

February 16, 2015  
(Translated Date: March 4, 2015)  
Mizuho Bank (China), Ltd.  
Advisory Division

—Policy Issues for the China (Shanghai) Pilot Free Trade Zone—

**Mizuho China Business Express**

(No. 369)

**People's Bank of China Shanghai Head Office Introduces New Foreign Debt Administration Model to Enable Offshore Financing Through Free Trade Accounts**

On February 12, 2015, the Shanghai Head Office of the People's Bank of China (PBOC) issued the [Circular on Printing and Distributing the Implementation Rules for Macro-prudential Management of Offshore Financing and Cross-border Capital Flows for Separate Accounting Business in the China \(Shanghai\) Pilot Free Trade Zone \(Interim\)](#) (Yin Zong Bu Fa [2015] No. 8; hereinafter referred to as "Circular No. 8"). The new rules allow enterprises in the China (Shanghai) Pilot Free Trade Zone (hereinafter referred to as the "Shanghai FTZ") to raise funds overseas through "free-trade accounts" (hereinafter referred to as "FTA") that may be opened with financial institutions that have set up so-called "separate accounting units" (free trade accounting units; hereinafter referred to as "FTU"), a term that refers to the special accounting system provided for the Shanghai FTZ.

Offshore financing through FTU is not a method of foreign debt administration for foreign debt quotas (or the so-called "borrowing gap"), but it applies a macro-prudential management model that involves balance management of the reusable portion of a financing (loan) quota following repayment within a total of up to twice the enterprise's capital (paid-in capital + capital reserves) (in case of ordinary enterprises), thus giving enterprises greater financing flexibility. In practice, however, due caution will need to be exercised for several reasons, since the amount recorded as the total varies depending on the risk factors of raised funds and, under current rules, a percentage of foreign currency-denominated trade finance that does not count as foreign debt is also recorded.

The following paragraphs explain the new model for the administration of funds raised offshore as regulated by Circular No. 8.

**Amounts recorded by multiplying risk factors**

Under the provisions of Circular No. 8, enterprises in the Shanghai FTZ that have opened an FTA may raise funds overseas. Chinese-funded FTZ enterprises whose offshore RMB fund borrowing was previously limited by their

paid-in capital will now be able to utilize the new macro-prudential management model to borrow foreign debt. By contrast, foreign-invested FTZ enterprises have the option to select either the existing foreign debt administration model or the new macro-prudential management model provided for in Circular No. 8 (Article 2). Such enterprises must then file a record of their choice with the PBOC Shanghai Head Office via their settlement bank. Enterprises that opt for the macro-prudential management model record the outstanding balance of existing foreign debt (both foreign currency and RMB debt) as the total under the new model.

FTAs may be used to borrow both onshore and offshore loans, but an upper limit applies to funds that are raised through offshore financing (Article 7). This is calculated using the following formula: capital (paid-in capital + capital reserves) × offshore borrowing leverage ratio × macro-prudential adjustment parameter, where the offshore borrowing leverage ratio for ordinary FTZ enterprises (excluding branch organizations) is “twice,” and the macro-prudential adjustment parameter is initially set at “1.”

Accordingly, ordinary FTZ enterprises can borrow up to twice their capital. The offshore borrowing leverage ratios for financial institutions are set according to status (see Table. 1). In addition, these caps are to be recalculated once a year (ibid), in principle.

**Table. 1: Offshore borrowing leverage ratios by borrower entity**

Borrower entity	Borrower entity status	Ratio
Ordinary enterprises	(Does not apply to branch organizations)	Twice their capital
	Entities with an FTU	Three times their capital
	Municipal-level branches in Shanghai with an FTU	8% of capital
	FTZ entities with no FTU*	Twice their capital
	Direct-controlled branches in the FTZ with no FTU*	5% of capital
Non-bank financial institutions	New entities registered in the FTZ	Five times their Tier 1 capital
	Municipal-level banks in Shanghai with an FTU	5% of Tier 1 capital
Banks		

\* Non-bank financial institutions with no FTU are required to open an FTA with a financial institution that has set up an FTU.

(Compiled by the Advisory Division from Circular No. 8.)

Offshore funds that can be raised through FTU include funds recorded in the total amount and unrecorded funds (Article 6; see Table. 2). Under current regulation, trade finance is not counted as foreign debt, but where funds are raised through an FTU, a percentage (20%) of foreign currency-denominated trade finance are to be recorded as outstanding.

**Table. 2: Funds recorded (unrecorded) as offshore loan funds**

	Type of funds	Definitions, terms, etc.
Recorded funds	<b>Foreign currency-denominated trade finance</b>	<b>20%</b> of funds raised is to be <u>recorded</u> , with term risk (see <b>Table. 3</b> ) set at “1” for both medium/long-term and short-term loans.
	<b>Off-balance-sheet loans (Contingent liabilities)</b>	<b>20%</b> of the external contingent liabilities of financial institutions generated by the hedging transactions of enterprises with FTAs is to be <u>recorded</u> . <b>50%</b> of the contingent liabilities generated by hedging transactions undertaken by the financial institution in international financial markets is to be <u>recorded</u> .
	<b>Other funds</b>	The actual circumstances of all external liabilities are to be recorded.
Unrecorded funds	<b>absorbed deposits (Financial institutions)</b>	Funds absorbed from overseas by financial institutions that provide FTA services; where such funds are to be deposited onshore (including with the head and branch offices of the bank), the balance is to be recorded in accordance with current regulations on the administration of foreign currency-denominated foreign debt.
	<b>Trade credit, non-financing guarantees, RMB-denominated trade finance</b>	Trade credit generated from authentic trade transactions (advances and deferred payments, etc.) and RMB-denominated trade finance, and non-financing guarantees provided by financial institutions for trade and investment activities
	<b>Panda bonds (for own use)</b>	Where an offshore parent company issues RMB bonds in China and a wholly-owned group subsidiary registered in the FTZ uses the funds raised from the bond issuance
	<b>Fund transfers within the group</b>	Centralized management of cross-border funds where the principal enterprise is an FTZ enterprise (limited to cash flows generated by operating activities and business investment activities)
	<b>Assigned capital, debt relief</b>	Debt/equity swaps of loan funds or funds obtained from debt relief, etc. (where the amount recorded for the initial loan is left on-book)

(Compiled by the Advisory Division from Circular No. 8.)

