China Relaxes Rules Relating To Repatriation Of Offshore Renminbi

The People’s Bank of China ("PBOC") promulgated the Administrative Measures for Conducting Foreign Direct Investments in Renminbi (外商直接投资人民币结业务管理 办法) on 13 October 2011 ("New Regime"). The framework for Renminbi denominated foreign direct investment into China was also clarified by the Ministry of Commerce ("MOFCOM") in the Circular on Cross-border RMB Direct Investment (商务部关于跨境人民币直接投资有关问题的通知) dated 12 October 2011.

Historically, foreign direct investment into China had to be made in foreign currencies (primarily US Dollars) and a party seeking to make a foreign direct investment into China in Renminbi had to obtain prior regulatory approval on a case-by-case basis. The New Regime replaces the previous regulatory regime. The Hong Kong Monetary Authority has described the New Regime as an "important step" and expects the New Regime to greatly expand the use of Renminbi funds in Hong Kong and promote the development of the dim sum bond market. We believe the New Regime also bodes well for the offshore Renminbi loans market.

The major points in the New Regime are as follows:

1. the New Regime applies to "cross-border Renminbi foreign direct investment" – that is, investments made by foreign investors (including investors from Taiwan, Hong Kong and Macau) funded from offshore Renminbi obtained from "legal channels";

2. MOFCOM identified three major types of "legal channels" for foreign investors to obtain offshore Renminbi: (i) Renminbi obtained legally offshore, including but not limited to proceeds of issuances of dim sum bonds or Renminbi denominated shares, (ii) Renminbi obtained from cross-border trade settlement, and (iii) Renminbi legally remitted offshore by way of profit, transfer of equity, capital decrease, liquidation or early recovery of investment;

3. subject to compliance with the rules imposed by the New Regime and the general regulatory framework relating to foreign investments into China, prior approval from the PBOC is no longer required to remit offshore Renminbi into China by way of investment. Cross-border Renminbi denominated investments may be by way of equity or debt, but the use of such Renminbi to invest in negotiable securities or financial derivatives or for the purpose of trust loans (also referred to as entrustment loans) are prohibited;

4. the New Regime establishes rules for the opening of special Renminbi accounts with onshore banks by foreign investors. The special Renminbi account is a segregated account and may not be used for receipt or payment of cash. The account bank is charged with the responsibility of monitoring the special Renminbi account;

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5. Renminbi profits may be remitted offshore in Renminbi form under the New Regime once the account bank is satisfied with its review of the foreign invested enterprise's resolution on profits disposal, evidence of tax payment and other related documents;

6. Renminbi funds acquired through capital decrease, transfer of equity, liquidation, early recovery of investment or other similar activities may be remitted offshore in Renminbi form under the New Regime once the account bank is satisfied with its review of the relevant governmental approvals, files and evidence of tax payment; and

7. foreign invested enterprises may make interest and principal repayments with respect to offshore Renminbi debts by submitting to the account bank the loan or bond document, payment order, evidence of tax payment and other relevant materials.

The New Regime represents a significant and important step in the internationalisation of the Renminbi. It reduces the regulatory uncertainty associated with the repatriation of offshore Renminbi financing proceeds and the remittance of Renminbi profits offshore and is expected to further stimulate appetite for offshore Renminbi debt.

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