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—Policy Issues for Foreign Exchange Administration—

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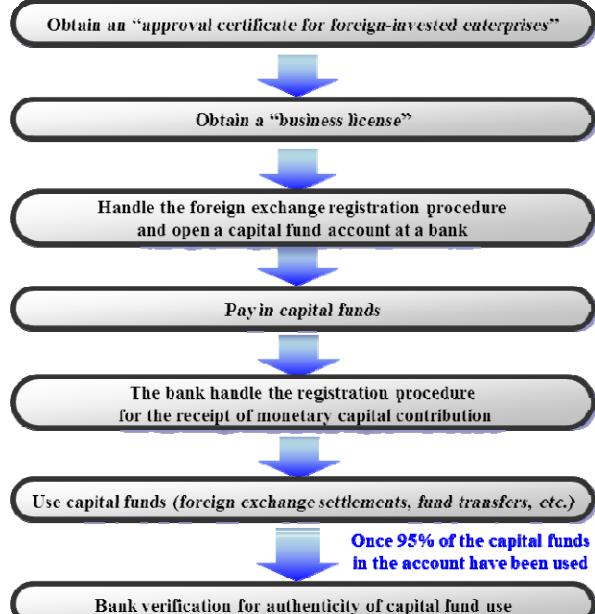
State Administration of Foreign Exchange Simplifies Foreign Exchange Administration of Direct Investment, Assigns Foreign Exchange Registration Procedure to Banks

On February 13, 2015, the State Administration of Foreign Exchange (SAFE) promulgated the [Circular on Further Simplifying and Improving Direct Investment-related Foreign Exchange Administration Policies](#) (Huifa [2015] No. 13; hereinafter referred to as “Circular No. 13”). The Circular simplifies the foreign exchange registration procedures for foreign direct investment and overseas direct investment, enables enterprises to handle it in a designated foreign exchange bank, and abolishes the capital contribution confirmation registration procedures. Circular No. 13 will go into effect on June 1, 2015.

Banks now authorized to handle foreign exchange registration

Once Circular No. 13 goes into effect, foreign-invested enterprises will be able to handle directly the relevant foreign exchange registration procedures and open a capital fund account through a designated foreign exchange bank in their location (Article 1). Moreover, enterprises no longer need to complete the registration procedure for the capital contribution confirmation after capital funds have been paid into such account (Article 2). In principle, once capital funds have been received, the bank, subject to application, will handle the registration procedure for the receipt of monetary capital contribution through the capital account information system of the SAFE within five working days, meaning that enterprises are now free to use such capital funds once such procedure is completed.

Fig: Flowchart of capital contribution procedure upon enterprise establishment



Source: Compiled by the Advisory Division

The Circular also abolishes the requirements for the registration of non-monetary contribution confirmation and capital contribution confirmation for shares acquired from a Chinese investor.

Circular No. 13 abolishes the requirement of the annual inspection of direct investment-related foreign exchange and replaces it with a **registration procedure for stock rights and interests in domestic direct investment** (Article 2). Foreign-invested enterprises are required to complete a "**Statistical Table of Foreign Investor Rights and Interests in Domestic Direct Investment**" on the right, and enter information on the rights and interests of the foreign investors in the previous financial year and report this to the SAFE through the capital account information system by September 30 each year. Banks will not be allowed to handle any foreign exchange business under the capital account for enterprises that fail to report such information (e.g., the release of capital funds for use by such enterprises).

The Statistical Table of Foreign Investor Rights and Interests in Domestic Direct Investment