When recording amounts of funds raised offshore, due care is needed since such amounts are not simply recorded but need first to be multiplied by the relevant risk factor (Article 5). Three risk factors are employed, namely, the term risk conversion factor, currency risk conversion factor, and category risk conversion factor, where the corresponding risk categories and values are as shown in Table. 3.

**Table. 3: Risk factors and their values**

Risk factor	Risk category	Value
<b>Term risk conversion factor<sup>*1</sup></b>	Medium/long-term loans (exceeding one year)	1
	Short-term loans (up to one year) <sup>*2</sup>	1.5
<b>Currency risk conversion factor</b>	RMB-denominated	1
	Foreign currency-denominated	1.5
<b>Category risk conversion factor</b>	On-balance-sheet funds	1
	Off-balance-sheet funds	0.2 or 0.5

<sup>\*1</sup> For foreign currency-denominated trade finance, term risk is set at “1” for both medium/long-term loans and short-term loans.

<sup>\*2</sup> Where accelerated repayments on a medium and long-term loan have occurred more than three times within one year, all outstanding balances and newly raised funds are to be calculated in their entirety as short-term loans.

(Compiled by the Advisory Division from Circular No. 8.)

Where, for example, a loan of US\$ 1 million has been borrowed via an FTA as short-term foreign debt (up to one

year), its scale is computed as follows: **US\$ 1 million × 1.5 (short-term loan risk) × 1.5 (foreign currency risk) × 1 (on-balance-sheet risk) = US\$ 2.25 million**. This US\$ 2.25 million must then be converted into RMB at the intermediate market rate published by the PBOC on the date of borrowing and recorded accordingly.

**The use of raised funds is subject to “actual demand.”**

Offshore loans raised via an FTU must be **used on the basis of actual demand**. Specifically, such funds may only be used to finance an enterprise’s operating activities or for establishing projects either inside the FTZ or outside China, and such fund use must be consistent with the direction of industry-based macro-control measures in place nationwide and in the Shanghai FTZ (Article 14).

Where enterprises are to raise funds overseas via an FTA, they must file an application with the PBOC Shanghai Head Office via their settlement bank at least three working days prior to the execution of a foreign debt contract (Article 12). In addition, the requirement for foreign currency-denominated foreign debt to be registered with the State Administration of Foreign Exchange still stands, and RMB-denominated foreign debt must be reported by the bank to the relevant PBOC Shanghai Head Office system (Article 13).

**Application documents required for offshore financing**

- ✓ The original offshore loan contract and a copy of its principal terms (where the contract is in a foreign language, a Chinese translation of the principal terms must be provided separately)
- ✓ The business license
- ✓ The latest capital verification report or audit report
- ✓ The resolution of the board of directors on the matter of offshore financing (where the funds are being raised by a branch of a non-bank financial institution, written authorization from the corporation is required)
- ✓ A status report on offshore RMB loans, foreign currency-denominated foreign debt, and any external guarantees secured by offshore enterprises up to and including the date of application, etc.

(Circular No. 8, Article 12)

**Financial disclosure requirements need to be taken into account.**

Entities opting for the macro-prudential management model should note that FTZ enterprises that raise offshore loans through an FTU are **bound by financial disclosure requirements**. Circular No. 8 states that: “a FTZ enterprise shall **disclose its balance sheet, income statement, and cash flow statement** for the financial year in the standard formats via the FTZ’s disclosure platform for annual reports” (Article 15).

The ***Interim Regulations on Information Disclosure of Enterprises*** (Decree of the State Council of the People’s Republic of China [No. 654]), which were promulgated by the State Council in August 2014 (with effect from October) require enterprises to disclose information via the **Enterprise Credit Information Disclosure System**. Financial information is included in the information that is to be reported in annual reports, but the disclosure of such information is optional. However, the provisions of Circular No. 8 make the disclosure of financial

information by FTZ enterprises that have raised offshore loans via an FTU mandatory.

Circular No. 8 makes specific provision for entities that are prohibited from raising offshore loans through an FTU. It states that enterprises that have not reported and/or disclosed financial information to the Enterprise Credit Information Disclosure System (with the exception of newly established enterprises that have been in operation for less than one year) and enterprises on the **blacklist** (as enterprises with irregularities in their operations) on the Enterprise Credit Information Disclosure System are not permitted to raise offshore loans via an FTU (Article 15). Moreover, although enterprises that are on the **priority-attention list** for RMB settlement of goods exports are permitted to raise offshore loans, the financial institutions that handle such business have an obligation to undertake a careful examination of the relevant transactions (ibid).

On December 28, 2014, the Standing Committee of the National People's Congress passed a decision to enlarge the geographic scope of the Shanghai FTZ in response to a decision of the Standing Committee of the State Council. The expansion is expected to become official on March 1, 2015, at which time the Lujiazui Financial and Trade Zone, Shanghai World Expo site, Jinqiao Economic and Technological Development Zone, and Zhangjiang High-tech Park will be added to the Shanghai FTZ, thereby increasing its total area from 28.78 square kilometers to 120.72 square kilometers. According to the PBOC briefing, **enterprises in the expanded areas will be permitted to set up FTAs and raise offshore loans**, which are expected to give rise to an increase in the number of enterprises with FTAs and a surge in offshore borrowing.

\*

Circular No. 8 is being heralded as a new “experiment” by the PBOC in capital account liberalization, and realizes the “borrowing of domestic and foreign currency-denominated funds from overseas markets by Chinese- and foreign-funded enterprises, non-bank financial institutions and other economic units registered in the FTZ according to operational needs” included in the [\*\*\*Opinions of the People's Bank of China on Financial Measures to Support the China \(Shanghai\) Pilot Free Trade Zone\*\*\*](#) (Yinfa [2013] No. 244). The PBOC has explained that the release of Circular No. 8 is intended to lower fund-raising costs for domestic enterprises by expanding the routes available to access offshore loans at lower rates of interest.

A provisional translation of Circular No. 8 together with the original Chinese document is presented below for further reference.

Naoki Tsukioka, Advisory Division, Mizuho Bank (China), Ltd.

