

The New Regulations established a unified asset-liability management regulatory system covering capacity assessment and quantitative assessment in the insurance sector, which clearly defines asset-liability management structure, process tools, and various regulatory indicators, stress tests and scoring methods. In the New Regulations, No. 1 and No.2 are about the capability assessment and quantitative evaluation rules for the asset and liability management of property insurance companies; No. 3 and No.4 are for personal insurance companies; and No. 5 is about the content of the asset and liability management report.

In the rules of asset-liability management supervision and evaluation, the quantitative evaluation section mainly scores the matching and impact of the asset and liability management of insurance companies through the quantitative calculation of specific indicators; the capability evaluation section mainly assesses the asset and liability management capability of a company from its organization structure, process control, model tools, performance assessment and regular reports.

The scores of the above two evaluations make up the overall score. Based on the results of the comprehensive scoring, the CBIRC puts insurance companies into four categories: A, B, C, and D, and implements differentiated supervision regimes to each. For A-class companies with a high capability and good asset-liability matching, appropriate supporting regulatory policies will be given. For C-class and D-class companies with lower capability or poor asset-liability matching, targeted regulatory measures will be taken. It is helpful to gradually build a continuous and effective mechanism with the coordination and interaction of business supervision, fund utilization supervision and solvency supervision.

The formulation of this New Regulation draws on advanced experience abroad and fully considers the actual situation of the domestic Chinese insurance sector. Before the adoption of the New Regulation, a few rounds of advance research and testing in the whole insurance sector had been carried out. The official release of the New Regulations has filled in the regulatory gap, the lack of specific regulatory rules in the asset and liability field, which means that the asset and liability management in the insurance sector has been switched from "soft constraints" to "hard constraints".

## VII. Foreign Exchange

### (i) Introduction to China's Foreign Exchange Regulatory System

According to the provisions of the PRC *Regulations on Foreign Exchange Control*, foreign institutions

and individuals conducting direct investment in China shall complete foreign exchange registration after obtaining approval from the relevant regulatory authorities and shall comply with relevant foreign exchange management regulations under capital projects. At the same time, foreign institutions and individuals conducting direct investment in China shall also comply with the relevant provisions of the *Regulations on Domestic Foreign Exchange Control* on foreign exchange accounts and the opening and use of foreign exchange accounts. Since 2010, the State Administration of Foreign Exchange ("SAFE") has introduced a number of specific policies to simplify and adjust the foreign exchange management supervision for capital projects. The main effective policies related to foreign direct investment are as follows:

*1. Notice of the State Administration of Foreign Exchange on the Issuance of Regulations on Foreign Exchange Control of Foreign Investors' Direct Investment in China and Relevant Supporting Documents* (Huifa [2013] No. 21) ("No. 21 Document")

The issuance of No. 21 Document basically established an institutional framework based on "registration management" for managing the foreign exchange element of foreign investors' direct investment. By clarifying the foreign exchange management model based on "registration management", it simplifies the operating procedures of foreign exchange management, such as foreign exchange registration, account opening and use, reception of funds and payments as well as foreign currency settlement, removes most of the pre-approval matters in the regular business, which significantly simplifies the existing foreign exchange management system.

*2. Notice of the State Administration of Foreign Exchange on Further Simplifying and Improving Foreign Exchange Management Policies for Direct Investment* (Huifa [2015] No. 13) ("No. 13 Document")

No. 13 Document further simplifies the foreign exchange registration system of foreign investment established by No. 21 Document. Its core content is to decentralize most of the foreign exchange registration procedures to banks. In the event banks perform audit, statistical monitoring and reporting responsibilities within the scope of its authority, SAFE only reserves the right to register certain special matters. The main contents of No. 13 Document include: (1) canceling the foreign exchange registration approval under foreign direct investment in China and under Chinese companies' overseas direct investment; (2) simplifying the handling procedures for some foreign direct investment business; (3) improving banks' awareness of compliance in handling the foreign

exchange registration of direct investment; (4) strengthening the training guidance and post-event supervision of banks by SAFE.

