



NOTICE OF THE STATE ADMINISTRATION OF FOREIGN EXCHANGE ON THE RELEVANT ISSUES CONCERNING THE IMPROVEMENT OF FOREIGN EXCHANGE ADMINISTRATION OF DIRECT INVESTMENTS BY FOREIGN INVESTORS

(Promulgated on March 3, 2003 by the State Administration of Foreign Exchange)

The branches of the SAFE and departments of foreign exchange administration of all provinces, autonomous regions and municipalities directly under the Central Government, the branches of Shenzhen, Dalian, Qingdao, Xiamen and Ningbo; and the head offices of the designated Chinese-funded foreign exchange banks:

In order to adapt to the new trends of international investments, absorb foreign investments through various channels, continuously improve the foreign exchange administration of direct investments by foreign investors, and further improve the environment for foreign investments, we hereby give our notice as follows regarding the relevant issues on the foreign exchange administration of direct investments by foreign investors:

I. Foreign Investor Accounts and Administration of Investments

1. Where a foreign investor does not establish a foreign-funded enterprise but engages in direct investments or activities related to direct investments inside the territory of China, it may

apply to the foreign exchange bureau at the locality of the investment project for opening a special foreign exchange account of foreign investor in its own name.

A foreign investor is permitted to open a multi-currency special foreign exchange account in only one bank, unless otherwise approved by the foreign exchange bureau. Such an account may be either of the following four kinds according to its uses:

(a) Investment Account. Where a foreign investor undertakes contracted projects, carries out cooperative exploitation, development and exploration of resources and engages in venture capital inside the territory of China, it may apply to open such an account after obtaining the non-legal-person business license for depositing and paying the foreign exchange funds involved.

(b) Purchase Account. Where a foreign investor plans to establish a foreign-funded enterprise inside the territory of China, but needs to purchase the land use right and immovable properties attached thereto, mechanical equipment or other assets, etc. inside the territory of China at the initial stage, it may, after effectiveness of the contract on asset purchase, apply to open such an account for depositing and paying foreign exchange purchases.

(c) Expense Account. Where a foreign investor plans to establish a foreign-funded enterprise inside the territory of China, but needs to carry out such work as market survey and planning, preparation of institutional establishment, etc. at the initial stage, it may, after obtaining the notice on advance approval of the name of the company issued by the administrative department for industry and commerce, apply to open such an

account for depositing and paying the foreign exchange funds involved.

(d) Guaranty Account. Where a foreign investor needs to provide guaranty of funds to a domestic institution in accordance with the relevant provisions and the stipulations in the contract before investing inside the territory of China, it may, within the time limit stipulated in the contract, apply to open such an account for depositing and paying foreign exchange guaranty funds. A foreign investor must, when applying to open a special foreign exchange account, submit to the foreign exchange bureau documents which could prove the authenticity and legitimacy of its investment activities, and the foreign exchange bureau shall verify such particulars as the maximum amount, duration, and scope of income and expenditure of the relevant account, and carry out daily supervision (see Annex 1). The funds in a foreign investor's special foreign exchange account shall be remitted by spot exchange, instead of being deposited by cash. The settlement and transfer of the exchange funds in the account must be approved by foreign exchange bureau sum by sum (see Annexes 2 and 3).

For a special foreign exchange purchase, expense or guaranty account of foreign investor, if the foreign investor establishes a foreign-funded enterprise inside the territory of China, the balance of funds in the above said account may be transferred into the enterprise's capital account; while the funds settled and transferred through the above said account may be considered as investments contributed by the foreign party, and formalities of capital verification of the said funds may be gone through with the corresponding approval documents issued by the foreign exchange bureau; if the foreign investor does not

establish a foreign-funded enterprise inside the territory of China, it may, with the corresponding approval documents issued by the foreign exchange bureau, go through the formalities of purchase and payment of exchanges for the unused funds, and the formalities of remitting this sum of funds to the outside of the territory, as well.