(Provisional translation)

**People's Bank of China Shanghai Head Office**  
**Yin Zong Bu Fa [2015] No. 8**  
**Circular on Printing and Distributing the Implementation Rules for Macro-prudential Management of Offshore Financing and Cross-border Capital Flows for Separate Accounting Business in the China (Shanghai) Pilot Free Trade Zone (Interim)**

China Development Bank, the policy banks, state-owned commercial banks, joint-stock commercial banks, Postal Savings Bank of China Shanghai (municipal) branches, pilot free trade zone bank branches; Bank of Communications, Shanghai Pudong Development Bank, Bank of Shanghai, Shanghai Rural Commercial Bank; other Shanghai branches of municipal commercial banks; all foreign banks in Shanghai; all non-bank financial institutions in Shanghai:

Pursuant to the *Opinions of the People's Bank of China on Financial Measures to Support the China (Shanghai) Pilot Free Trade Zone* (Yinfa [2013] No. 244), and with the approval of the People's Bank of China, you are hereby notified of the printing and distribution of the *Implementation Rules for Macro-prudential Management of Offshore Financing and Cross-border Capital Flows for Separate Accounting Business in the China (Shanghai) Pilot Free Trade Zone (Interim)*. These rules are to be appropriately implemented pursuant to their uniform deployment by the Shanghai Head Office of the People's Bank of China (including the Shanghai Branch of the People's Bank of China and the Shanghai Branch of the State Administration of Foreign Exchange).

Notice is hereby given.

Annex: *Implementation Rules for Macro-prudential Management of Offshore Financing and Cross-border Capital Flows for Separate Accounting Business in the China (Shanghai) Pilot Free Trade Zone (Interim)*

People's Bank of China Shanghai Head Office

February 12, 2015

Annex:

***Implementation Rules for Macro-prudential Management of Offshore Financing and Cross-border Capital Flows for Separate Accounting Business in the China (Shanghai) Pilot Free Trade Zone (Interim)***

**Chapter 1: General Provisions**

**Article 1:** These Rules are formulated to facilitate trade and investment in the pilot free trade zone (hereinafter referred to as the “FTZ”), to enhance the capacity of finance in serving the cross-border development of the FTZ’s real economy, and to prevent exposure to offshore financing risk in the FTZ, in accordance with the *Opinions of the People’s Bank of China on Financial Measures to Support the China (Shanghai) Pilot Free Trade Zone* (Yinfa [2013] No. 244) and other relevant provisions.

**Article 2:** As mentioned in these Rules, offshore financing for separate accounting business in the FTZ refers to the raising of funds overseas by financial institutions in the Shanghai area through separate accounting units, and the raising of funds overseas by FTZ enterprises and non-bank financial institutions through their free trade accounts, and is hereinafter referred to as “offshore loans under separate accounting.”

FTZ enterprises and non-bank financial institutions have the option to select and apply either the existing foreign debt administration model for foreign debt and offshore borrowing or the new macro-prudential management model provided for herein, and may file notice of their choice with the PBOC Shanghai Head Office via their settlement bank. In principle, no changes are admissible once the selection has been made. Where there are reasonable grounds for changing the selection, an application shall be filed via the settlement bank with the PBOC Shanghai Head Office without fail. Only one change is admissible. The outstanding balance of foreign debt and RMB-denominated offshore borrowings under the former administration model shall be recorded and administered under the newly selected model.

As mentioned in these Rules, financial institutions refers to the branch organizations established in Shanghai by all corporate financial institutions and national financial institutions that have been duly established in the Shanghai area with the approval of the PBOC, the China Banking Regulatory Commission, China Securities Regulatory Commission, or China Insurance Regulatory Commission that have already installed internal separate accounting systems in accordance with the requirements of the *Implementation Rules on Separate Accounting Business in the China (Shanghai) Pilot Free Trade Zone (Interim)* and the *Rules for the Prudential Management of Risks Relating to Separate Accounting Business in the China (Shanghai) Pilot Free Trade Zone (Interim)* issued by the PBOC Shanghai Head

Office, and are connected to the relevant systems of the PBOC Shanghai Head Office (and the relevant State Administration of Foreign Exchange systems; the same applies hereinafter).

**Article 3:** The PBOC Shanghai Head Office (including the Shanghai Branch of the PBOC and the Shanghai Branch of the State Administration of Foreign Exchange; the same applies hereinafter) are responsible for the macro-prudential management of offshore loans under separate accounting and cross-border capital flows, and shall work with other financial regulators to establish mechanisms for cooperation.

## Chapter 2: Regulations on Offshore loans under Separate Accounting

**Article 4:** FTZ enterprises and non-bank financial institutions and financial institutions that provide separate accounting business in the FTZ may obtain loans in China (including the FTZ) and may obtain loans overseas, and shall abide by the principles of risk control. That portion of said loans obtained overseas shall be administered subject to the use of the offshore borrowing leverage ratio, risk conversion factors, and the macro-prudential adjustment parameter.

The PBOC Shanghai Head Office shall adjust the offshore borrowing leverage ratio, risk conversion factors, and the macro-prudential adjustment parameter on the basis of FTZ cross-border and cross-regional capital flows and credit supply within the FTZ and nationwide, and, where necessary, may take temporary emergency measures, such as control the total of offshore loans under separate accounting, in accordance with the need to maintain financial stability in the domestic economy.

**Article 5:** RMB- and/or foreign currency-denominated funds rose overseas by an FTZ enterprise or financial institution via a separate accounting unit shall be consolidated and calculated from the balance (i.e., the outstanding balance of loans; the same applies hereinafter) to obtain the total. The formula for the calculation is as follows:

Offshore loans under separate accounting =  $\Sigma$  balance of offshore loans  $\times$  term risk conversion factor  $\times$  currency risk conversion factor  $\times$  category risk conversion factor

Offshore loans are categorized according to term and may be divided into two categories, namely: medium and long-term loans and short-term loans. Medium and long-term loans refer to offshore loans with a repayment term agreed by both parties of more than one year (exclusive), and short-term loans refer to offshore loans with a repayment term agreed by both parties of one year or less (inclusive). The term risk conversion factor for medium and long-term loans is set at “1,” and that for short-term loans at “1.5.” Where accelerated repayments on a medium and long-term loan have

occurred more than three times on a cumulative basis within one year, all outstanding balances and newly raised funds are to be calculated in their entirety as short-term loans.