编制单位:	填报时间: 年 月 日					
组织机构代码:	金额单位: 人民币元					
指标	期初数	期末数				
一、外商投资企业资产合计						
其中: 流动资产						
非流动资产						
二、外商投资企业负债合计						
其中: 短期负债						
长期负债						
三、归属外商投资企业全体股东的权益						
四、归属于外方股东的权益						
4.1 归属外方股东的实收资本						
4.2 外方股东享有的公积金及留存收益额						
其中: 资本公积						
盈余公积						
未分配利润						
4.3 其它						
五、外商投资企业少数股东权益						
六、外方投资者实际出资额						
七、外商投资企业应付外方股利						
八、外商投资企业盈利情况	当期(上年)数	历年累计				
归属于外商投资企业全体股东的净利润						
其中: 外方股东享有的净利润						
分配外方股东的利润金额合计						
汇往外方股东的利润金额合计						
附注(仅投资性外商投资企业填写)						
权益法核算子公司中享有的权益 (期末数)	应付股利	实收资本	未分配利润	资本公积	盈余公积	其他
成本法核算子公司中享有的权益 (期末数)	应付股利	实收资本	未分配利润	资本公积	盈余公积	其他
备注: (存在特殊情况须在本栏目中进行详细说明)						

Source: *Operating Guidelines for Direct Investment-related Foreign Exchange Business*

Voluntary settlement system for foreign exchange capital funds to go into effect nationwide

The delegation of foreign exchange registration procedure for direct investment to banks was one of the foreign exchange administration reform measures to be introduced in the China (Shanghai) Pilot Free Trade Zone (hereinafter referred to as the "Shanghai FTZ") in February 2014.

On December 21, 2014, the State Council issued the **Circular on Promoting the Replicable Experience from Pilot Reforms undertaken in the China (Shanghai) Pilot Free Trade Zone** (Guofa [2014] No. 65). The circular specifies which of the reform measures being implemented in the Shanghai FTZ are to be rolled out nationwide. Among these, it requires the SAFE to ensure nationwide rollout for the delegation of foreign exchange registration procedure for direct investment to banks and **the voluntary settlement system for foreign exchange capital funds** that allows enterprises to settle their foreign exchange capital funds in full at a single transaction by June 30, 2015. The publication of Circular No. 13 signals the likely release of a nationwide version of the detailed rules on

the voluntary settlement system in the near future.

It is worth noting that the SAFE has previously dealt with the issue of the voluntary settlement system for foreign exchange capital funds in its [Circular of the SAFE 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), which was promulgated on July 4, 2014. This pilot measure was introduced in sixteen regions commencing August 4, 2014, including Tianjin Binhai New Area and Suzhou Industrial Park.

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A provisional translation of Circular No. 13 together with the original Chinese document is presented below for further reference.

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(Provisional translation)

State Administration of Foreign Exchange
Huifa [2015] No. 13
Circular on Further Simplifying and Improving Direct Investment-related
Foreign Exchange Administration Policies

Provincial, autonomous region, and municipal branches, foreign exchange administrative departments, Shenzhen, Dalian, Qingdao, Xiamen and Ningbo branches of SAFE; designated Chinese-funded foreign exchange banks:

In order to further deepen the reform of foreign exchange administration under the capital account, promote and facilitate the operation of cross-border investment funds, standardize direct investment-related foreign exchange administration business, and improve administrative efficiency, the State Administration of Foreign Exchange (SAFE) has decided to further simplify and improve direct investment-related foreign exchange administration policies on a nationwide basis, by giving a generalized foundation to pilot experiments undertaken in certain areas to date. The relevant issues are hereby notified as follows.

1. Cancelling two administrative examination and approval requirements: the foreign exchange registration and approval requirement for domestic direct investment, and the foreign exchange registration and approval requirement for overseas direct investment.

On the basis of this Circular and its Appendix: *Operating Guidelines for Direct Investment-related Foreign Exchange Business* (see Appendix), this is altered such that banks may directly review and handle the foreign exchange registration for domestic direct investment and the foreign exchange registration for overseas direct investment (hereinafter collectively referred to as “direct investment-related foreign exchange registration”), with the SAFE and its branches (hereinafter referred to as the “Foreign Exchange Administration”) undertaking indirect supervision of such direct investment-related foreign exchange registration through the banks.

- (1) Following the entry into force of this Circular, banks that have already acquired a financial institution identification code from the Foreign Exchange Administration and that have opened the capital account information system to traffic at their local Foreign Exchange Administration may directly handle direct investment-related foreign exchange registration procedures for the domestic investment entities of onshore foreign-invested enterprises and offshore foreign-invested enterprises (hereinafter referred to as the “relevant market entities”) through the capital account information system of the Foreign Exchange Administration.
- (2) Banks and their branches and shall, under the guidance of their local Foreign Exchange Administration, develop direct investment-related foreign exchange registration and other relevant businesses, and shall

discharge their responsibilities in respect of examination, statistical monitoring, reporting and record filing, within the scope of their authority.