### *3. Notice of the State Administration of Foreign Exchange on Reforming the Management Method of Foreign Exchange Capital Settlement of Foreign Invested Enterprises* (Huifa [2015] No. 19) ("No. 19 Document")

No. 19 Document specifies: to implement a nationwide reform of foreign exchange capital settlement by foreign invested enterprises. The main content of the reform are as follows: (1) to implement discretionary settlement for foreign exchange capital of FIEs; (2) to include the RMB funds obtained by an FIE from its discretionary settlement of foreign exchange capital in the account pending for foreign exchange settlement and payment; (3) Capital funds of FIEs should be used within the scope of the business; (4) to facilitate the domestic equity investment made by the funds obtained from foreign exchange settlement of FIEs; (5) to regulate the payment management of the funds obtained from foreign exchange settlement.

### *4. Notice on Expanding the Applicable Scope of the Temporary Waiver for Withholding Income Tax on Foreign Investors' Direct Investment Made by Distributed Profits* (Fiscal and Tax [2018] 102) ("No. 102 Document")

No. 102 Document specifies: in all projects and fields where foreign investment is not prohibited, withholding income tax shall be temporary waived for domestic direct investment made by foreign investors using the profits distributed from Chinese domestic resident enterprises (FIEs). No.102 Document specifies the conditions, operating and filing procedures for the temporary waiver for withholding income tax for foreign investors. At the same time, it also clarifies the situations under which paid tax is refunded and the situations required to apply for deferred tax payments. According to No.102 Document, those who are found during the follow-up management by tax authorities to be unable to meet the required conditions shall be deemed to be foreign investors who fail to submit income tax returns in accordance with the regulations, provided that such incompliance responsibility shall be attributed to the corporate body which distributes the profits.

In particular, if foreign institutions or individuals purchase real estate or invest in the real estate sector in China, additional attention shall be drawn to complying with the foreign exchange management policies and regulations on real estate investment adopted by SAFE and other relevant regulatory authorities.

## (ii) Foreign Exchange Management - Foreign Investment in the Banking Sector

### 1. Inception period

As mentioned above, foreign institutions that conduct direct investment in China need to apply for registration for foreign exchange management. Since the foreign exchange management reform in 2015, according to the requirements of Document No. 13, the authority to approve and handle foreign exchange registration has been delegated by SAFE to banks. SAFE stipulates that the registration for foreign exchange management of financial institutions set up by foreign investors by means of new establishment, mergers or acquisitions shall be handled according to the regulations and policies for the establishment of FIEs or projects. This Guideline will not elaborate further here.

### 2. Operation period

#### (1) Foreign invested bank's business entity

##### A. Make short-term, medium-term and long-term loans

###### (a) Offshore commercial loan

According to the relevant provisions, a foreign invested bank's business entity may directly provide offshore commercial loans within the approved scope of business, and shall register in accordance with SAFE's provisions<sup>136</sup>. But at present, SAFE has not yet enacted specific regulations and rules on this. It is suggested that the local SAFE branch should be further consulted with on the specific registration process.

###### (b) Onshore commercial loan

China once included foreign exchange funds borrowed by the borrowing units from foreign banks and Sino-foreign joint venture banks registered in China in the scope of foreign debts<sup>137</sup>. At present, the foreign debt with the character of international commercial loans only includes credit loans borrowed by domestic institutions from offshore institutions and natural persons and non-permanent institutions established in China<sup>138</sup>. Commercial loans made by a foreign invested bank's

---

<sup>136</sup> Article 20 of the *Regulations of the People's Republic of China on Foreign Exchange Control*.

<sup>137</sup> Article 3 of the *Provisional Regulations on Statistics and Supervision of Foreign Debts*.

<sup>138</sup> Article 5 of the *Interim Provisions on the Management of Foreign Debts*.

business entity in China is no longer considered as foreign debt, nor does it involve SAFE registration procedures.