2. Where a foreign investor invests the funds in an offshore account, which it has opened in a designated foreign exchange bank approved by the People's Bank of China to operate offshore business, into a foreign-funded enterprise inside the territory, the transfer of the foreign exchange funds from the offshore account to the enterprise's capital account inside the territory does not have to be approved by the foreign exchange bureau. However, the bank of inward remittance shall, when the foreign-funded enterprise is going through the formalities of confirmation of capital verification, indicate on the receipt of the bank confirmation letter the words of "offshore funds" regarding this sum of funds.

Where a foreign investor invests the foreign exchange funds in a domestic non-resident individual's spot exchange account into a foreign-funded enterprise, the foreign exchange bureau shall, after making sure that no error exists in the relevant submitted documents, issue corresponding approval documents on the foreign exchange business under capital item (see Annex 4), and upon the strength of such documents, the bank shall handle the business of domestic transfer of the sum of funds from a non-resident individual's spot exchange account to a foreign-funded enterprise's capital account, while the enterprise shall, with such documents, go through the formalities of confirmation of capital verification and registration of foreign investments and foreign exchanges. A foreign exchange

branch bureau with large amount of business may, upon approval of the SAFE, grant the power to verify the transfer of the above said funds to a designated foreign exchange bank, which shall implement the corresponding duties of verification, statistics, monitoring, report for record, etc.. The authorized designated foreign exchange bank shall have a strict internal control system, and have no records on major violation of foreign exchange rules in the recent three years. The bank of inward remittance shall, when the foreign-funded enterprise is going through the formalities of confirmation of capital verification, indicate on the receipt of the bank confirmation letter the words of "domestic transfer for non-resident individual" regarding this sum of funds.

3. A foreign investor may, in addition to contributing convertible currency, imported equipment and other materials, intangible assets, Renminbi profits, etc. as investments, invest in a foreign-funded enterprise in the following ways upon approval of the foreign exchange bureau:

(a) the foreign-funded enterprise uses the development fund, reserve fund (or capital reserve, surplus reserve), etc. to increase its capital;

(b) the foreign-funded enterprise uses its undistributed profits, dividends payable and the interest payable thereunder, etc. to increase its capital;

(c) the foreign-funded enterprise uses the principal of the foreign party's registered foreign debts and the current interest thereof to increase its capital;

(d) the foreign investor uses the properties obtained from a foreign-funded enterprise it invests due to recovery of investments ahead of time, liquidation, stock right transfer, capital reduction, etc. to reinvest inside the territory of China.

Where a foreign investor invests in the above ways, the foreign exchange bureau shall, after making sure that no error exists in the relevant submitted documents, issue corresponding approval documents on the foreign exchange business under capital item (see Annexes 5 and 6), and with the approval documents, the bank shall handle the relevant domestic transfer business, while the enterprise shall go through the formalities of confirmation of capital verification and registration of foreign investments and foreign exchanges .

4. Where a foreign investor or a foreign-funded investment enterprise purchases the stock rights of a domestic enterprise, it shall, in accordance with the laws, regulations and the stipulations between both parties to the contract on stock right transfer, pay the consideration for purchase of stock rights (that is, the cost paid by the foreign party to the Chinese party for purchasing the latter's stock rights, and the form of which might be the foreign investor's or the foreign-funded investment enterprise's own foreign exchange funds, Renminbi profits or other lawful assets obtained from other foreign-funded enterprise it invests inside the territory of China), and shall, either automatically or by entrusting the stock right transferor, make registration of foreign investments and foreign exchanges for transfer of stock rights and receipt of exchanges in the foreign exchange bureau at the stock right transferor's locality. If the consideration for purchase of stock rights is paid in a lump sum, the

registration of foreign investments and foreign exchanges for transfer of stock rights and receipt of exchanges shall be made within 5 days after the consideration has been fully paid; while if the consideration for purchase of stock rights is paid by installments, the foreign investor or foreign-funded investment enterprise shall, within 5 days after each installment of consideration is paid, make registration of foreign investments and foreign exchanges for transfer of stock rights and receipt of exchanges with regard to the current installment of consideration.

