"> ✓ The total amount of short-term foreign debt (with a contractual period of less than one year) and medium- and long-term foreign debt (with a contractual period of over one year) incurred by a foreign-invested enterprise must not exceed the gap between the total investment and registered capital of such FIE (the so-called “foreign debt borrowing gap”). ✓ The actual amount of foreign debt that may be borrowed by a foreign-invested enterprise is equal to the ratio of the foreign shareholders’ paid-in capital multiplied by its foreign debt borrowing gap. ✓ The foreign debt borrowing quota for foreign-invested holding companies must be no more than fourfold its registered capital where such registered capital is not less than US\$30 million or no more than six-fold where such registered capital is not less than US\$100 million. ✓ The quota for new foreign debt borrowing by foreign-invested financial lease companies (on an outstanding principal basis) is equal to ten times its net assets minus its total risk assets (including foreign debt) in the previous financial year. ✓ Where medium- and long-term foreign debt is to be rolled over (extended), or new medium- and long-term foreign debt is to be incurred for the repayment of an earlier foreign debt, such amount will not take up the foreign debt borrowing gap insofar as there is no increase in the amount of the existing foreign debt principal and the proceeds of such borrowing will not be converted into RMB.
Regulations on the use of foreign debt	<ul style="list-style-type: none"> ✓ Short-term foreign debt may not be used to make fixed asset investment or for other medium- to long-term purposes. ✓ Loan proceeds may not be converted into RMB where refinancing or other debt adjustments are being made. ✓ Where the proceeds are to be used for equity participation (for the enterprise establishment or acquisition of an equity interest by a foreign-invested holding company, etc.), they are to be transferred in the original currency and may not be converted into RMB. ✓ Loan proceeds may not be used for lending except by foreign-invested leasing companies and small loan companies. ✓ Loan proceeds may not be used for the establishment of mortgages or rights on a pledge except by collateral management companies. ✓ Loan proceeds may not be used for securities investment. ✓ The income from interest on a foreign debt account may be converted into RMB in accordance with the regulations on the foreign exchange administration of current account transactions.
Handling of foreign debt accounts	<ul style="list-style-type: none"> * Scope of deposits: The proceeds from foreign debt for which foreign debt contract registration has been carried out in accordance with the regulations and interest on deposits (in such accounts), and funds for repayment that have been deposited at least five business days prior to repayment * Scope of withdrawals: External payments under the current account, RMB conversions in accordance with the regulations, capital account payments in accordance with the regulations
Special accounts for repayment of principal and interest	<ul style="list-style-type: none"> * Scope of deposits: Foreign exchange funds owned by the FIE and other foreign exchange funds for the repayment of foreign debt (that are deposited within the prescribed scope and/or amount in accordance with the request of the creditor) * Scope of withdrawals: Foreign debt repayments ✓ The balance of such accounts must not exceed the total amount of foreign debt principal and interest and related expenses for the next two repayment installments. ✓ Foreign exchange funds transferred into a special account for repayment of principal and interest subject to the purchase of foreign exchange may not be converted into RMB without SAFE approval.

Source: Compiled by the Advisory Division based on the *Measures* and the *Operating Guidelines for the Measures for Administration of External Debt Registration*.

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