

SAFE Released New Rules on Foreign Debt Registrations

By Michael Mei and Lillian Xiao

Recently, the State Administration of Foreign Exchange (“SAFE”) issued the *Circular on the Release of Administrative Measures on Foreign Debt Registrations* (Hui Fa [2013]No.19), stating that, in order to deepen the reform of the foreign debt administration system, simplify administrative approval procedures, strengthen foreign debt statistical monitoring and prevent foreign debt risks, SAFE has formulated the *Administrative Measures on Foreign Debt Registration* and the *Operational Directions on Foreign Debt Registrations* (collectively, the “**New Rules**”). The New Rules, which will be implemented as of 13 May 2013, optimize the administration of foreign debt registrations. Set out below are the main contents of the New Rules:

➤ Administration of Foreign Debt Registrations

According to the New Rules, if the debtor is a financial department, it shall, within 10 work days in the beginning of every month, submit to local SAFE the information on conclusion of foreign debt contract, drawdown, settlement, FX sale and purchase, repayment of principal and interest and change of account in respect of its foreign debt. If the debtor is a domestic bank, it shall submit, for each transaction, the information on its borrowing foreign debt through relevant SAFE system. If the debtor is a domestic obligor other than a financial department or a domestic bank (“**non-banking debtor**”), it shall, within 15 working days after the conclusion of a foreign debt contract, go to local SAFE to go through registration formalities for each transaction. Where a non-banking debtor draws funds or repays principal and pay interest which constitutes a non-transfer fund business, it shall, within 5 working days after such drawdown or repayment and payment, go to local SAFE to go through filing formalities for each transaction.

如果您需要本出版物的中文本，请与下列人员联系：

郭建良: (86 21) 3135 8756
Publication@llinkslaw.com

If you would like other Llinks publications, please contact:

Roy Guo: (86 21) 3135 8756
Publication@llinkslaw.com

Llinks Law Offices
www.llinkslaw.com

SAFE Released New Rules on Foreign Debt Registrations

➤ Administration of Opening of a Foreign Debt Account, Fund Utilization and FX Sale and Purchase

The New Rules simplified the administration of foreign debt registrations and canceled the approvals for opening and closing of a foreign debt account, FX sale and purchase of funds and repayment of principal and payment of interest. According to the New Rules, the banks designated by SAFE, upon the request of a non-banking debtor, can directly handle such business after necessary review procedures are conducted.

Regarding FX sale and purchase of foreign debt funds, according to the New Rules, foreign debt borrowed by a foreign invested enterprise (“FIE”) can be used after FX sale and purchase while the debts borrowed by domestic financial institutions or domestic Chinese-funded enterprises shall not be used after FX sale and purchase unless otherwise provided. When a debtor applies for FX sale and purchase of foreign debt funds, the principle of actual need should be followed unless otherwise provided. The purpose of foreign debt stipulated in a loan contract shall comply with the administrative provisions on foreign exchange. Short-term foreign debts shall in principle only be used for working capital purposes and may not be used for medium and long-term purposes such as investment in fixed assets. Debtors, when purchasing foreign exchange with RMB for repayment of foreign debt, shall comply with the principle of actual need.

➤ Administration of Onshore Loan with Offshore Security

According to the New Rules, where an FIE or a domestic Chinese-funded enterprise with an onshore loan with offshore security quota approved by SAFE borrows money from a domestic financial institution, it may accept offshore security provided by a offshore institution or individual (“**onshore loan with offshore security**”). Under an onshore loan with offshore security, the domestic financial institution that advances loans as obligee shall handle concentrated registrations. An obligee shall, within 10 work days in the beginning of every month, report to local SAFE the relevant data. If a debtor and an obligee are not registered in the same jurisdiction of the same local SAFE, the obligee shall report to local SAFEs where the debtor and the obligee are located.

– Onshore Loan with Offshore Security for an FIE

When borrowing money from a domestic financial institution while accepting offshore security, an FIE may directly enter into a security contract with the obligee and offshore security provider. In case an offshore security provider performs its security obligations, the foreign debt arising from such performance shall be deemed as short-term foreign debt (calculated on the basis of the balance of the debtor's foreign debt principal actually occurred towards the offshore security provider) and shall be subject to its “borrowing gap” (i.e. the difference between the total amount of investment and the registered capital) or foreign debt quota. An FIE also needs to go through foreign debt registration formalities.

– Onshore Loan with Offshore Security for a Domestic Chinese-funded Enterprise

SAFE Released New Rules on Foreign Debt Registrations

The new Rules nullified “Where a domestic Chinese-funded enterprise borrows money from a domestic financial institution, they shall not accept security provided by an offshore institution or individual without the approval of SAFE” stipulated in the *Notice of the State Administration of Foreign Exchange on Relevant Issues Concerning Improvement of the Administration of Foreign Exchange* (Hui Fa [2005] No. 74). The New Rules, on the basis of the *Notice of the State Administration of Foreign Exchange on Relevant Issues Concerning Approval of Onshore Loan with Offshore Security Quota for Domestic Chinese-funded Enterprises by Certain SAFE Branches* (Hui Fa [2012] No. 24), further clarifies that quota administration will be imposed on domestic Chinese-funded enterprises’ “onshore loan with offshore security” businesses, i.e. when borrowing onshore money with offshore security, a domestic Chinese-funded enterprise shall in advance apply to local SAFE for a onshore loan with offshore security quota. Besides, according to the New Rules, where a domestic Chinese-funded enterprise carries out “onshore loan with offshore security” business within its quota, there is no need for it to report local SAFE branch for approval on a transaction-by-transaction basis as so required by the above Hui Fa [2012] No. 24 notice but may directly enter into a security agreement within the approved quota. In case an offshore security provider performs its security obligations, a domestic Chinese-funded enterprise shall go to local SAFE to go through foreign debt registration and information filing formalities.

➤ **FX Administration of Transfer of Non-performing Asset (“NPA”) to Foreign Investors**

The New Rules restates the operational directions on the approvals for the revenues and expenditures and conversions of foreign exchange in relation to disposal of NPA by financial asset management companies and the filings and registrations of foreign investors buying NPA and the approvals of FX sale and purchase. After the implementation of the New Rules, the *Circular of the State Administration of Foreign Exchange Concerning Relevant Issues on Control of Foreign Exchanges Relating to Use of Foreign Capitals for Non-performing Asset Disposal of Financial Asset Management Companies* (Hui Fa [2004] No. 119) and the *Circular of the State Administration of Foreign Exchange on Relevant Issues Concerning Regulation of Administration of Record Filing for Security Involved in Outward Transfers of Non-performing Assets by Financial Asset Management Companies* (Hui Fa [2011] No. 113) shall be repealed.

➤ **Others**

In addition to simplify the administration of foreign debt registrations, SAFE will, by relying on the capital account information system, strengthen monitoring and analysis of foreign debt statistics and off-site inspections and actively prevent foreign debt risks.

SAFE Released New Rules on Foreign Debt Registrations

Contact Details

If you would like to know more information about the subjects covered in this publication, please feel free to contact the following people or your usual Links contact.

Shanghai	Beijing
Charles Qin Tel: (86 21) 3135 8668 (86 10) 6655 5020 Charles.Qin@llinkslaw.com	Wen Li Tel: (86 10) 6655 5050 - 1027 Wen.Li@llinkslaw.com
Michael Mei Tel: (86 21) 3135 8669 (86 10) 6655 5020 Michael Mei@llinkslaw.com	

© Links Law Offices 2013