Before the foreign investor pays all the consideration for purchase of stock rights, its equities in the purchased enterprise shall be determined in light of the proportion it has actually paid, and on this basis, it shall handle the relevant foreign exchange business such as stock right transfer, capital reduction, liquidation, and remittance of profits abroad, etc..

The foreign exchange bureau shall, after making sure that no error exists in the relevant documents submitted by the foreign investor, handle the registration of foreign investments and foreign exchanges for the transfer of stock rights and receipt of exchanges and issue the relevant attestation (see Annex 7). The attestation on the registration of foreign investments and foreign exchanges for the transfer of stock rights and receipt of exchanges is the effective document to prove that the consideration for the foreign party to purchase the stock rights has been fully paid, and is also the important basis for the purchased enterprise to make registration of foreign investments and foreign exchanges. All branches and departments of foreign exchange administration of the SAFE shall, according to the format of the new "Report on Registration of Foreign Investments and Foreign Exchanges"

(see Annex 8), gather the data for registration of foreign investments and foreign exchanges for the transfer of stock rights and receipt of exchanges (including the copies of registration and the amount) and other types of data for registration of inflow of foreign investments, and report them to the SAFE month by month. The format of the original "Report on Registration of Foreign Investments and Foreign Exchanges" shall be stopped from use as of the day when the present notice comes into force.

5. Where a foreign-funded non-investment enterprise invests to establish or purchases an enterprise inside the territory of China in accordance with the "Interim Provisions on Investments of Foreign-Funded Enterprises inside the Territory of China" jointly promulgated by the Ministry of Foreign Trade and Economic Cooperation and the State Administration for Industry and Commerce, the invested enterprise need not, if containing no foreign capital, make foreign exchange registration of foreign-funded enterprise, or go through the formalities of confirmation of capital verification and registration of foreign investments and foreign exchanges. The foreign exchange bureau shall, with the "Business License of Enterprise Legal Person" indicated with the words of "investments of foreign-funded enterprise" and issued by the administrative department for industry and commerce to the invested enterprise, administer the invested enterprise by considering it as a foreign-funded enterprise in respect of raising foreign loans.

The foreign exchange bureau shall not approve the domestic transfer of foreign exchange funds between a foreign-funded non-investment enterprise and an enterprise it invests, or between the different enterprises invested by a

foreign-funded non-investment enterprise. If, in any particular event, such kind of domestic transfer is indeed to be carried out, the branch or department of foreign exchange administration of the SAFE shall report the transfer to the SAFE.

6. A domestic enterprise with the proportion of investments contributed by the foreign investor less than 25% of the registered capital shall, with the approval certificate of foreign-funded enterprise that is issued by the department of foreign trade and economic cooperation and is indicated with the words of "investments contributed by the foreign party are less than 25%", and the business license of foreign-funded enterprise that is issued by the administrative department for industry and commerce and is indicated with the words of "investments contributed by the foreign party are less than 25%", make foreign exchange registration of foreign-funded enterprise, and shall, in accordance with the relevant provisions, go through the formalities of confirmation of capital verification and registration of foreign investments and foreign exchanges.

II. Confirmation of Capital Verification and Registration of Foreign Investments and Foreign Exchanges for Foreign-Funded Enterprises

The relevant issues in the confirmation of capital verification and registration of foreign investments and foreign exchanges for foreign-funded enterprises shall be dealt with pursuant to the following principles:

1. If, when the foreign exchange capital paid by a foreign-funded enterprise established by a foreign investor exceeds the verified maximum amount for the enterprise's capital account, with the

excessive part of funds not more than 1% of the maximum amount for the enterprise's foreign exchange capital account, and with the absolute amount not more than 10000 USD or the equal value, the foreign exchange bureau may, in light of the actual amount entering into account, handle the confirmation of capital verification and the registration of foreign investments and foreign exchanges for the foreign investor.

