July 4, 2016

Recent China Development – Outbound Investment in Renminbi

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BACKGROUND

Due to the recent strong desire to convert Renminbi ("**RMB**") funds into foreign currency and remit foreign currency amounts outside of China ("**China**" or the "**PRC**", which excludes Hong Kong, Macau and Taiwan for purposes of this discussion), the State Administration of Foreign Exchange of China ("**SAFE**") and the Chinese banks have slowed down the process for foreign currency conversions. In practice, after PRC investors obtain required regulatory approvals from, or complete filings with, the National Development and Reform Commission and the Ministry of Commerce or their respective provincial counterparts ("**Regulatory Approvals**"), their conversion and remittance of outbound investment capital may be subject to a further scrutiny of the competent branch of SAFE and Chinese banks which handle such conversions and remittances. As a result, remittances of foreign currency amounts overseas for purposes of outbound investments have taken longer than before. Given the foregoing issue, some PRC investors have begun to directly remit funds in RMB to an account opened with an offshore bank and held by an entity that they incorporated outside of China or the target company of a Chinese outbound investment. Consequently, the foreign bank will convert RMB amounts into foreign currency in order for Chinese investors to close their outbound transactions.

KEY OBSERVATIONS

While the applicable PRC rules have been in place since 2011, Chinese investors began to utilize this approach only recently, as it has been more difficult to convert RMB into foreign currency, and an increasing number of foreign banks have become willing to convert RMB into foreign currency. Pursuant to the *Measures for the Administration of a Pilot Program on Settlement of Outbound Investment in Renminbi* ("**Measures**") issued by the People's Bank of China and effective on January 6, 2011, a non-financial enterprise registered in a pilot program region may choose to remit RMB funds overseas for purposes of completing their outbound investments after they obtain all required Regulatory Approvals. In practice, it normally takes approximately five working days for a

Chinese Bank to review the application documentation upon its acceptance and complete the fund conversion and remittance process.

Key points to note are as follows:

- In order to use RMB amounts for outbound investments, a Chinese investor is required to be a non-financial enterprise.
- If a Chinese investor determines to utilize RMB funds to invest outside China, it is required to expressly include this approach into the application documents when applying for the Regulatory Approvals.
- When a PRC investor applies with a China-based bank to remit an RMB amount out of China for its outbound investment, it must have obtained the Regulatory Approvals.
- The offshore bank to which the RMB amount will be remitted must be actually engaged in the RMB clearing/settlement business.
- Outbound investment in RMB may increase Chinese investors’ costs due to a higher offshore RMB exchange rate compared with the onshore RMB exchange rate.

With more Chinese companies pursuing outbound investment activities, while there appears to be the continuing pressure of depreciation of the RMB, it is worth monitoring how this approach will be implemented and whether it will in fact make a Chinese investor’s outbound investment process easier and faster.

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