

## **CHINESE UPDATE -- Update on Cross-Border RMB Investment – MOFCOM Further Opens Up RMB Inbound Investment**

Editors' Note: Authored by Ms. Wei CHEN, a partner of Jun He. Ms. Chen specializes in cross-border M&A, foreign direct investment, outbound investment, private equity investment and national security review. Ms. Chen has expanded experience in other fields such as the securities market, offshore IPO listings and follow-up offerings.

### **Highlights:**

1. The RMB-dominated cross-border investment had always been a significant channel to promote the internationalization of RMB.
2. Foreign investors have always been seeking more convenient channels to “spend” their RMB proceeds derived from their investment in China, international trade or other sources in onshore or offshore markets.
3. China’s authorities have made significant developments in 2011 and 2012 to expand the scope and variety of cross-border transactions utilizing the RMB.
4. MOFCOM released a new circular to further relax its supervision over the RMB-denominated inbound investment and the new circular became effective on January 1, 2014.

**Posted in:** [Chinese Update, Cross-Border RMB Investment – MOFCOM Further Opens Up RMB Inbound Investment]

### **MAIN ARTICLE**

When the Chinese government started to step up the internationalization of RMB (the Chinese currency), the RMB-dominated cross-border investment had always been a significant channel to build up. China’s authorities have made significant developments in 2011 and 2012 to expand the scope and variety of cross-border transactions utilizing the RMB.

For inbound investment, the government gave the green light to RMB-denominated investments by foreign investors in 2011, when the Ministry of Commerce (MOFCOM), the People’s Bank of China (PBOC) and the State Administration of Foreign Exchange (SAFE) issued several circulars permitting the RMB-denominated foreign investments and also imposing certain supervision rules in this regard.

Earlier December 2013, MOFCOM released another circular to further relax its supervision power over the RMB-denominated inbound investment. The new circular, the *Circular concerning Relevant Issues with regard to Cross-border RMB Direct Investment* (“**Circular No.87**”) became effective on

January 1, 2014. The new circular supersedes the two previous regulations<sup>1</sup> issued by MOFCOM governing this area.

## **I. Highlights of Circular No.87**

Circular No.87 is in a rather short form by having seven articles only, with the following highlights.

1. Foreign Investor; Source of Offshore RMB and Investment Channel
  - Foreign Investor has been defined to include investors from Hong Kong, Macau and Taiwan;
  - Source of Offshore RMB: any RMB legally gained offshore;
  - Investment Channel: establishment of new enterprises; subscription in existing enterprises; acquisition of domestic enterprises and other foreign direct investment activities.
2. Approval Authority and Procedures
  - The currently effective laws and regulations governing the foreign investment are applicable to transactions dominated by either foreign currency or RMB, and therefore, RMB-dominated foreign investments should go through the approval procedures same as those for the foreign currency dominated transactions.
3. Restriction
  - The offshore RMB cannot be invested, either directly or indirectly, in negotiable securities or financial derivatives (except for the strategic investment in public companies);
  - The offshore RMB cannot be used for offering entrusted loans.
4. Special Items marked on the MOFCOM Approval
  - MOFCOM and its local agencies should specify the following in their approvals, (i) “invested by offshore RMB”, (ii) the amount of the RMB investment, and (iii) investment restrictions.
5. Change of Currency used for Inbound Investment
  - If the foreign investor intends to change the dominated currency in its investment from foreign currency to RMB, MOFCOM approval on the change of the joint venture contract and the articles of association will be no longer required. Instead, the foreign investor may directly go through the procedures of company registration, opening of a bank account and others with the relevant authorities, following its MOFCOM approval on the foreign currency dominated transaction.
6. Re-investment by using RMB derived from Onshore
  - Where the foreign investor uses its onshore RMB which may be derived from the dividend distribution, sale of equity interest/shares, reduction of capital contribution, liquidation or early exit from investment, the relevant existing regulations should still be followed.

---

<sup>1</sup> *Circular of the MOFCOM regarding the Relevant Issues in relation to Cross-border RMB Direct Investment* (Shang Zi Han [2011] No.889) and *Circular of MOFCOM concerning Relevant Issues in relation to MOFCOM System regarding Administration on*

## **II. Further Opening-Up by Circular No.87**

Circular No. 87 further opens up the RMB inbound investment from the following aspects.

### **1. Removal of Restrictions on Investment Scale and Sectors**

Under the previous regulatory regime, if the inbound RMB investment falls within the following circumstances, the investment should be finally approved by MOFCOM at the central level:

- (1) The amount of RMB used for an investment reaches RMB 300 million;
- (2) Investment in sectors such as financing guarantee, financing lease, micro-loan and auction;
- (3) Investment in foreign invested holding companies, foreign invested venture capital companies or foreign invested equity investment enterprises; or
- (4) Investment in sectors that are subject to macro-economic control of the State such as cement, steel and iron, electrolytic aluminum and ship building.

Circular No.87 has removed the aforesaid restrictions on the scale and sectors, which is the most notable opening-up by this Circular.

### **2. Expansion of Offshore RMB Sources**

The previous regulations have listed three legitimate sources of the offshore RMB, i.e., (i) RMB proceeds derived from cross-border trading activities; (ii) RMB proceeds derived onshore from the dividend distribution, sale of equity interest/shares, reduction of capital contribution, liquidation or early exit from investment, and legitimately remitted out of China; and (iii) RMB funds gained offshore through legitimate channels including issuance of RMB share or RMB bond.

Circular No.87 does not exemplify or restrict the sources of the "legally gained offshore RMB". Upon Circular No. 87, any legally gained offshore RMB may be used for inbound investment, regardless of whether obtained through cross-border trade, investment proceeds from China, currency exchange, issuance of RMB share or bond, or any other means.

### **3. Cancellation of Approval on Change of Currency used for Inbound Investment**

Under the previous regulatory system, if a foreign investor intends to change the dominated currency for its inbound investment from foreign currency to RMB, the foreign investor should obtain the approval from MOFCOM or its local agency.

The said approval has been removed by the Circular No.87. In this sense, the foreign investor is able to directly go through the procedures of company registration, opening of a bank account and others with the relevant authorities, with no need to obtain a prior MOFCOM approval on change of dominated currency.

## **III. Comments**

Circular No.87 expands the sources of offshore RMB and simplifies the investment procedures by abolishing the special approval requirement on large-scale investment or investment in special sectors. With more opening-up measures taken by the government, it is expected that the RMB-dominated inbound investment process will become more predictable and convenient for the investor.

Lastly, it is worth noting that Circular No.87 still restricts RMB inbound investments in negotiable securities and financial derivatives, in order to channel RMB investment into substantive economic activities.

*The foregoing has been prepared for the general information of readers only. It is not meant to provide legal advice with respect to any specific matter and should not be acted upon without professional counsel. If you have any questions or require any further information regarding these or other related matters, please contact your regular Jun He representative.*