The foreign exchange premium amount which is paid by a foreign investor to an enterprise at the time of investment by participating in holding shares due to increase of the enterprise's capital, and which is in excess of the product of the proportion of shares held by participation and the enterprise's registered capital, shall be calculated into the maximum amount for the enterprise's capital account, while the excessive foreign exchange funds shall enter into the account pursuant to the principles in the preceding paragraph.

2. If, when a foreign-funded enterprise with the investments contributed by the foreign investor in kind entrusts an accounting firm to make confirmation to the foreign exchange bureau, the amount of value of the investments in kind appraised by the value appraisal institution of the commodity inspection department is inconsistent with the amount on the customs declaration form on imported goods, the foreign exchange bureau shall take the amount from the value appraisal institution of the commodity inspection department as the standard, and handle the confirmation of capital verification and the registration of foreign investments and foreign exchanges for the foreign investor.

3. If, when a foreign-funded enterprise with the investments contributed by the foreign investor

only in intangible assets entrusts an accounting firm to make confirmation to the foreign exchange bureau, the investments of such intangible assets shall be listed in the investment schedule attached to the confirmation letter on the foreign party's investments, with which the foreign exchange bureau shall handle the registration of foreign investments and foreign exchanges regarding the investments of intangible assets. In addition, the receipt of the confirmation letter on the foreign party's investments shall be indicated: "The investments of intangible assets by the foreign party have been registered, and the registration No. isxxxxxx. The present receipt shall only have the validity of proving its registration."

4. Where, due to the reason that the amount of the appraised value of the foreign party's premium investments, participation in holding shares, or investments in kind is more than the amount in the customs declaration, or due to the fluctuation of exchange rate or other similar reasons, the investments actually contributed by the foreign-funded enterprise are more than the registered capital, the enterprise's registered capital and its actual investments after the premium input of its capital shall be truthfully registered.

5. Where an enterprise that processes raw materials on clients' demands, assembles parts for the clients or processes according to the clients' samples, or engages in compensation trade entrusts an accounting firm to inquire the foreign exchange bureau about transitional investment, and needs to submit the relevant documents to the foreign exchange bureau, the foreign exchange bureau may, after verifying and confirming that the equipment for such transitional investment is imported goods and the exchanges

have been paid abroad, issue the receipt of the confirmation letter on the foreign party's investments in light of the amount indicated on the commodity value appraisal, and shall handle the registration formalities of foreign investments and foreign exchanges (see Annex 9).

6. Where the name of the foreign party to a foreign-funded enterprise is inconsistent with that of the payer of the investment amount from abroad, the foreign exchange bureau may handle the confirmation of capital verification and the registration of foreign investments and foreign exchanges, and shall, in the meanwhile, indicate in the receipt of the confirmation letter on the foreign party's investments such words: "The payer of the investment amount is inconsistent with the investor".

7. For the convenience of inquiries on the approval documents of foreign exchange business under capital item between different places, the foreign exchange bureau shall, when issuing the approval documents of foreign exchange business under capital item to any foreign-funded enterprise, indicate the relevant contact person and his telephone number.

8. Where the foreign exchange bureau finds that any designated foreign exchange bank violates the provisions on administration of accounts by privately opening an account for an enterprise, by allowing the capital to enter the account in excess of the limit, or by other means, it shall impose punishments in accordance with the "Provisions on the Administration of Domestic Foreign Exchange Accounts".

Where the foreign exchange bureau finds any enterprise forges or alters the approval documents on the foreign exchange business

under capital item, the receipts of the foreign exchange bureau or designated foreign exchange bank, the customs declaration form on import of goods or other documents, it shall transfer the relevant documents to the judicial organ for punishment.