(3) The relevant market entities may select a bank in their place of incorporation to handle their direct investment-related foreign exchange registration procedures, and, having completed direct investment-related foreign exchange registration, may set up the relevant direct investment accounts and carry out businesses such as the settlement of capital funds (including profit and dividend payments and refunds).

2. Simplifying certain direct investment-related foreign exchange business procedures

(1) The administration of the foreign investors' capital contribution confirmation registration for domestic direct investment is hereby simplified. The foreign investors' non-monetary contribution confirmation registration for domestic direct investment and the foreign investors' capital contribution confirmation registration for shares acquired from a Chinese investor are hereby cancelled. The foreign investors' monetary capital contribution confirmation registration is adjusted to registration of the receipt of monetary capital contributions for domestic investment. Where a foreign investor is making a monetary capital contribution (i.e., a cross-border foreign currency cash transaction or in RMB), once the deposit bank has received such capital funds, it shall directly handle the registration procedure for the receipt of monetary capital contribution for domestic direct investment through the capital account information system of the Foreign Exchange Administration, following completion of which such capital funds will be available for use.

(2) The record filing of foreign exchange for overseas reinvestment is hereby cancelled. Where an overseas enterprise established or controlled by a domestic investment entity is establishing or controlling a new overseas enterprise through overseas reinvestment, it is no longer necessary to complete the foreign exchange record-filing procedure.

(3) The annual inspection of direct investment-related foreign exchange is hereby cancelled and replaced with registration of stock rights and interests. The relevant market entities shall, either independently or delegating an accounting firm or a bank, forward data on stock rights and interests related to domestic direct investment and/or overseas direct investment (hereinafter collectively referred to as "direct investment-related stock rights and interests") in the preceding financial year through the capital account information system of the Foreign Exchange Administration by September 30 (inclusive) each year.

With respect to the relevant market entities that have not undertaken the procedures in accordance with the preceding paragraph, the Foreign Exchange Administration shall apply business management controls in respect of such entities through the capital account information system, and banks shall not handle any foreign exchange capital business procedures on behalf of such entities. Where the Foreign Exchange Administration have removed such business management controls following submission of the requisite supplementary report and the provision of explanatory documents and a reasonable

explanation to the Foreign Exchange Administration, and a violation of the foreign exchange administrative regulations is suspected, the Foreign Exchange Administration may implement administrative punishment in accordance with the law.

The other relevant market entities such as foreign-invested enterprises that participate in a sampling inspection of direct investment-related stock rights and interests by the Foreign Exchange Administration shall, in accordance with the requirements for sampling inspections of direct investment-related stock rights and interests, forward the relevant information on a quarterly basis to the Foreign Exchange Administration in their place of incorporation.

3. Raising bank awareness of the need for compliance in handling direct investment-related foreign exchange administration
 - (1) Banks shall establish a system of internal control regulations for direct investment-related foreign exchange registration business, and shall keep records for future reference. The system of internal control regulations shall, at minimum, include the following.
 1. Operational rules for direct investment-related foreign exchange registration business, including operational procedures and standards for the receipt of such business, and verification of the compliance and authenticity of documents received
 2. A risk management system for direct investment-related foreign exchange registration business, including compliance-related risk screening, double checks and graded checks.
 3. A statistical reporting system for direct investment-related foreign exchange registration business, including data acquisition channels and operational procedure.
 - (2) Banks shall undertake business access management in respect of the direct investment-related foreign exchange registration developed by the branches that have already acquired a financial institution identification code at the Foreign Exchange Administration.
 - (3) Banks shall carefully perform verification of the authenticity in strict accordance with the requirements of this Circular and its Appendix: *Operating Guidelines for Direct Investment-related Foreign Exchange Business*, shall handle direct investment-related foreign exchange administration business procedures through the capital account information system of the Foreign Exchange Administration, and shall archive all documents relating such registration for future reference.
 - (4) Where, in the process of handling direct investment-related foreign exchange registration business procedures, the regulations are unclear or data is found to contain inaccuracies and/or anomalies, banks shall provide feedback to the Foreign Exchange Administration in the place of incorporation of the relevant market entities, without delay.
4. Strengthening the training and guidance and follow-up supervision by the Foreign Exchange Administration in respect of banks