## B. Provide guarantees

In China, cross-border guarantees are mainly supervised and regulated by SAFE. Cross-border guarantees mean guarantee performances made in writing by the guarantor to the creditor, which is a legally binding promise to perform the payment obligations as stipulated in the guarantee contract and may result in cross-border receipts and payments of funds or cross-border asset transfers and other international revenue and expenditure transactions<sup>139</sup>. Foreign invested bank's business entity which provide or accept different forms of cross-border guarantees need to go through different foreign exchange management procedures in accordance with the relevant provisions.

### (a) Nei Bao Wai Dai (内保外贷)

*Nei Bao Wai Dai* ("内保外贷" in Chinese) refers to those cross-border guarantees in which the guarantor is registered in China and the debtor and creditor are registered abroad. The main way for foreign invested bank's business entity to participate in Nei Bao Wai Dai is to provide cross-border guarantees as guarantor.<sup>140</sup>

#### i. Registration for Nei Bao Wai Dai

For this type of business, the foreign invested bank's business entity shall obtain the corresponding qualification as guarantor, and submit relevant data to SAFE through data interface or other means<sup>141</sup>. As guarantor for this type of business, a foreign invested bank's business entity shall examine and verify the debtor's qualifications, the use of funds under guarantee, the expected source of repayment funds, the possibility of performance of the guarantee and the relevant transaction background, conduct due diligence on whether it conforms to relevant laws and regulations at home and abroad, and supervise whether the debtor uses funds under the guarantee in accordance with its stated purposes<sup>142</sup>.

---

<sup>139</sup> See Article 2 of *Provisions on the Foreign Exchange Administration of Cross-border Guarantees*.

<sup>140</sup> See Article 3 of *Provisions on the Foreign Exchange Administration of Cross-border Guarantees*.

<sup>141</sup> See Article 2 and Article 3 of Part 1 of *Guideline on the Foreign Exchange Administration of Cross-border Guarantees*.

<sup>142</sup> See Article 8 of Part 1 of *Guideline on the Foreign Exchange Administration of Cross-border Guarantees*.

It should be noted that SAFE has strict requirements on the purpose of funds of this type of business, that is, the funds involved in Nei Bao Wai Dai should only be used for the relevant expenditure incurred within the debtor's normal business scope, and cannot be used for payment beyond the debtor's business scope. No sham transaction should be made for arbitrage, and other forms of speculative trading are also prohibited.<sup>143</sup>

The repatriation of funds under Nei Bao Wai Dai was once restricted, that is, without the approval of SAFE, the debtor could not repatriate the funds under Nei Bao Wai Dai directly or indirectly to the PRC for use such as domestic lending, equity investment or securities investment<sup>144</sup>. However, in 2017, SAFE eased the restrictions, allowing the debtor to repatriate funds under Nei Bao Wai Dai directly or indirectly back for domestic use such as domestic lending or equity investment<sup>145</sup>.

#### ii. Performance of guarantee

Where a foreign invested bank's business entity has performed its obligation of guarantee, it may make external payments thereunder by itself. Its funds of performance of guarantee may come from its advances of foreign exchange provided earlier to the counter-guarantor, the deposits deposited by the counter-guarantor in the form of foreign exchange or RMB, or other payments made by the counter-guarantor. The counter-guarantor may directly purchase or pay for the foreign exchange with the certificate of performance of guarantee<sup>146</sup>.

#### iii. Registration of external debt

Where the guarantee obligation is performed under Nei Bao Wai Dai, the foreign invested bank's business entity which becomes a creditor to an external debt shall register the external debt, i.e. submit the relevant information of the external debt through the capital account information system<sup>147</sup>.

In addition, if the debtor (or counter-guarantor) under the guarantee performs its obligation to repay to the foreign invested bank's business entity on its own initiative, the debtor (or counter-

---

<sup>143</sup> See Article 11 of *Provisions on the Foreign Exchange Administration of Cross-border Guarantees*.

<sup>144</sup> See Article 11 of *Provisions on the Foreign Exchange Administration of Cross-border Guarantees*.

<sup>145</sup> See Article 2 of *Notice of the State Administration of Foreign Exchange on Further Promoting the Reform of Foreign Exchange Administration and Improving the Examination of Authenticity and Compliance*.

<sup>146</sup> See Article 6 of Part 1 of *Guideline on the Foreign Exchange Administration of Cross-border Guarantees*.