If, after the accounting firm has issued the capital verification report to an enterprise, the foreign exchange bureau finds that the accounting firm has not made or failed to follow the stipulated procedures to make confirmation of capital verification, it shall order the accounting firm to re-make the confirmation of capital verification, and notify the institute of certified public accountants at the firm's locality on such violation of rules. The foreign exchange bureau shall not, before the institute of certified public accountants at the firm's locality makes a formal decision on punishment, accept the firm's new confirmation of capital verification; for an accounting firm that violates the rules again after being punished, the branch or department of foreign exchange administration of the SAFE shall report the name of the firm to the SAFE, and the SAFE shall disclose the name publicly on its website or through other media, and, in the meanwhile, suggest the enterprises choose accounting firms cautiously. If, when an accounting firm which has not made or failed to follow the stipulated procedures to make confirmation of capital verification goes through the relevant formalities for a second time, the foreign exchange bureau finds that the capital verification report issued by the firm is a false one, it shall transfer the relevant documents to the judicial organ for punishment, and, in the meanwhile, notify the administrative department for industry and commerce at the firm's locality.

III. Adjustments on Administration of Capital Reduction and Some Administration Business on Foreign-Funded Enterprises

1. Where a foreign-funded enterprise's reduction of capital input by the foreign investor involves purchase or payment of exchanges, the foreign exchange bureau shall, after making sure that no error exists in the relevant documents submitted by the foreign investor, issue the corresponding approval documents on the foreign exchange business under capital item (see Annex 10), with which the foreign investor shall go through the formalities of purchase and payment of exchanges for the funds in capital reduction and of remitting the exchanges abroad.

In the event that a foreign-funded enterprise reduces its capital for reducing its book loss, or that the adjusted capital after reduction is that which has not been input by the foreign party, the foreign exchange bureau shall not approve the foreign investor to use the accordingly reduced part of capital as re-investments inside the territory or the foreign-funded enterprise to use that capital to pay exchanges abroad.

2. The contribution of investments by the foreign party to a foreign-funded joint stock company limited or a fund management company with the foreign investor participating in holding shares shall be subject to the system of actual contribution of capital as provided for in the "Company Law of the People's Republic of China". When either of the two kinds of companies is applying to the foreign exchange bureau for opening a capital account of foreign-funded enterprise, it does not need to submit the business license of foreign-funded legal-person enterprise issued by the administrative department for industry and commerce, instead,

the foreign-funded joint stock company limited may, with the approval certificate of foreign-funded joint stock company limited, which is issued by the department of foreign trade and economic cooperation, while the fund management company with the foreign investor participating in holding shares may, with the approval certificate of foreign-funded enterprise, which is issued by the department of foreign trade and economic cooperation, and the official reply on the opening of business, which is issued by the CSRC, go through the relevant formalities.

Other documents for verification required by the foreign exchange bureau from the said two kinds of companies for the opening of capital account and foreign exchange registration of foreign-funded enterprise shall still be in compliance with the relevant provisions.

3. Where the foreign exchange bureau needs to verify the capital verification report of a foreign-funded enterprise in the process of handling the foreign exchange business, and the capital verification report was issued after May 1, 2002, it shall, in the meanwhile, verify the receipt of the confirmation letter on the investments contributed by the foreign party involved; if it needs to verify the auditing report of the foreign-funded enterprise in the process of handling the foreign exchange business, and the auditing report is about the year after 2002, it shall, in the meanwhile, verify the foreign-funded enterprise's "Statement on Foreign Exchange Income and Expenses".

4. In order to further improve the efficiency of supervision on settlement of capital exchange, and facilitate the operation of investment funds of enterprises, we hereby simplify the documents for verification needed by the authorized bank in the

operational rules for settlement of capital exchanges, which are provided for in the "Notice of the State Administration of Foreign Exchange on Reforming the Management Methods of Settlement of Capital Exchanges under Foreign Investments" (No. 59 [2002] issued by the SAFE), into three types as follows:

(a) the enterprise's written application (on which the enterprise's capital account No., information on contribution of investments, the currency, amount and uses for settlement of exchange, etc. shall be indicated);

(b) the enterprise's foreign exchange registration certificate;

(c) other documents need to be supplemented in light of the actual situation.

For other requirements on verification, the relevant provisions and operational rules in the "Notice of the State Administration of Foreign Exchange on Reforming the Management Methods of Settlement of Capital Exchanges under Foreign Investments" (No. 59 [2002] issued by the SAFE) shall still be complied with.