- (1) The Foreign Exchange Administration shall strengthen its training and guidance and follow-up supervision in respect of banks, shall ascertain, without delay, bank handling of direct investment-related foreign exchange business and the transmission of the relevant data, reports and other materials, shall develop follow-up monitoring and inspections of bank compliance in the handling of direct investment-related foreign exchange registration and the enforcement of internal control systems, shall gain a comprehensive understanding of the status of the handling of direct investment-related foreign exchange registration by banks, shall report any anomalies to a higher administration, and shall rectify and deal with any regulatory violations without delay.
- (2) Where a bank has failed to discharge its responsibilities in respect of the examination, statistical monitoring, and reporting of direct investment-related foreign exchange registration in accordance with regulatory requirements, the Foreign Exchange Administration may take punitive action pursuant to the relevant regulations on foreign exchange administration, and may impose a temporary suspension on the handling of direct investment-related foreign exchange registration on such bank. Where the regulatory violation is particularly serious or effective remedy has not been made within the duration of the temporary suspension, the Foreign Exchange Administration may suspend the handling of direct investment-related foreign exchange registration of such bank.

This Circular shall enter into force on June 1, 2015. Once effective, the provisions of this Circular will prevail in the event of any discrepancies between prior regulations and the contents of this Circular. A voluntary settlement policy will continue to be implemented in those regions covered by the pilot reform on an administrative approach for the settlement of foreign exchange capital funds of foreign-invested enterprises, in accordance with the *Circular of the SAFE 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) and other relevant regulations. The SAFE branches and foreign exchange administration departments shall, upon receipt of this Circular, forward it without delay to the central sub-branches, sub-branches, city commercial banks, rural commercial banks, foreign-invested banks, and rural cooperative banks within their respective jurisdictions. Chinese-funded banks shall, upon receipt of this Circular, forward it without delay to the branches within their respective jurisdictions. 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: *Operating Guidelines for Direct Investment-related Foreign Exchange Business* (omitted)

State Administration of Foreign Exchange

February 13, 2015

(Original document)

国家外汇管理局
汇发[2015]13号
关于进一步简化和改进直接投资外汇管理政策的通知

国家外汇管理局各省、自治区、直辖市分局、外汇管理部，深圳、大连、青岛、厦门、宁波市分局；各中资外汇指定银行：

为进一步深化资本项目外汇管理改革，促进和便利企业跨境投资资金运作，规范直接投资外汇管理业务，提升管理效率，国家外汇管理局决定在总结前期部分地区试点经验的基础上，在全国范围内进一步简化和改进直接投资外汇管理政策。现就有关事项通知如下：

一、取消境内直接投资项下外汇登记核准和境外直接投资项下外汇登记核准两项行政审批事项

改由银行按照本通知及所附《直接投资外汇业务操作指引》（见附件）直接审核办理境内直接投资项下外汇登记和境外直接投资项下外汇登记（以下合称直接投资外汇登记），国家外汇管理局及其分支机构（以下简称外汇局）通过银行对直接投资外汇登记实施间接监管。

- (一)** 本通知实施后，已经取得外汇局金融机构标识码且在所在地外汇局开通资本项目信息系统的银行可直接通过外汇局资本项目信息系统为境内外商投资企业、境外投资企业的境内投资主体（以下简称相关市场主体）办理直接投资外汇登记。
- (二)** 银行及其分支机构应在所在地外汇局的指导下开展直接投资外汇登记等相关业务，并在权限范围内履行审核、统计监测和报备责任。
- (三)** 相关市场主体可自行选择注册地银行办理直接投资外汇登记，完成直接投资外汇登记后，方可办理后续直接投资相关账户开立、资金汇兑等业务（含利润、红利汇出或汇回）。