<sup>147</sup> See Article 7 of Part 1 of *Guideline on the Foreign Exchange Administration of Cross-border Guarantees*.

guarantor) and the guarantor may handle payment and receipt procedures on their own. If the debtor (or counter-guarantor) is unable to perform the payment obligation on its own initiative for various reasons, the foreign invested bank's business entity may handle the relevant foreign exchange procedures on behalf of the debtor (or counter-guarantor) in case the currency it has received from the debtor (or counter-guarantor) by legal means is inconsistent with the currency under the original performance of guarantee<sup>148</sup>.

#### iv. De-registration of Nei Bao Wai Dai

After the guarantor's payment responsibility under Nei Bao Wai Dai expires, the debtor pays off the debts under the guarantee or the guarantee obligation is performed, the foreign invested bank's business entity shall go through de-registration from Nei Bao Wai Dai, and may submit the updated data relating to Nei Bao Wai Dai to SAFE's capital account system through the data interface or other means.

### (b) Wai Bao Nei Dai ( 外保内贷 )

*Wai Bao Nei Dai* ( 外保内贷 in Chinese) refers to the cross-border guarantee where the guarantor is registered abroad, the debtor is a non-financial institution registered and operated in China, and the creditor is a financial institution registered and operated in China. This concerns loans in domestic or foreign currency (excluding entrusted loan) or cross border guarantees with binding commitments provided by the financial institution<sup>149</sup>. The main way for foreign invested bank's business entity to participate in Wai Bao Nei Dai is to provide loans or commitment as creditors.

#### i. Registration for Wai Bao Nei Dai

In terms of Wai Bao Nei Dai engaged in by domestic debtors, a foreign invested bank's business entity that provide loans or commitment is in charge of submitting the data thereof to SAFE<sup>150</sup>.

#### ii. Performance of guarantee

Where the obligation of guarantee has been performed under Wai Bao Nei Dai, the domestic debtor shall go to the local SAFE branch within 15 working days for registration of short-term foreign debts

---

<sup>148</sup> See Article 7 of Part 1 of *Guideline on the Foreign Exchange Administration of Cross-border Guarantees*.

<sup>149</sup> See Article 3 and Article 17 of *Provisions on the Foreign Exchange Administration of Cross-border Guarantees*.

<sup>150</sup> See Article 18 of *Provisions on the Foreign Exchange Administration of Cross-border Guarantees*.

and the filing of relevant information<sup>151</sup>. The foreign invested bank's business entity may directly handle the payment receipt of performance of guarantee with the overseas guarantors<sup>152</sup>.

It should be noted, however, that if the funds provided for performance of guarantee differ from the currency of the loan under the guarantee which results in settlement or purchase of foreign exchange, the foreign invested bank's business entity shall make the application with SAFE. Specifically, the branch or head office of the bank shall, after summing up the applications for settlement (or purchase) of foreign exchange arising from the payment of guarantee of performance of its own and its subordinate branches, make the application with the local SAFE branch<sup>153</sup>.

#### (c) Other cross-border guarantees

A foreign invested bank's business entity that provides or accepts cross-border guarantees other than by means of Nei Bao Wai Dai and Wai Bao Nei Dai may, in principle, sign the cross-border guarantee by itself. Unless specified otherwise, the guarantor and debtor do not need to register or file the cross-border guarantee with SAFE<sup>154</sup>.

### C. Inter-bank borrowing and offshore borrowing

#### (a) Administrative model

China exercises total control over the foreign debts of a domestic foreign invested bank's business entity. The foreign debts of a domestic foreign invested bank's business entity include offshore borrowing, offshore inter-banking, offshore inter-bank deposits, dealings with offshore branches and affiliates (debtor), and non-resident deposits and other forms of foreign liabilities<sup>155</sup>.