Offshore loans are categorized according to currency and may be divided into two categories, namely: RMB loans and foreign currency loans. Where an offshore loan is settled in RMB, the currency risk conversion factor is set at “1,” and where settlements are made in a foreign currency, the currency risk conversion factor is set at “1.5.”

Offshore loans are categorized as either on-balance-sheet loans or off-balance-sheet loans. The risk conversion factor for on-balance-sheet loans is set at “1,” and that for off-balance-sheet loans (contingent liabilities) is set at either “0.2” or “0.5” on a two-step scale.

## **Article 6: Regulations on the calculation of offshore loans under separate accounting**

### **1. Business types not recorded as offshore loans under separate accounting**

**(1) Absorbed deposits.** Overseas RMB and foreign currency deposits absorbed from an offshore entity by a financial institution providing free trade account services shall not be recorded as offshore loans under separate accounting.

Where a separate accounting unit is depositing accepted foreign currency deposit funds with a domestic organization (including senior-ranking corporate organizations), the foreign debt balance of such organization shall be recorded in accordance with current regulations on the administration of foreign currency-denominated foreign debt.

**(2) Trade credit, non-financing guarantees and RMB-denominated trade finance.** Trade credit (including advances and deferred payments) generated from the authentic expansion into cross-border trade by FTZ enterprises and RMB-denominated trade finance shall not be recorded as offshore loans under separate accounting. The various types of RMB-denominated trade finance generated from authentic cross-border trade settlement transactions by financial institutions shall not be recorded as offshore loans under separate accounting. Non-financing guarantees provided by financial institutions to support international trade and investment activity in the real economy shall not be recorded as offshore loans under separate accounting.

**(3) Panda bonds for own use.** Where an offshore parent company of an FTZ enterprise issues RMB bonds in China to raise funds for the use of a wholly-owned group subsidiary established in the FTZ, such funds shall not be recorded as offshore loans under separate accounting.

**(4) Fund transfers within the group.** The centralized management of cross-border funds (limited to cash flows generated by operating activities and business investment activities) within the group

where the principal enterprise is an FTZ enterprise shall not be recorded as offshore loans under separate accounting.

(5) **Assigned capital and debt relief.** For capital transfers of offshore loans under separate accounting and/or funds obtained from debt relief, the commensurate amounts shall not be recorded as offshore loans under separate accounting. The authentic use of off-balance-sheet financing for FTZ asset-backed bonds formed as offshore loans under separate accounting and offshore funds obtained from an overseas assignment shall not be recorded as offshore loans under separate accounting, and no alteration shall be made to the amounts originally recorded as offshore loans under separate accounting.

## 2. Business types recorded as offshore loans under separate accounting

- (1) **Foreign currency-denominated trade finance.** The foreign currency-denominated trade finance of financial institutions and enterprises shall be recorded as offshore loans under separate accounting at a rate of 20 percent, with the term risk conversion factor recorded as a standard “1.”
- (2) **Off-balance-sheet loans (contingent liabilities).** External contingent liabilities (including financing guarantees) formed from the necessity of providing hedging services to manage the risks associated with authentic cross-border transactions and the currencies and terms of assets and liabilities for customers with free trade accounts shall be recorded as offshore loans under separate accounting at a rate of 20 percent. Contingent liabilities arising from the necessity of own hedging currency and term risks so as to participate in international financial markets shall be recorded as offshore loans under separate accounting at a rate of 50 percent.
- (3) **Other funds.** Other types of foreign debt shall be recorded as offshore loans under separate accounting in accordance with their actual circumstances.

The PBOC Shanghai Head Office may adjust the various business types recorded as offshore loans under separate accounting in accordance with the development of such businesses and the need for risk management.

**Article 7:** The upper limit on offshore loans under separate accounting shall not exceed the amount yielded from the following calculation: capital  $\times$  offshore borrowing leverage ratio  $\times$  macro-prudential adjustment parameter. Wherein, capital shall, unless otherwise specified, include the paid-in capital (or share capital) and the capital reserves, taking the latest capital verification report or audit report issued by a domestically registered account as standard. The upper limit on offshore loans under separate accounting shall be calculated annually, in principle.

The offshore borrowing leverage ratio for offshore loans under separate accounting is set on the basis of borrower entity. For FTZ incorporated enterprises (this does not apply to branch organizations), the ratio is set at twice such enterprises' capital. For non-bank financial institutions in the FTZ that have set up separate accounting units, the ratio is set at three times such institutions' capital, whilst for municipal-level non-bank financial institutions with separate accounting units in Shanghai, the ratio is set at 8 percent of the capital of their domestically incorporated organization. For newly established corporate banking organizations that have set up separate accounting units, the ratio is set at five times their Tier 1 capital, whilst for municipal-level banks with separate accounting units in Shanghai, the ratio is set at 5 percent of the Tier 1 capital of their domestically incorporated organization. For domestically incorporated non-bank financial institutions that have not set up separate accounting units but have opened a free trade account with a separate accounting unit held by another financial institution, the ratio is set at twice the capital of such non-bank financial institution, whilst the ratio for the directly controlled branches of non-bank financial institutions in the FTZ is set at 5 percent of the domestically incorporated capital.

The macro-prudential adjustment parameter is initially set at "1."

**Article 8:** The interest rate on offshore loans under separate accounting shall be set independently by the parties to such loans within reasonable bounds and in accordance with commercial principles.

Offshore loans under separate accounting that are denominated in a foreign currency shall be converted using the market rate on the date of borrowing according to the following formula, and recorded accordingly.

For foreign currencies that are already traded on the China Foreign Exchange Trade System (CFETS; including region-based markets), the intermediate market rate for the RMB or the reference rates published for region-based transactions shall apply. For foreign currencies not currently traded on the CFETS, the reference rates for the RMB published by CFETS shall apply.

### Chapter 3: Macro-control Trigger Mechanisms for Offshore Loans under Separate Accounting

**Article 9:** The PBOC Shanghai Head Office shall, in accordance with the requirements of "macro-prudential principles," establish mechanisms for the macro-control of offshore loans under separate accounting in the FTZ in conjunction with the relevant departments. Such mechanisms shall comprise a risk alert indicator system and the commensurate macro-control policy tools.

