

Notice of the General Affairs Department of the State Administration of Foreign Exchange on the Relevant Operating Issues concerning the Improvement of the Administration of Payment and Settlement of Foreign Currency Capital of Foreign-funded Enterprises

(No. 142 [2008] of the State Administration of Foreign Exchange)

Branches and foreign exchange administrative departments of the State Administration of Foreign Exchange in all provinces, autonomous regions and municipalities directly under the Central Government, and branches of the State Administration of Foreign Exchange in Shenzhen, Dalian, Qingdao, Xiamen and Ningbo, and all Chinese-funded foreign exchange designated banks,

In accordance with the Regulation of the People's Republic of China on Foreign Exchange Administration and relevant provisions, for the purposes of improving the foreign exchange administration over foreign-funded enterprises, facilitating foreign-funded enterprises' handling such businesses as verification, payment and settlement of foreign currency capital, and regulating the relevant business operations of foreign exchange designated banks (hereinafter referred to as the "banks") and accounting firms, you are hereby notified of the following relevant operating issues concerning the administration of payment and settlement of foreign currency capital of foreign-funded enterprises after the direct investment foreign exchange information system of the State Administration of Foreign Exchange (hereinafter referred to as the "investment system of the SAFE") starts to run:

I. Where a foreign-funded enterprise applies to a bank for settlement of foreign currency capital, it shall, in advance, handle the capital verification in an accounting firm. After going through the confirmation request formalities for capital verification at the State Administration of Foreign Exchange or its branch (hereinafter referred to as the "SAFE or its branch"), the accounting firm shall issue a capital verification report to the enterprise. No bank shall settle any foreign currency capital for which the capital verification formalities have not been completed.

The accumulative amount of capital settled by a bank for a foreign-funded enterprise shall not exceed the accumulative amount of verified capital of the said foreign-funded enterprise.

II. Such businesses as an accounting firm's confirmation request to the SAFE or its branch for information about the capital contribution by a foreign party for the purpose of verification of capital of a foreign-funded enterprise and a bank's settlement of foreign currency capital of a

foreign-funded enterprise shall be handled through the investment system of the SAFE.

III. To handle the businesses of payment and settlement of foreign currency capital for foreign-funded enterprises, a bank shall comply with the administrative provisions of the SAFE on foreign exchange payment and settlement.

The RMB fund from the settlement of foreign currency capital of a foreign-funded enterprise shall be used within the business scope as approved by the examination and approval department of the government, and shall not be used for domestic equity investment unless it is otherwise provided for. Except a foreign-funded real estate enterprise, no foreign-funded enterprise shall use RMB fund from the settlement of foreign currency capital to purchase domestic real estate for any purpose other than its own use. A foreign-funded enterprise shall follow the relevant provisions of the state, when using the RMB fund from the settlement of foreign currency capital for any securities investment.

Where a foreign-funded investment enterprise formed with the approval of the commerce administrative department is engaged in the domestic equity investment, its transfer of capital within China may be handled only after being examined and approved by the SAFE or its branch.

IV. To apply to a bank for settlement of foreign currency capital, a foreign-funded enterprise shall submit the following materials:

1. The foreign-funded enterprise's foreign exchange registration IC card.
2. The order of payment out of the RMB fund from the settlement of foreign currency capital (see Annex 1 for the format). The term "order of payment" refers to a written instruction signed and issued by an enterprise or individual, based on which a bank makes outward payment out of the RMB fund from the settlement of foreign currency capital.
3. Documents certifying the purposes of the RMB fund from the settlement of foreign currency capital, including a business contract or an advice of payment issued by the payee. The advice of payment shall contain the major clauses of the business contract, amount, name and bank account number of the payee, fund purposes, etc. An enterprise which intends to repay a RMB loan with the RMB fund from the settlement of foreign currency capital shall submit a statement that

the loan has been used within the approved business scope under the contractual provisions.

4. The latest capital verification report issued by an accounting firm (which shall be accompanied by a letter in reply to the confirmation request for information about the capital contribution by a foreign party).

5. Relevant vouchers of the outward payments made under the Order of Payment out of the RMB fund from the immediately previous settlement of foreign currency capital and a detailed checklist on use thereof (see Annex 2 for the format), and photocopies of the invoices and relevant vouchers bearing the official seal or financial seal of the enterprise. If this settlement of foreign currency capital is one-time settlement or is the final installment of settlement of foreign currency capital, the enterprise shall, within 5 working days after the settlement, submit the aforesaid materials to the bank.

6. Other materials which the bank deems necessary to be supplemented.

In the case of settlement of foreign currency reserve of an enterprise in an amount equivalent to USD 50, 000 or less, the enterprise is not required to submit the documents mentioned in items (3) and (5) of the preceding paragraph, and may, upon the strength of the checklist of interest issued by the bank, directly conduct the formalities for foreign currency settlement of the interest in its capital account.

The bank shall, in light of the aforesaid materials, carefully examine the genuineness and compliance of the purposes of the RMB fund from the settlement of foreign currency capital of the foreign-funded enterprise. If finding that the aforesaid materials cannot corroborate each other or have discrepancies, the bank shall not handle the relevant business for this enterprise.