Before 2016, the management of short-term foreign debt (with a contract term of less than one year) was mainly based on short-term foreign debt balance indicators. That is to say, before the end of February every year, the domestic foreign invested bank's business entity had to report to the NDRC or the SAFE about its medium term and long-term foreign debt or short-term foreign debt balance occurred in the current year; and SAFE was required to examine and approve the short-term foreign

---

151 See Article 4 of Part 2 of *Guideline on the Foreign Exchange Administration of Cross-border Guarantees*.

152 See Article 3 of Part 2 of *Guideline on the Foreign Exchange Administration of Cross-border Guarantees*.

153 See Article 5 of Part 2 of *Guideline on the Foreign Exchange Administration of Cross-border Guarantees*.

154 See Article 25 of *Provisions on the Foreign Exchange Administration of Cross-border Guarantees*.

155 See Article 3 of *Measures for the Administration on Foreign Debts of Foreign-funded Banks in China*.

debt balance of the domestic foreign invested bank's business entity in the current year<sup>156</sup>. The short-term foreign debt balance of the domestic foreign-invested bank's business entity at any point in the year shall not exceed the balance approved by SAFE.

From 2016 onwards, China began to gradually implement a macro-prudential pilot management program for full-covered cross-border financing. In 2017, the *Notice of the People's Bank of China on Matters related to Macro-prudential Management of Full-Covered Cross-border Financing ("No. 9 Document")* was officially introduced. According to the provisions of Document No. 9, under the macro-prudential management model, the domestic foreign invested bank's business entity carrying out cross-border financing shall calculate the risk-weighted balance (which means the outstanding balance unrepaid); and the risk-weighted balance shall not exceed the upper limit, that is, the risk-weighted balance of cross-border financing shall be less than the upper limit of the risk-weighted balance of cross-border financing. Specifically, the risk-weighted balance of cross-border financing =  $\sum$ the balance of domestic and foreign currency for cross-border financing \* term risk conversion factor \* category risk conversion factor +  $\sum$ the balance of foreign currency for cross-border financing \* exchange rate risk conversion factor; the upper limit of risk-weighted balance of cross-border financing = assets or net assets \* cross-border financing leverage rate \* macroprudential adjustment parameter<sup>157</sup>.

Since 12 January 2018, a foreign invested bank's business entity has automatically applied the macro-prudential management model under the No. 9 Document.

#### (b) Business operations

Before a foreign invested bank's business entity first engages in cross-border financing business, it shall calculate the risk-weighted balance of cross-border financing and the upper limit of the risk-weighted balance of cross-border financing according to the leverage rate of cross-border financing and macro-prudential adjustment parameters stipulated in No. 9 Document, as well as the latest audited capital data of the foreign invested bank's business entity, and submit the detailed procedure of calculation to the People's Bank of China and SAFE<sup>158</sup>.

---

156 See Article 5 and Article 6 of *Measures for the Administration on Foreign Debts of Foreign-funded Banks in China*

157 See Article 3 and Article 5 of No.9 Document.

158 See Article 11 of No.9 Document.

A foreign invested bank's business entity may engage in cross-border financing if the risk-weighted balance of the financing is within the upper limit. As such, the foreign invested bank's business entity may sign a financing contract with the overseas institution<sup>159</sup>.

Before performing the executed cross-border financing contracts, the foreign invested bank's business entity shall submit to the People's Bank of China and SAFE information on the amount of capital and cross-border financing contracts, and after withdrawal of the funds, they shall submit information on cross-border income in local and foreign currencies as required, and information on cross-border expenditure in local and foreign currencies after payment of interest and repayment of principal. If there is any change to the audited capital, the foreign creditors involved in the financing contract, the borrowing period, the amount and the interest rate concerned, the domestic foreign invested bank's business entity shall update the relevant information in the system in time<sup>160</sup>.

A foreign invested bank's business entity shall report to the People's Bank of China and SAFE the occurrence of cross-border financing in local and foreign currencies and changes in their balances occurred last month within five working days from the beginning of each month. All cross-border financing business materials shall be kept for reference for a period of five years from the end of the cross-border financing transaction<sup>161</sup>.

The funds extended to the foreign invested bank's business entity can be used to supplement capital, serve the development of the real economy, and shall be in conformity with the macro-control of national industries. With the approval of SAFE, the foreign invested bank's business entity can settle and use the financing foreign exchange funds<sup>162</sup>.