**Article 10:** The PBOC Shanghai Head Office shall establish a risk alert indicator system for offshore loans under separate accounting that corresponds to the data collected by its systems, economic and financial operations in the FTZ, and actual cross-border and cross-regional capital flows. Key alert indicators shall include alert indicators for the scale of offshore loans, alert indicators for the composition of offshore loans (currency composition indicators, foreign exchange sensitivity indicators, term composition indicators, term mismatch ratios, etc.), alert indicators for cross-border/cross-regional capital flows, and FTZ credit supply alert indicators, among others.

Control tools for the various parameters used in respect of offshore loans under separate accounting shall include, the offshore borrowing leverage ratio, risk conversion factors, and the macro-prudential adjustment parameter, whilst other tools shall include tools to control extensions of account deposit terms for raised funds, charges levied on raised funds for the special deposit reserve fund, zero-interest deposit reserve funds charges, and tools to maintain the financial stability of the domestic economy as necessary, among others.

The PBOC Shanghai Head Office may adjust and make improvements to the aforementioned risk alert indicators and macro-control policy tools on the basis of its monitoring and risk-prevention needs.

**Article 11:** Three risk grades shall be set in respect of the risk alerts for offshore loans under separate accounting in the FTZ, namely: Grade I (low risk), Grade II (medium risk), and Grade III (high risk).

When a risk alert indicator reaches the critical level for its risk grade, the PBOC Shanghai Head Office shall issue the commensurate risk alert to financial institutions and may use the aforementioned tools to make the appropriate adjustments. Such adjustments may be made by means of a single tool or a combination of multiple tools, and may be implemented in respect of individual, multiple and/or all financial institutions. The financial institutions shall cooperate with the macro-control management of the PBOC Shanghai Head Office.

Where adjustments to risk conversion factors, offshore borrowing leverage ratios, or the macro-prudential adjustment parameter result in a breach in the ceiling on the balance of offshore loans under separate accounting under term, such loans may be held to maturity if a loan contract exists, and no new business of offshore loans under separate accounting may be executed until a new upper limit has been set for the balance of offshore loans under separate accounting.

## Chapter 4: Information Disclosure and Use of Funds

**Article 12:** FTZ enterprises and non-bank financial institutions shall file an application for business of offshore loans under separate accounting to the PBOC Shanghai Head Office via their settlement bank at least three working days prior to the execution of an offshore loan contract.

FTZ entities shall submit the following factual materials to their bank:

- (1) The original offshore loan contract and a copy of its principal terms; where the contract is in a foreign language, a Chinese translation of the principal terms shall be attached.
- (2) The business license
- (3) The latest capital verification report or audit report
- (4) The resolution of the board of directors on the matter of offshore financing; where the offshore loan is being taken out by a branch of a non-bank financial institution, written authorization from its domestically incorporated organization shall be submitted.
- (5) A status report on offshore RMB loans, foreign currency-denominated foreign debt, and any external guarantees secured by offshore enterprises up to and including the date of application
- (6) Other supplemental explanatory documents to be provided for the aforementioned materials

Where a bank discovers that the actual loan amount given in explanatory documents submitted by an FTZ enterprise or non-bank financial institution constitutes a breach in the ceiling on offshore loans under separate accounting specified in these Rules, it shall refuse to handle settlements using offshore loan funds and shall report such to the PBOC Shanghai Head Office.

Where offshore loan business arises in the separate accounting units of financial institutions, an application shall be filed directly to the relevant system of the PBOC Shanghai Head Office.

All materials relating to business of offshore loans under separate accounting are to be retained by the settlement bank in readiness for inspection for a period of five years following the termination of such loan business.

**Article 13:** When a bank handles settlement business for offshore loans under separate accounting of an FTZ enterprise or non-bank financial institution, it shall make an inquiry to the relevant PBOC Shanghai Head Office system for basic information on the offshore loans under separate accounting of the FTZ enterprise or non-bank financial institution, and shall confirm that such offshore loans are in compliance with the provisions of these Rules.

For FTZ enterprises or non-bank financial institutions that handle business of offshore loans under separate accounting for the first time, banks shall, prior to referencing the basic information, send information on such entity's capital and other matters based on the aforementioned materials submitted by such entity to the relevant system of the PBOC Shanghai Head Office, and shall automatically produce a ceiling for the offshore loans under separate accounting. Where a merger or acquisition undertaken by an FTZ entity that has already engaged in business of offshore loans under separate accounting leads to a significant change in its capital, it shall submit the relevant proof to banks and may apply to alter the relevant information on capital in the system.

Where an FTZ entity has taken out a foreign currency-denominated offshore loan or offshore loan denominated in RMB or a foreign currency that is not a fund-transfer loan within its offshore loans under separate accounting limit, it shall undertake foreign debt registration and record filing procedures with the PBOC Shanghai Head Office in accordance with the relevant requirements of the foreign debt administration. Where offshore loans under separate accounting are denominated in RMB, the relevant loan information shall be sent to the relevant system of the PBOC Shanghai Head Office via the settlement bank at which the entity has set up a free trade account.

**Article 14:** The funds obtained from offshore loans under separate accounting by an FTZ enterprise or non-bank financial institution shall be used to finance such entity's operating activities or for establishing projects either inside the FTZ or outside China in consistence with the relevant provisions on free trade accounts, and such fund use shall be consistent with the direction of industry-based macro-control measures in place nationwide and in the FTZ.

The offshore loans processed by financial institutions through their separate accounting units in the FTZ shall be used to finance the operating activities of the separate accounting business itself within the FTZ or outside China and to serve the development of the real economy, and such fund use shall be consistent with the direction of industry-based macro-control measures in place nationwide and in the FTZ.

**Article 15:** Where an FTZ enterprise engages in business of offshore loans under separate accounting, it shall disclose its balance sheet, income statement, and cash flow statement for the financial year in the standard formats via the FTZ's disclosure platform for annual reports. The separate accounting units of financial institutions shall utilize the FTZ's annual report disclosure system for enterprises to update, without delay, the capital status, etc., of enterprises that have opened free trade accounts with such bank by June 30 annually.

Financial institutions shall not handle cross-border settlement business for offshore loans under separate accounting for enterprises that have been in operation for more than one year but that have not disclosed the relevant information to the disclosure platform or that are on the blacklist of enterprises with irregularities in their operations. Business of offshore loans under separate accounting already executed may be held to maturity. Financial institutions shall handle with caution the cross-border settlement business for offshore loans under separate accounting for enterprises on the priority attention list issued by six ministries and commissions, including the PBOC.