V. If the capital account and RMB account of a foreign-funded enterprise are opened in the same bank, the foreign exchange settlement bank shall, on the same day, finish the formalities for foreign exchange settlement, entry of the RMB fund into account and transfer of outward payment. If they are not in the same bank, when transferring the RMB fund from the settlement of foreign currency capital, the foreign exchange settlement bank shall give an indication of "Settlement of Foreign Currency Capital" on the transfer voucher, and the inward transfer bank of the RMB fund shall, within 2 working days (including the day of inward transfer), upon an order of payment, handle the formalities for transfer of an outward payment out of this sum of RMB fund.

An enterprise may retain the RMB fund from the settlement of foreign currency capital in its RMB account, if the said RMB fund is used for its reserve turnover or paying wages and bonuses.

VI. The entry into account and foreign exchange settlement of the foreign exchange consideration which a domestic institution or individual collects for transferring its shares or equities in a domestic enterprise to a foreign investor (hereinafter referred to as the “equity transfer consideration”) shall be handled through an exclusive foreign currency account for cashing assets. The opening of an exclusive foreign currency account for cashing assets and entry of fund into the account shall be subject to the examination and approval of the local branch of the SAFE under the relevant provisions. The bank shall, upon the strength of the approval document issued by the local branch of the SAFE, handle the relevant business.

A domestic institution or individual shall, upon the strength of the following materials and in accordance with the relevant requirements of the foreign exchange payment and settlement system, directly apply to the bank for settlement of foreign currency capital in its exclusive foreign currency account for cashing assets:

1. The order of payment out of the RMB fund from the settlement of foreign currency capital (see Annex 3 for the format).
2. The document certifying the purposes of the RMB fund from the settlement of foreign currency.
3. Relevant vouchers of the outward payments made under the order of payment out of the RMB fund from the immediately previous settlement of foreign currency capital and a detailed checklist on use thereof (see Annex 4 for the format), and photocopies of the invoices and relevant vouchers bearing the official seal or financial seal of the enterprise. If this settlement of foreign currency capital is one-time settlement or is the final installment of settlement of foreign currency capital, the domestic institution or individual shall, within 5 working days after the settlement, submit the aforesaid materials to the bank.

VII. When a bank handles such fund transfer business for a foreign-funded enterprise as redeposition of capital as time deposit, future sale and settlement of foreign currency, swap or structured deposit which is under a same account and not subject to the examination and approval of the SAFE or its branch, it shall employ different sub-account numbers under the same account, and each transferred fund shall be incorporated into the quota for the capital account and

managed under the scope of receipts and payments. The fund in the capital account shall not be illicitly transferred into any other foreign currency account.

VIII. A bank shall, under this Notice and relevant provisions, strictly examine the materials submitted by a foreign-funded enterprise when applying for settlement of foreign currency capital, and timely feed back the information about settlement of foreign currency capital to the SAFE or its branch through the investment system of the SAFE. The relevant information fed back by the bank shall automatically enter into the SAFE archival database of foreign exchange information of enterprises.

IX. The SAFE or its branch shall, under the Regulation of the People's Republic of China on Foreign Exchange Administration, intensify the supervision over banks' settlement of foreign currency capital for foreign-funded enterprises and other businesses, and make extended inspections of the flow direction and use of foreign-funded enterprises' capital and RMB fund from the settlement of foreign currency capital. If finding any of the following violations, it shall punish the violator in accordance with Article 44 of the Regulation of the People's Republic of China on Foreign Exchange Administration:

1. Changing the purposes of the RMB fund from the settlement of foreign currency capital without approval; or
2. Repaying an unused RMB loan with the RMB fund from the settlement of foreign currency capital.

X. This Notice shall be implemented as of the date of promulgation. In case of any discrepancy between this Notice and the Notice of the State Administration of Foreign Exchange on Tentatively Reforming the Mode of Administration of the Settlement of Foreign Currency Capital under the Foreign Investment Account (No. 41 [2001] of the State Administration of Foreign Exchange), Notice of the State Administration of Foreign Exchange on Reforming the Mode of Administration of the Settlement of Foreign Currency Capital under the Foreign Investment Account (No. 59 [2002] of the State Administration of Foreign Exchange), Notice of the State Administration of Foreign Exchange on the Issues concerning the Improvement of Foreign Exchange Administration Relating to Direct Investment of Foreign Investors (No. 30 [2003] of the State Administration of Foreign Exchange), Notice of the State Administration of Foreign Exchange on Improving the Administration of Examination of Foreign Exchange Settlement under the Capital Account and Registration of Foreign Debts of Foreign-funded Enterprises (No. 42 [2004] of the State Administration of Foreign Exchange) or any other document in the administration of capital and settlement of foreign currency capital, this Notice shall prevail.

XI. All branches and foreign exchange administrative departments of the SAFE shall, after receipt of this Notice, forward this Notice to their sub-branches, urban commercial banks, rural commercial banks, foreign-funded banks and accounting firms within their respective jurisdictions. All Chinese-funded foreign exchange designated bank shall forward this Notice to their respective branches.

If you encounter any problem in the implementation of this Notice, please timely report it to the SAFE. Contact Tel: 010-68402365.

Annexes:

1. Order of Payment out of the RMB Fund from the Settlement of Foreign Currency Capital
2. Detailed Checklist on Use of the RMB Fund from the Immediately Previous Settlement of Foreign Currency Capital
3. Order of Payment out of the Fund in the Exclusive Foreign Currency Account for Cashing Assets
4. Detailed Checklist on Use of the RMB Fund from Immediately Previous Settlement of Foreign Currency Capital in the Exclusive Foreign Currency Account for Cashing Assets

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