#### D. Settlement and sale of foreign exchange

In addition to the qualifications mentioned above, when a foreign invested bank's business entity applies for new qualifications for spot settlement and sale of foreign exchange, SAFE will also verify its comprehensive position limit for foreign exchange sales<sup>163</sup>.

---

159 See Article 11 of No.9 Document.

160 See Article 11 of No.9 Document.

161 See Article 11 of No.9 Document.

162 See Article 11 of No.9 Document.

163 See Article 47 of *Detailed Rules for the Implementation of the Measures for the Administration of the Foreign Exchange Settlement and Sale Business of Banks*.

The local SAFE Branch shall be responsible for verifying the position limit of a foreign invested bank's business entity and adjusting it annually. If the volume of settlement and sale of foreign exchange in the previous year is less than US\$100 million, and if qualifications for settlement and sale of foreign exchange are newly obtained, the upper limit of comprehensive position of settlement and sale of foreign exchange is US\$50 million and the lower limit is US\$-3 million; if the volume of settlement and sale of foreign exchange in the previous year is between US\$100 million and US\$1 billion, the upper limit of comprehensive position of settlement and sale of foreign exchange is US\$300 million and the lower limit is US\$-5 million; if the volume of settlement and sale of foreign exchange in the previous year is above US\$1 billion, the upper limit of comprehensive position of settlement and sale of foreign exchange is US\$1 billion and the lower limit is US\$-10 million. In addition, if the comprehensive position cap of settlement and sale of foreign exchange approved in accordance with the aforementioned standards cannot meet the actual needs of foreign invested bank's business entity, the institutions may apply to the SAFE branch office according to their actual needs, and the SAFE branch office may raise the cap appropriately<sup>164</sup>.

For foreign banks with more than two branches in China, the head office or regional headquarters of the foreign bank may authorize a domestic branch (the "**Centralized Management Bank**") to manage the positions of the domestic branches. After the centralized management of the positions of branches of foreign banks has been implemented, the positions of all branches in China will be integrated into the position management of the Centralized Management Banks and traded and managed by the Centralized Management Bank in a unified manner. After the centralized management of the positions of branches of foreign banks is implemented, the daily management shall be carried out in accordance with the positions quota approved by SAFE. The aggregated data of all branches of the foreign bank shall be used for the calculation of business<sup>165</sup>.

#### E. Overseas financial management service on behalf of clients and Custodian service of overseas financial management on behalf of clients

##### (a) Overseas financial management service on behalf of clients

As mentioned above, a foreign invested bank's business entity needs to obtain the permission of the CBIRC or the local banking regulatory bureau to carry out the business of overseas financial

---

<sup>164</sup> See Article 45 of *Detailed Rules for the Implementation of the Measures for the Administration of the Foreign Exchange Settlement and Sale Business of Banks*.

<sup>165</sup> See Article 49 of *Detailed Rules for the Implementation of the Measures for the Administration of the Foreign Exchange Settlement and Sale Business of Banks*.

management service on behalf of clients. If a foreign invested bank's business entity is entrusted by an investor to purchase foreign exchange with RMB, it shall apply to SAFE for the purchase quota of overseas financial management service on behalf of clients. (However, if a foreign invested bank's business entity is entrusted by an investor to make overseas financial investment through the investor's own foreign exchange, the amount entrusted by the investor shall not be included in the purchase quota of foreign exchange for investment approved by SAFE)<sup>166</sup>.

The net amount of foreign exchange purchased by a foreign invested bank's business entity engaged in overseas financial management service on behalf of clients shall not exceed the purchase limit of foreign exchange approved by SAFE<sup>167</sup>. Within the approved quota for foreign exchange purchase, the foreign invested bank's business entity may issue foreign financial management products denominated in RMB to investors, and uniformly handle the procedures of foreign exchange purchase for raising RMB funds<sup>168</sup>. After the repatriation of overseas financial management funds, the foreign invested bank's business entity shall pay the investment principal and revenue to the investors. Where an investor purchases foreign exchange in RMB, the foreign invested bank's business entity shall pay the investor after the settlement of the foreign exchange; if an investor invests in foreign exchange, the foreign exchange shall be repatriated to the investor's original account by the foreign invested bank's business entity; if the original account has been closed, it may be repatriated to the account designated by the investor<sup>169</sup>.

