

Summary of the *Circular on Relevant Issues Concerning the Management of Onshore Foreign Exchange Accounts of Overseas Institutions Issued by the State Administration of Foreign Exchange* (promulgated on July 13, 2009)

On July 13, 2009, the State Administration of Foreign Exchange promulgated the *Circular on Relevant Issues Concerning the Management of Onshore Foreign Exchange Accounts of Overseas Institutions* (the “**Circular**”), which came into effect as of August 1, 2009.

Under the background of the global financial crisis, the issuance of the Circular is aimed at regulating such activities as opening and use of onshore foreign exchange accounts by overseas institutions, promoting trade and investment, and guarding against financial risks. Hence, the Circular, on one hand, allows all domestic banks, under the premise of cautious operation, to open onshore offshore accounts for overseas institutions, simplifies the documentation requirements for opening bank accounts and the procedures of funds transfer across border, thus beneficial for banks to expand intermediary business and for enterprises “going abroad” to manage the fund with domestic bank in order to guarantee the security of funds, to promote the capacity of banks and enterprises in overcoming the global crisis.

On the other hand, the Circular regulates the identification mark of foreign exchange accounts opened by overseas institutions, and the statistical declaration rules of balance of payments, clarifying that the authentication of payments and receiving of funds across border shall be examined and inspected in accordance with cross-border transaction principles. The Circular further states that the funds in these onshore bank accounts shall be administrated as foreign debt and a “firewall” between the onshore and offshore accounts of an institution should be established, thereby preventing the domestic offshore accounts of overseas institutions from being used as channel of illegal funds transfer. We hereby briefly introduce the content of the Circular as below:

1. Procedures for opening onshore foreign exchange accounts by overseas institutions

In accordance with the Circular, except for those onshore bank accounts against which the State Administration of Foreign Exchange has express provisions (e.g., opening, use and close of the foreign exchange accounts of qualified foreign institutional investors, special foreign exchange accounts of foreign investors, B-share foreign exchange accounts of overseas institutions and onshore foreign exchange accounts of embassies and consulates of foreign countries (regions) stationed in China or representative offices of international organizations in China with diplomatic immunity), the procedures for opening onshore foreign exchange accounts under other categories by overseas institutions are simpler. The documents required for opening a bank account include supporting documents indicating that the overseas institution was duly incorporated and registered in a foreign jurisdiction. Such application will not be subject to the approval of the State Administration of Foreign Exchange and its local counterparts (“**SAFE**”).

2. Special nature of onshore foreign exchange accounts of overseas institutions

Pursuant to the provisions of the Circular, when opening a foreign exchange account for an overseas institution, "NRA (NON-RESIDENT ACCOUNT)" should be uniformly marked before the foreign exchange account, so that the bank can accurately ascertain the nature of the foreign exchange account to which the funds transfer occurred; furthermore, the foreign exchange receipts and disbursements between domestic institutions or individuals and the onshore foreign exchange accounts of overseas institutions shall be managed as per cross-border transactions. The domestic banks shall, in accordance with the provisions on the foreign exchange management of cross-border transactions, handle the said business after examining the valid commercial documents and vouchers of the domestic institutions or individuals.

3. Procedures for funds wire through onshore foreign exchange accounts of overseas institutions

According to the Circular, with respect to receiving of foreign exchange from within and outside China through the onshore foreign exchange accounts of overseas institutions, the fund transfer between them, the fund transfer between them and the offshore accounts or the overseas payment through them, the domestic banks may, under instructions of clients, directly handle such businesses, unless it is otherwise provided for by the SAFE. However, all the fund incomes and expenditures that occur within and outside China through the onshore foreign exchange accounts of overseas institutions and all the account balance changes arising therefrom, should be handled in accordance with the relevant provisions of the statistical declaration of balance of payments.

4. Preventing the onshore foreign exchange accounts of overseas institutions from being used as illegal channel of funds transfer

As stipulated in the Circular, without the approval of the SAFE, it is prohibited to deposit and withdraw foreign currency cash into and from an onshore foreign exchange account of an overseas institution, and it is prohibited to convert the foreign exchange funds in such foreign exchange account into RMB capital. The fund balance of an onshore foreign exchange account of an overseas institution will be included in a domestic bank' short-term foreign debt indicators management, unless it is otherwise provided for by the SAFE.

5. Circumstances where the Circular does not apply

The Circular does not apply to the situation where an overseas institution or individual opens an offshore bank account at a domestic bank which is legally qualified for operating offshore banking business; neither does it apply to receipts and disbursements of foreign exchange funds between abovementioned offshore bank accounts and onshore bank accounts.

If you have any questions regarding the above, please feel free to contact us. Thank you.

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