## **Chapter 5: Off-site Checks, On-site Inspections, and Handling of Regulatory Violations**

**Article 16:** The PBOC Shanghai Head Office shall undertake scheduled and unscheduled off-site checks on the status of offshore loans taken out by financial institutions and FTZ enterprises via FTZ separate accounting units, and, in the event of any misgivings, shall send monitoring questions, and the financial institutions shall provide feedback without delay. Where necessary, the PBOC Shanghai Head Office may conduct on-site inspections.

**Article 17:** Where the relevant information on offshore loans under separate accounting has not been sent in a timely manner or the information sent is found to be fallacious, the PBOC Shanghai Head Office may issue a warning or criticism to the financial institution concerned having duly inspected the matter, and may demand rectification within a specified deadline and take action in accordance with the *Law of the People's Republic of China on the People's Bank of China*, the *Regulations of the People's Republic of China on Foreign Exchange Administration*, and other relevant regulations.

Where it is discovered that offshore loans under separate accounting are being developed in excess of the prescribed scale or that the use of offshore loan funds is inconsistent with the provisions of these Rules, the funds shall be refunded via the original route where such funds have not already been used. Where the funds have already been used, the PBOC Shanghai Head Office shall penalize the borrower entity in accordance with the *Law of the People's Republic of China on the People's Bank of China*, the *Regulations of the People's Republic of China on Foreign Exchange Administration*, and other relevant regulations. Where the circumstances are grave, the PBOC Shanghai Head Office may temporarily suspend such business of offshore loans under separate accounting.

The PBOC Shanghai Head Office shall order financial institutions that handled settlements for offshore loans under separate accounting in excess of the prescribed amount to make rectification. The PBOC Shanghai Head Office may temporarily suspend the separate accounting business of financial

institutions found to have handled multiple settlements for offshore loans under separate accounting in excess of the prescribed amount.

### **Chapter 6: Supplementary Provisions**

**Article 18:** The PBOC Shanghai Head Office shall be responsible for the interpretation of these Rules.

**Article 19:** These Rules shall be effective as of the date of their promulgation. In the event of any inconsistency with prior regulations of the PBOC Shanghai Head Office, these Rules shall prevail.

(Original document)

**中国人民银行上海总部**  
**银总部发〔2015〕8号**  
**关于印发《中国（上海）自由贸易试验区分账核算业务境外融资  
与跨境资金流动宏观审慎管理实施细则（试行）》的通知**

国家开发银行、各政策性银行、国有商业银行、股份制商业银行、中国邮政储蓄银行上海（市）分行、自贸区分行；交通银行、上海浦东发展银行、上海银行、上海农商银行；其他城市商业银行上海分行；上海市各外资银行；上海市各非银行金融机构：

根据《中国人民银行关于金融支持中国（上海）自由贸易试验区建设的意见》（银发〔2013〕244号），经中国人民银行批准，现将《中国（上海）自由贸易试验区分账核算业务境外融资与跨境资金流动宏观审慎管理实施细则（试行）》印发给你们，请按照中国人民银行上海总部（含中国人民银行上海分行和国家外汇管理局上海市分局）的统一部署稳妥实施。

特此通知。

附件：中国（上海）自由贸易试验区分账核算业务境外融资与跨境资金流动宏观审慎管理实施细则（试行）

中国人民银行上海总部  
2015年2月12日

附件:

## 中国（上海）自由贸易试验区分账核算业务境外融资 与跨境资金流动宏观审慎管理实施细则（试行）

### 第一章 总则

**第一条** 为进一步促进自由贸易试验区（以下简称“试验区”）贸易投资便利化，提升金融服务试验区实体经济跨境发展的能力，防范试验区境外融资风险，根据《中国人民银行关于金融支持中国（上海）自由贸易试验区建设的意见》（银发〔2013〕244号）及其他有关规定，制定本细则。

**第二条** 本细则所称试验区分账核算业务境外融资是指上海地区金融机构通过试验区分账核算单元办理的从境外融入资金的行为和试验区内企业及非银行金融机构通过自由贸易账户从境外融入资金的行为，以下简称“分账核算境外融资”。

试验区内外企业和非银行金融机构可以在现行外债及境外借款管理模式和本细则宏观审慎管理模式下任选一种模式适用，并通过其结算银行向中国人民银行上海总部备案。一经选定，原则上不再更改。如确有合理理由需要更改的，须通过结算银行向中国人民银行上海总部提出申请。更改仅限一次。原管理模式下的外债或境外人民币借款未偿余额计入新选择的模式管理。

本细则所称金融机构是指：经中国人民银行、中国银监会、中国证监会和中国保监会批准在上海地区设立的各类法人金融机构和全国性金融机构在上海设立的分支机构，且这些机构已经按照中国人民银行上海总部发布的《中国（上海）自由贸易试验区分账核算业务实施细则（试行）》和《中国（上海）自由贸易试验区分账核算业务风险审慎管理细则（试行）》要求建立内部试验区分账核算管理制度，接入中国人民银行上海总部的相关系统（含外汇局系统，下同）。

**第三条** 中国人民银行上海总部（含中国人民银行上海分行和国家外汇管理局上海市分局，下同）负责分账核算境外融资和跨境资金流动的宏观审慎管理相关工作，并和其他金融监管部门建立协调、合作机制。

### 第二章 分账核算境外融资管理规则

**第四条** 区内企业、非银行金融机构和提供试验区分账核算业务的金融机构，可以从境内（含区内）融资，也可以从境外融资，并遵循风险可控原则。其中，境外部分采用境外融资杠杆率、风险转换因子和宏观审慎调节参数的方式进行管理。

中国人民银行上海总部可根据试验区跨境及跨区资金流动、区内及境内信贷供求情况，对境外

融资杠杆率、风险转换因子、宏观审慎调节参数等进行调整，必要时还可根据维护国家金融稳定的需要，采取控制分账核算境外融资总规模等临时应急管理措施。

**第五条** 区内企业和金融机构通过试验区分账核算单元从境外融入的本外币资金按余额（指已提用未偿余额，下同）合并计算总规模，计算公式为：

分账核算境外融资=  $\Sigma$  境外融资余额\*期限风险转换因子\*币种风险转换因子\*类别风险转换因子

境外融资按期限划分，可分为中长期融资与短期融资两类。中长期融资是指融资双方约定还款期限在1年以上（不含）的境外融资，短期融资是指融资双方约定还款期限在1年以下（含）的境外融资。中长期融资的期限风险转换因子设定为1，短期融资的期限风险转换因子设定为1.5。中长期融资在一年内发生提前还款累计超过3次的，所有未偿融资及新发生融资将均按短期融资计算。