(b) Custodian service of overseas financial management on behalf of clients

Commercial banks engaged in overseas financial management on behalf of clients may entrust a foreign invested bank's business entity with custody qualifications approved by the CBIRC as custodians of offshore financial management on behalf of clients<sup>170</sup>. The foreign invested bank's business entity shall fulfil their regular reporting obligations to the CBIRC and SAFE, including<sup>171</sup>:

- ※ Reporting to the CBIRC and SAFE within five working days from the date of opening domestic custody accounts, overseas settlement accounts for the use of foreign exchange funds and securities custody accounts of commercial banks;

---

166 See Article 13 of *Interim Administrative Measures for Commercial Banks to Provide Overseas Financial Management Services*.

167 See Article 17 of *Interim Administrative Measures for Commercial Banks to Provide Overseas Financial Management Services*.

168 See Article 15 of *Interim Administrative Measures for Commercial Banks to Provide Overseas Financial Management Services*.

169 See Article 16 of *Interim Administrative Measures for Commercial Banks to Provide Overseas Financial Management Services*.

170 See Article 19 of *Interim Administrative Measures for Commercial Banks to Provide Overseas Financial Management Services*.

171 See Article 21 of *Interim Administrative Measures for Commercial Banks to Provide Overseas Financial Management Services*.

- ※ Reporting the remittance and repatriation of the relevant funds to SAFE within five working days;
- ※ Reporting the revenue and expenditure of the domestic custody account of the commercial bank to SAFE within five working days from the end of each month;
- ※ Reporting the overseas utilization of foreign exchange funds of the commercial bank in the previous year to SAFE within one month after the end of each fiscal year;
- ※ Reporting to the CBIRC and SAFE in a timely manner if it finds that the commercial bank's investment instructions are illegal or irregular;
- ※ Other reporting matters as stipulated by the CBIRC and SAFE.

A foreign invested bank's business entity shall, in accordance with the principle of prudence, select an offshore financial institution as its overseas custody agent in accordance with risk management requirements and business practices, and open a commercial bank foreign exchange fund utilization settlement account and securities custody account with the overseas custody agent for funds settlement and securities custody with overseas securities registration and settlement institutions<sup>172</sup>.

### (iii) Foreign Exchange Management - Foreign Investment in the Insurance Sector

According to legal and regulatory requirements, including the *Guidelines for Foreign Exchange Management of Insurance Business*<sup>173</sup>, the foreign exchange supervision of the insurance sector mainly involves the following:

#### 1. Market Access Management of the Foreign Currency Insurance Business

The foreign currency insurance business that insurance companies and their branches can carry out mainly includes:

- ※ Foreign currency property insurance;
- ※ Foreign currency life insurance;

---

<sup>172</sup> See Article 24 of *Interim Administrative Measures for Commercial Banks to Provide Overseas Financial Management Services*.

<sup>173</sup> *Guidelines for Foreign Exchange Management of Insurance Business*, Hui Fa [2015] No. 6, adopted on 19 January 2015.

※ Foreign currency reinsurance.

The foreign currency property insurance business shall meet one of the following conditions:

- ※ The insured subject matter is property and related interests are outside the PRC;
- ※ The insured subject matter is property and related interests which are moved between the PRC and overseas territories;
- ※ The insured subject matter or the insured risks are full or partial liability risks, credit guarantee risks which exist or occurred outside the PRC;
- ※ The insured subject matter is an overseas insured person, or the property and related interests of an overseas insured person; or
- ※ Other circumstances stipulated by laws and regulations.

The foreign currency life insurance business shall meet one of the following conditions:

- ※ Cross-border short-term health insurance and accident insurance of domestic individuals;
- ※ Short-term health insurance and accident insurance of overseas individuals; or
- ※ Other circumstances stipulated by laws and regulations.

