

When the capital account foreign exchange money is converted into RMB under the voluntary conversion rule, the RMB fund shall sit in a connected new account “capital account – To-Pay RMB account” (资本项目-托收付人民币) through which various payments will be effected.

As a foreign exchange administration technique, China manages its foreign exchange affairs mainly through its complex foreign exchange bank accounts system.

According to Decree No. 16, the inflow into this To-Pay RMB account is the converted RMB from other capital accounts (as opposite to current accounts) such as the registered capital account, foreign exchange account for selling domestic assets, foreign exchange account for re-investment in China, foreign debt account, foreign exchange account for offshore listing, or RMB fund from other To-Pay RMB account.

The payments out of this To-Pay RMB account can be expenditures in the normal course of business operation, equity investment fund in China, RMB deposits, purchase of foreign exchange for repaying foreign debts (direct repayment of foreign debt denominated in RMB), payment of foreign exchange to foreign investors who withdraw or reduce their investment in China.

Foreign exchange purchased with the money from the To-Pay account shall not be wired into the original registered capital bank account.

III Use of Capital Account Foreign Exchange and Converted RMB

The use of capital account foreign exchange money and its converted RMB is always subject to certain limitations. For example, such foreign exchange and RMB money:

- (1) shall not be directly or indirectly used for expenses outside of the company’s business scope or for expenses prohibited by state laws and regulations;
- (2) unless expressly otherwise prescribed, shall not be directly or indirectly used for securities investment or other investment and wealth management products except bank-managed principal-protected products;
- (3) shall not be used for giving loans to its non-affiliated enterprises, except as explicitly permitted in its business scope;

This implies that such FX and RMB money can be loaned to affiliated enterprises, a change from the Decree No. 19 issued by China SAFE in 2013 (the “[2013] Decree No. 19”, a notice regarding registration of foreign debts) whereby it is provided that except for foreign-invested leasing companies and foreign-invested small loan companies, foreign exchange money arising from foreign debts cannot be used for loaning activities.

- (4) shall not be used for building, purchasing real properties that are not for self use (real estate development companies excluded).

It is worth a note that in this Decree No. 16, it indicates that RMB money in the To-Pay accounts can be used for guarantee purposes including deposit (存款). However according to the [2013] Decree No. 19, no borrowers except security/guarantee companies shall mortgage or pledge the foreign exchange

money arising from foreign debts. On the other hand, pursuant to another China SAFE rule issued in 2011 regarding RMB loans with foreign exchange as pledge, foreign exchange that can be used as pledge for RMB loans shall be limited to the foreign exchange fund under current accounts.

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