5. Where a Chinese-foreign cooperative enterprise pays money for the foreign party to recover investments ahead of time (including fixed returns) with the depreciated amount of the fixed assets or the amortized amount of the intangible assets, the relevant "guaranty letter" in the "Operational Rules for the Management of Foreign Exchanges under Capital Items" (No. 38 [2001] issued by the SAFE) shall be verified in accordance with the following provisions:

(a) If the cooperative enterprise is in debt (banking loans or loans of the foreign shareholder), the

foreign investor shall provide a guaranty letter on the corresponding amount, which is issued by a foreign-funded financial institution established inside the territory of China;

(b) If the cooperative enterprise's debt is limited to the loans of the foreign shareholder, the guaranty letter issued by the foreign shareholder on bearing joint liabilities for the cooperative enterprise's debts unconditionally may take the place of the guaranty letter by the above said financial institution;

(c) If the cooperative enterprise is in no debt, the foreign investor does not need to provide a guaranty letter.

For other requirements on verification, the relevant provisions in the "Operational Rules for the Management of Foreign Exchanges under Capital Items" shall still be complied with.

IV. Other Matters

1. "Foreign exchange bureau" as mentioned in the present notice shall refer to the State Administration of Foreign Exchange, or any of the branches of, departments of foreign exchange administration of, and sub-branches of the SAFE.

2. All the branches of the SAFE and departments of foreign exchange administration are requested to transmit the following parts in the present notice involving banking operations to the designated foreign exchange banks under the SAFE:

(a) Part 1: Clauses 1, 2 and 3 in "Foreign Investor Accounts and Administration of Investments", and Annexes 1 through 6 of the present notice;

(b) Part 2: Clause 1 and Paragraph 1 of Clause 8 in "Confirmation of Capital Verification and Registration of Foreign Investments and Foreign Exchanges for Foreign-Funded Enterprises";

(c) Part 3: Clause 4 of "Adjustments on Administration of Capital Reduction and Some Administration Business of Foreign-Funded Enterprises".

3. The present notice shall come into force on April 1, 2003. In case any question arises during the implementation, please contact the Department of Foreign Investment and External Debt under the State Administration of Foreign Exchange through: 010- 68402254.

Annexes:

1. Examination and approval of the opening, modification and cancellation of special foreign exchange account of foreign investor (omitted)

2. Examination and approval of the settlement by a foreign investor of the exchange funds in the special foreign exchange account (altogether 4 types) (omitted)

3. Examination and approval of domestic transfer of the funds in a special foreign exchange account (altogether 4 types) by a foreign investor to a foreign-funded enterprise's capital account (omitted)

4. Examination and approval of transfer of the foreign exchange funds in a foreign investor's domestic non-resident individual spot exchange account to a foreign-funded enterprise's capital account (omitted)

5. Examination and approval of increase of capital by a foreign-funded enterprise with the development funds, reserve funds (or capital reserve, surplus reserve), undistributed profits, dividends payable and the interest payable thereunder, the principal of the foreign party's registered foreign debts and the current interest thereof, etc. (omitted)

6. Examination and approval of a foreign investor's reinvestment inside the territory of China with the properties obtained from a foreign-funded enterprise it invests due to recovery of investments ahead of time, liquidation, stock right transfer, capital reduction, etc. (omitted)

7. Registration of foreign investments and foreign exchanges for transfer of stock rights and receipt of exchanges concerning the consideration paid by a foreign investor for purchasing the Chinese party's stock rights (omitted)

8. Yearly and monthly statements on registration of foreign investments and foreign exchanges in different regions (format) (omitted)

9. Check of the confirmation of capital verification of transitional investments of an enterprise that processes raw materials on clients' demands, assembles parts for the clients and processes according to the clients' samples; or engages in compensation trade, and registration of foreign investments and foreign exchanges for such transitional investments (omitted)

10. Examination and approval of reduction of the foreign party's registered capital in a foreign-funded enterprise (omitted)