The foreign currency reinsurance business shall meet one of the following conditions:

- ※ Reinsurance in China for foreign currency property insurance and foreign currency life insurance pursuant to Article 7 and Article 8 of this guide; or
- ※ Other circumstances stipulated by laws and regulations.

## 2. Foreign Exchange Account Management

Opening, change, use and closing of foreign currency business accounts and foreign currency funds operation accounts by insurance institutions and their branches pursuant to the relevant provisions may be handled directly by the financial institution and the approval from the foreign exchange

bureau is not required, except for first-time account openings where the insurance institution is required to present materials including the official business license, organization code certificate pursuant to relevant provisions to complete the basic information registration formalities with the handling financial institution or the local foreign exchange bureau.

The scope of income and expenditure of a foreign currency capital funds account of an insurance institution shall be: foreign currency capital funds (foreign currency working capital) remitted inwards and remitted outwards in the event of capital reduction (divestment) pursuant to laws by shareholders (overseas parent company), fund transfers under the operation of domestic and overseas foreign currency funds, receipt and payment of foreign currency funds due to cancelled transactions, exchange settlement and usage pursuant to relevant provisions, foreign currency expenditure under current account, and foreign currency income and expenditure of capital projects stipulated by the foreign exchange bureau.

The scope of receipts and payments of a foreign currency business account of an insurance institution shall be: foreign currency income and expenditure under foreign currency insurance, fund transfers under the operation of domestic and overseas foreign currency funds, investment income, income from entrusted management fee, exchange settlement and usage pursuant to relevant provisions, foreign currency income and expenditure under current account projects, and foreign currency income and expenditure under capital projects stipulated by the foreign exchange bureau.

The scope of receipts and payments of a foreign currency funds operation account opened in a custodian financial institution and used for custodian purposes shall be: transfer of foreign currency funds to and from foreign currency capital funds account, foreign currency business account, designated foreign currency account for overseas listing or another foreign currency funds operation account, income and expenditure pertaining to sale and purchase of foreign currency financial assets and any other foreign currency income and expenditure stipulated by the foreign exchange bureau.

The scope of receipts and payments of any other foreign currency funds operation accounts shall be: transfer of foreign currency funds to and from the foreign currency funds operation account used for custodian purposes, income and expenditure pertaining to sale and purchase of foreign currency financial assets and any other foreign currency income and expenditure stipulated by the foreign exchange bureau.

### 3. Foreign Currency Income and Expenditure Management

Foreign currency income and expenditure under current accounts from cross-border insurance, cross-border reinsurance of insurance institutions and their branches shall be handled pursuant to foreign exchange management regulations on current accounts of domestic institutions.

Foreign currency income and expenditure under capital projects from direct investments, external borrowing and lending, overseas listing, external guarantees and operation of overseas funds of insurance institutions shall be handled pursuant to foreign exchange management regulations on capital projects.

For the indemnification, charge back, recovered expenses under insurance policies transferred by the insured person to a third party in China or overseas, and where the transfer between the insured and the third party complies with the foreign exchange management regulations, the insurance institution may process the transfer of the insurance payout funds based on the insured's endorsement or written instruction.

For cross-border payments and receipts between an insurance institution and an overseas rescue and aid organization or medical institution for the rescue, aid or medical treatment rendered to the insured person, the handling financial institution shall examine and verify at least one item of the proof materials such as contracts, invoices, payment notices, payment lists, etc.

## VIII. Tax

The categories of taxes closely related to financial institutions mainly include corporate income tax and value-added tax ("VAT"). Due to limited space, we will only briefly introduce corporate income tax and value-added tax that are related to the business of Foreign invested banks and insurance institutions. In view of the complexity of tax issues, we recommend that foreign invested banks, foreign invested insurance institutions and investors from other financial institutions consult professional tax advisors or tax authorities for more details.

### (i) Corporate Income Tax (CIT)

Since the 1980s, foreign invested banks have enjoyed preferential corporate income tax policies which allow the corporate income tax of foreign invested banks to be exempted completely or reduced by a half. After the adoption of the *Corporate Income Tax Law* in 2008, tax policies have changed. Since then, foreign invested banks and insurance institutions are