境外融资按币种划分，可分为人民币融资与外币融资两类。境外融资以人民币计价结算的，币种风险转换因子设定为1，以外币计价结算的，币种风险转换因子设定为1.5。

境外融资类别按表内表外划分，可分为表内融资与表外融资两类。表内融资的风险转换因子设定为1，表外融资（或有负债）的风险转换因子设定为0.2和0.5二档。

**第六条 分账核算境外融资计算规则**

#### 一、不计入分账核算境外融资的业务类型

- （一）吸收的存款。**金融机构基于自由贸易账户服务，从境外主体吸收的境外本外币存款不计入分账核算境外融资。分账核算单元如将吸收的外币存款资金存放在境内机构（含上级法人机构）时，按现行外币外债管理规则计入该机构的外债余额。
- （二）贸易信贷、非融资性担保与人民币贸易融资。**区内企业因开展真实跨境贸易产生的贸易信贷（包括应付和预收）和人民币贸易融资不计入分账核算境外融资。金融机构因办理基于真实跨境贸易结算产生的各类人民币贸易融资，不计入分账核算境外融资。金融机构因支持实体经济开展国际贸易及投资活动而出具的非融资性担保不计入分账核算境外融资。
- （三）自用熊猫债。**区内企业的境外母公司在境内发行人民币债券并用于集团内设立在区内全资子公司的，不计入分账核算境外融资。
- （四）集团内资金往来。**区内企业主办的集团内跨境资金（仅限生产经营活动产生的现金流

和实业投资活动产生的现金流)集中管理业务不计入分账核算境外融资。

**(五) 转让与减免。**分账核算境外融资转增资本或已获得债务减免等情况下, 相应融资金额不再计入分账核算境外融资。分账核算境外融资形成的区内债权资产真实出表, 并向境外转让后获得的境外资金不再计入分账核算境外融资, 原计入的分账核算境外融资不变。

## 二、计入分账核算境外融资的业务类型

**(一) 外币贸易融资。**金融机构和企业的外币贸易融资按 20%计入分账核算境外融资, 其中期限转换因子统一按 1 计入。

**(二) 表外融资(或有负债)。**金融机构因向自由贸易账户客户提供基于真实跨境交易和资产负债币种及期限风险对冲管理服务需要而形成的对外或有负债(包括融资性担保), 按 20%计入分账核算境外融资; 因自身币种及期限风险对冲管理需要, 参与国际金融市场交易而产生的或有负债, 按 50%计入分账核算境外融资。

企业和金融机构跨境担保已实际履约并构成新的跨境融资关系的金额按实际情况计入分账核算境外融资。

**(三) 其他。**其余各类对外负债均按实际情况计入分账核算境外融资。

中国人民银行上海总部可根据业务开展情况及风险管理需要, 对计入分账核算境外融资的业务类型进行调整。

**第七条** 分账核算境外融资的上限不得超过其资本\*境外融资杠杆率\*宏观审慎调节参数。其中: 资本, 除另有表述外, 包括实收资本(或股本)和资本公积两部分, 以最近一期境内注册会计师出具的验资或审计报告为准。分账核算境外融资上限计算原则上每年进行一次。

分账核算境外融资杠杆率按主体类型设定。其中: 区内法人企业(分支机构不适用)设定为其资本的 2 倍。已建立分账核算单元的区内非银行法人金融机构设定为其资本的 3 倍, 非银行金融机构的上海市级分账核算单元设定为其境内法人机构资本的 8%。已建立分账核算单元的区内新设法人银行机构设定为其一级资本的 5 倍, 银行上海市级分账核算单元设定为其境内法人机构一级资本的 5%。未建立分账核算单元但在其他金融机构分账核算单元开立自由贸易账户的区内法人非银行金融机构按其资本的 2 倍设定, 非银行法人金融机构在区内的直属分公司按境内法人资本的 5%设定。

宏观审慎调节参数初始值设定为 1。

**第八条** 分账核算境外融资利率由双方按照商业原则在合理范围内自主确定。

分账核算外币境外融资以提款日的折算汇率按以下方式折算计入：

已在中国外汇交易中心挂牌交易（含区域挂牌）的外币，适用人民币汇率中间价或区域交易参考价；未在中国外汇交易中心挂牌交易的货币，适用中国外汇交易中心公布人民币参考汇率。

### 第三章 分账核算境外融资宏观调控触发机制

**第九条** 中国人民银行上海总部根据“宏观审慎原则”的要求，会同有关部门建立试验区分账核算境外融资宏观调控工作机制。该机制由风险预警指标体系及相应的宏观调控政策工具构成。

**第十条** 中国人民银行上海总部根据系统采集的数据以及试验区经济金融运行和跨境跨区资金流动情况建立相应的分账核算境外融资风险预警指标体系。主要的预警指标包括：境外融资规模预警指标、境外融资结构预警指标（境外融资货币结构指标、汇率敏感度指标、期限结构指标、期限错配率等）、跨境/跨区资金流动预警指标、区内信贷供求预警指标等。

分账核算境外融资参数类调控工具包括境外融资杠杆率、风险转换因子和宏观审慎调节参数，其他类工具包括延长融入资金的账户存放期限，对融入资金征收特别存款准备金、征收零息存款准备金、以及必要时为维护国家金融稳定采取的规模控制等。

中国人民银行上海总部可根据监测和风险防控需要对上述风险预警指标和宏观调控政策工具进行调整和完善。

**第十一条** 试验区分账核算境外融资风险预警设置 I 级（轻度风险）、II 级（中度风险）以及 III 级（重度风险）三个风险级别。

风险预警指标达到风险级别临界值时，中国人民银行上海总部将向金融机构发出相应的风险预警，并可以采用上述工具进行相应的调节。调节可以采用单一工具或组合工具的方式进行，也可针对单一、多个或全部金融机构进行。金融机构应配合中国人民银行上海总部的宏观调控管理。