二、简化部分直接投资外汇业务办理手续

- (一)** 简化境内直接投资项下外国投资者出资确认登记管理。取消境内直接投资项下外国投资者非货币出资确认登记和外国投资者收购中方股权出资确认登记。将外国投资者货币出资确认登记调整为境内直接投资货币出资入账登记，外国投资者以货币形式（含跨境现汇和人民币）出资的，由开户银行在收到相关资本金款项后直接通过外汇局资本项目信息系统办理境内直接投资货币出资入账登记，办理入账登记后的资本金方可使用。
- (二)** 取消境外再投资外汇备案。境内投资主体设立或控制的境外企业在境外再投资设立或控制新的境外企业无需办理外汇备案手续。
- (三)** 取消直接投资外汇年检，改为实行存量权益登记。相关市场主体应于每年9月30日（含）

前，自行或委托会计师事务所、银行通过外汇局资本项目信息系统报送上年末境内直接投资和（或）境外直接投资存量权益（以下合称直接投资存量权益）数据。

对于未按前款规定办理的相关市场主体，外汇局在资本项目信息系统中对其进行业务管控，银行不得为其办理资本项下外汇业务。在按要求补报并向外汇局出具说明函说明合理理由后，外汇局取消业务管控，对涉嫌违反外汇管理规定的，依法进行行政处罚。

参加外汇局直接投资存量权益抽样调查的外商投资企业等相关市场主体应按照直接投资存量权益抽样调查制度要求，按季度向注册地外汇局报送相关信息。

三、银行应提高办理直接投资外汇登记的合规意识

- (一)** 银行应制定直接投资外汇登记业务的内部管理规章制度，并留存备查。内部管理规章制度应当至少包括以下内容：
 - 1. 直接投资外汇登记业务操作规程，包括业务受理、材料合规性和真实性审核等业务流程和操作标准；
 - 2. 直接投资外汇登记业务风险管理制度，包括合规性风险审查、经办复核和分级审核制度等；
 - 3. 直接投资外汇登记业务统计报告制度，包括数据采集渠道和操作程序等。
- (二)** 银行自行对已经取得外汇局金融机构标识码的分支机构开展直接投资外汇登记进行业务准入管理。
- (三)** 银行应严格按照本通知及所附《直接投资外汇业务操作指引》的要求，认真履行真实性审核义务，通过外汇局资本项目信息系统办理直接投资外汇登记业务，并应完整保存相关登记资料备查。
- (四)** 银行在办理直接投资外汇登记业务过程中，如遇规定不明确、数据不准确或发现异常情况的，应及时向相关市场主体注册地外汇局反馈。

四、外汇局应强化对银行的培训指导和事后监管

- (一)** 外汇局应加强对银行的培训指导和事后监管，及时掌握其直接投资外汇业务办理和相关数据、报表及其它资料报送情况，对银行办理直接投资外汇登记合规性及内控制度的执行情况开展事后核查和检查，全面了解银行办理直接投资外汇登记的情况，发现异常情况要及时上报，对违规问题要及时纠正、处理。
- (二)** 银行未按规定要求履行直接投资外汇登记审核、统计、报告责任的，外汇局除按外汇管理有关规定对其处罚外，还可暂停该银行办理直接投资外汇登记。对违规情节特别严重或暂停期内未能进行有效整改的，外汇局可停止该银行办理直接投资外汇登记。

本通知自 2015 年 6 月 1 日起实施。本通知实施后，之前规定与本通知内容不一致的，以本通知为准。外商投资企业资本金结汇管理方式改革试点地区继续按照《国家外汇管理局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》（汇发[2014]36号）等有关规定实行意愿结汇政策。国家外汇管理局各分局、外汇管理部接到本通知后，应及时转发辖内中心支局、支局、城市商业银行、农村商业银行、外资银行、农村合作银行；各中资银行接到通知后，应及时转发所辖各分支机构。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映。

附件：直接投资外汇业务操作指引 (omitted)

国家外汇管理局

2015年2月13日

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