Summary of the Provisions on Administration of the Foreign Exchange Used in the Offshore Direct Investment by Onshore Institutions (became effective on August 1, 2009)

On July 13, 2009, the State Administration of Foreign Exchange (the "SAFE") promulgated the *Circular on issuing the Provisions on Administration of the Foreign Exchange Used in the Offshore Direct Investment by Onshore Institutions* (the "Provisions"). The Provisions became effective on August 1, 2009. Nine copies of foreign exchange related regulations and rules were abolished at the same time. Compared with the previous relative provisions, the Provisions simplifies the examination procedure in respect of the sources of foreign exchange funds used in offshore direct investment by removing it from a separate pre-approval process and incorporating it into the offshore direct foreign exchange registration procedures, as well as annuls the requirement for approval of outward remittance of foreign exchange funds used in offshore direct investment. It also expands foreign exchange fund sources allowed to be used by onshore institutions in offshore direct investment and reduces the costs of offshore investment. The Provisions is outlined as follows:

1. Onshore institutions may make offshore direct investment with foreign exchange funds from following sources:
   a) their own foreign exchange funds, including the foreign exchange funds in the foreign exchange accounts under the current items, the capital accounts of foreign-funded enterprises, etc.;
   b) foreign exchange loans borrowed in China subject to certain requirements;
   c) foreign exchange purchased with RMB funds;
   d) tangible assets and intangible assets;
   e) other foreign exchange assets approved by the foreign exchange authority; and
   f) profits gained from offshore direct investment outside China.

2. The Foreign Exchange Source Examination is no longer one of the conditions precedents to MOFCOM[1] approval; instead, it is abolished and combined together with the offshore investment foreign exchange registration, after obtaining the approvals from MOFCOM and NDRC[2].

3. After registration with the competent foreign exchange authority, an onshore institution may remit the foreign exchange funds for offshore direct investment at a designated foreign exchange bank, without handling the outbound remittance approval procedure at SAFE.

4. In addition, the onshore institution which has already engaged in offshore direct investment shall, within 60 days after the occurrence of any of the following circumstances, conduct the foreign

[1] Ministry of Commerce of the People's Republic of China(中华人民共和国商务部) and it's local counterparts
[2] National Development and Reform Commission (中华人民共和国国家发展和改革委员会) and it's local counterparts

exchange registration, modification, filing or de-registration procedures for its offshore direct investment at the local foreign exchange authority:

a) where the onshore institution retains offshore the profits gained from its offshore direct investment and the foreign exchange incomes under the capital items of income from capital decrease, share transfer or liquidation of offshore enterprises for the purpose of establishing, acquiring or purchasing the shares of any unregistered offshore enterprise, it shall handle the foreign exchange registration formalities for offshore direct investment in respect of such offshore direct investment;
b) where any basic information of a registered offshore enterprise changes, such as name, operation period, or partners, or there is any capital increase or decrease, share transfer or exchange, merger or split in respect of a registered offshore enterprise, the onshore institution shall handle the foreign exchange modification registration formalities for offshore direct investment in respect of such change;
c) where there is any long-term equity or debt investment, guarantee or any other important matter which does not involve change of capital of a registered offshore enterprise, the onshore institution shall handle the foreign exchange filing formalities for offshore direct investment in respect of such important matter;
d) where the equities held by a onshore institution in an offshore enterprise are written off due to share transfer, bankruptcy, dissolution, liquidation, expiration of operation period or other reasons, the onshore institution shall, within 60 days after obtaining the relevant documents from the competent offshore direct investment authorities, handle the foreign exchange deregistration formalities for offshore direct investment at the local foreign exchange authority.
e) where a onshore institution assigns all or part of the equities held by it in an offshore enterprise to any other onshore institution, the assignor shall handle the foreign exchange modification registration or deregistration formalities for offshore direct investment at the local foreign exchange authority where the assignor is located, and the assignee shall handle the foreign exchange registration formalities for offshore direct investment at the local foreign exchange authority where the assignee is located.

5. Outward Remittance of Early-stage Expenses for Offshore Direct Investment
   a) The Provisions allows an onshore institution to remit, subject to approval of the foreign exchange authority, early-stage expenses in an amount up to 15% of the total amount of proposed offshore direct investment as applied by the onshore institution before the offshore investment project is approved by the relevant authority.
   b) The early-stage expenses having already been remitted outward by a onshore institution shall be included in the total amount of offshore direct investment of the onshore institution. Where a onshore institution fails to complete the approval procedure for its offshore direct investment project within six months after the early-stage expenses are remitted outward, it shall transfer the remaining funds in its offshore account back to its onshore foreign exchange account through which the early-stage expenses were remitted out.

6. Repatriation of Funds and Foreign Exchange Settlement under Offshore Direct Investment
   a) Where a onshore institution remits the profits gained from offshore direct investment back to China, it may keep the profits in its foreign exchange account under the current items or handle the foreign exchange settlement formalities. An onshore institution shall enter the foreign exchange income made under the capital items from the capital, share transfer or liquidation of an offshore enterprise

formed by it into the special foreign exchange account for cashing in on assets or retain the same outside China upon the approval of the foreign exchange authority.

b) Where a onshore institution assigns all or part of the equities of an offshore enterprise to any other onshore institution, the relevant payments shall be made in RMB within China.

In addition, the Provisions shall apply to the direct investment made by onshore institutions in Hong Kong, Macao and Taiwan, as well as the foreign exchange administration of offshore direct investment made by onshore financial institutions. If the competent regulatory departments have different provisions on the use of funds by onshore financial institutions for offshore direct investment, such provisions shall prevail.

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

汉坤新法速递

HANKUN LEGAL UPDATE

漢坤律師事務所

HAN KUN LAW OFFICES

敬告读者：

汉坤律师事务所编写《汉坤新法速递》的目的仅为帮助客户及时了解中国法律及实务的最新动态和发展，上述内容仅供参考。

如您对上述内容有任何问题或建议，请与汉坤律师事务所的下列人员联系：

北 京 总 部

电话：+86-10-8525 5500

地址：北京市东长安街 1 号东方广场办公楼 C1 座 9 层 903-908 室

邮编：100738

张蕾 律师：

电话：+86-10-8525 5547

Email：leia.zhang@hankunlaw.com

金文玉 律师：

电话：+86-10-8525 5557

Email：wenyu.jin@hankunlaw.com

上 海 分 所

电话：+86-21-6080 0909

地址：中国上海市静安区南京西路 1266 号恒隆广场 5709 室

邮编：200040

曹银石 律师：

电话：+86-21-6080 0980

Email：yinshi.cao @hankunlaw.com

黄磊康 律师：

电话：+86-21-6080 0988

Email：joseph.hwang@hankunlaw.com

深 圳 分 所

电话：+86-755-2681 3854

地址：中国深圳市福田区莲花街道办福中三路荣超经贸中心 18 层 1812 室

邮编：518000

王哲 律师：

电话：+86-755-2681 3854

Email：jason.wang@hankunlaw.com