因风险转换因子、境外融资杠杆率和宏观审慎调节参数调整导致期间分账核算境外融资余额超出上限的，原有融资合约可持有到期；在分账核算境外融资余额调整到新上限前，不得办理新的分账核算境外融资业务。

## 第四章 信息报送与资金用途

**第十二条** 区内企业和非银行金融机构应当在境外融资合同签约后但不晚于提款前三个工作日，通过其结算银行向中国人民银行上海总部办理分账核算境外融资业务申报。

试验区主体应如实向银行提供以下材料：

- (一) 境外融资合同正本及合同主要条款复印件，合同为外文的应另附合同主要条款的中文译本。
- (二) 营业执照。
- (三) 最近一期验资或审计报告。
- (四) 董事会对境外融资事项的决议；非银行金融机构的分公司境外融资时需提交其境内法人机构的授权文件。
- (五) 截至申报日境外人民币借款、外币外债和以本企业为被担保人的境外担保等情况说明。
- (六) 针对前述材料应当提供的补充说明。

银行发现区内企业和非银行金融机构提交材料证明的实际融资数额超出本细则规定的分账核算境外融资计算上限时，应拒绝为其办理境外融资资金结算，并向中国人民银行上海总部报告。

金融机构分账核算单元发生境外融资业务的，应直接通过中国人民银行上海总部的相关系统办理申报。

所有分账核算境外融资业务材料留存结算银行备查，保留期限至融资业务结束后 5 年。

**第十三条** 银行在为区内企业和非银行金融机构办理分账核算境外融资结算业务时，需在中国人民银行上海总部的相关系统中查询区内企业和非银行金融机构的分账核算境外融资基本信息，确认其境外融资符合本细则规定。

对于首次办理分账核算境外融资业务的区内企业和非银行金融机构，银行在查询基本信息前，应根据其提供的上述材料，将其资本等情况发送中国人民银行上海总部的相关系统，自动生成分账核算境外融资计算上限。已办理分账核算境外融资的试验区主体因发生收购兼并等重大资本变更时，可向银行提供相关证明，申请在系统中变更资本相关信息。

区内主体在分账核算境外融资计算上限内发生外币境外融资或非资金划转类本外币计价的境外融资的，应按外债管理相关要求向中国人民银行上海总部办理外债登记或备案手续；发生分账核算人民币境外融资的，应通过开立自由贸易账户的结算银行向中国人民银行上海总部的相

关系统报送相关融资信息。

**第十四条** 区内企业和非银行金融机构分账核算境外融资所得资金的使用应符合自由贸易账户相关规定，用于自身的生产经营活动、区内及境外项目建设，并符合国家和试验区产业宏观调控方向。

金融机构通过其试验区分账核算单元办理的境外融资应用于分账核算业务自身的经营活动，用于区内和境外，服务实体经济发展，并符合国家和试验区产业宏观调控方向。

**第十五条** 区内企业发生分账核算境外融资业务的，应通过试验区企业年报公示平台公示其标准格式的年度资产负债表、损益表和现金流量表；金融机构分账核算单元应于每年 6 月 30 日前利用试验区企业年报公示制度及时更新在本行开立自由贸易账户企业的资本等情况。

对于经营期超过 1 年但仍没有在公示平台上公示其相关信息，或被列入经营异常名录的企业，金融机构不得为其办理分账核算境外融资跨境结算业务。已经办理的分账核算境外融资业务可以持有到期。中国人民银行等六部委发布的重点监管企业名单内的企业，金融机构应审慎为其办理分账核算境外融资跨境结算业务。

## 第五章 非现场核查、现场检查与违规处理

**第十六条** 中国人民银行上海总部定期或不定期对金融机构和区内企业通过试验区分账核算单元办理的境外融资情况进行非现场核查，发现疑间的，发起监测查疑，金融机构应及时反馈；必要时可发起现场检查。

**第十七条** 发现未及时或虚假报送分账核算境外融资有关信息的，中国人民银行上海总部将在查实后对涉及的金融机构做出通报批评，限期整改并可根据《中华人民共和国中国人民银行法》和《中华人民共和国外汇管理条例》等有关规定进行查处。

发现超规模开展分账核算境外融资，或融资款项用途与本细则规定不符的，资金尚未使用的，应原路退回所融入的款项；资金已经使用的，中国人民银行上海总部可根据《中华人民共和国中国人民银行法》和《中华人民共和国外汇管理条例》等有关规定对借款主体进行处罚；情节严重的，可暂停其开展分账核算境外融资业务。

对于办理超额分账核算境外融资结算的金融机构，中国人民银行上海总部将责令整改；对于多次发生办理超额分账核算境外融资结算的金融机构，中国人民银行上海总部可暂停其开展分账核算业务。

## 第六章 附则

**第十八条** 本细则由中国人民银行上海总部负责解释。

**第十九条** 本细则自公布之日起施行。中国人民银行上海总部此前有关规定与本细则不一致的，以本细则为准。

Disclaimer & Confidentiality

1. Legal and accounting advice: The information contained herein does not incorporate advice on legal, accounting or tax issues. You should obtain your own independent professional advice on the legal, accounting and tax aspects of this information.
2. Confidentiality: The information contained herein is given for general informational purposes only and shall be kept strictly confidential. This information is intended for your company's internal use only, and the disclosure to any third party is strictly prohibited.
3. Copyright: The information contained herein is, as a general rule, the intellectual property of MHBK (China), and may not be copied, duplicated, quoted, reproduced, translated, or lent, in whole or in part, in any form or by any means for any purpose whatsoever without prior consent.
4. Limitation of liability:
  - (a) The information contained herein was obtained from information sources deemed reliable by MHBK (China) but in no way is the accuracy, reliability or integrity of such information guaranteed. MHBK (China) disclaims any liability whatsoever for any damage arising out of or relating to this information. Moreover, the analysis herein is hypothetical and is not intended as an indication of the certainty or completeness of the results thereof.
  - (b) Please note that information to be disclosed hereafter, appraisals, the opinions of credit rating agencies, and/or changes in the system and/or financial environment may necessitate substantial modification to the relevant processes and/or schemes, which may have the effect of rendering the analysis herein ineffectual. Further, this information is not intended to be an exhaustive statement of the risks to which your company is exposed.
5. The information contained herein does not constitute a solicitation or offer by MHBK (China) to buy or sell any financial instruments or to provide investment advice or service.