

# China Finance Bulletin

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- “Journey Home” Programs: Investment with Offshore RMB in Mainland China and Domestic Borrowing of Offshore RMB



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**Welcome to this month’s issue of White & Case’s China Finance Bulletin. This bulletin offers you regular updates on the PRC finance sector ensuring you stay up to date with the latest legal, regulatory and practice developments.**

## “Journey Home” Programs: Investment with Offshore RMB in Mainland China and Domestic Borrowing of Offshore RMB

Following the development of offshore RMB trade settlement and dynamic growth of RMB bond issuance and lending in Hong Kong, China has recently taken an important further step to internationalize the RMB by launching pilot programs to allow offshore RMB to be invested back in Mainland China.

In late 2010 and early 2011, Ministry of Commerce of the People’s Republic of China (“MOFCOM”) and certain local branches of State Administration of Foreign Exchange (“SAFE”) issued a series of circulars, allowing offshore RMB funds to flow back to China by way of either inbound investment or foreign debts.

### Inbound Foreign Investment of RMB

Under the original foreign investment rules, foreign investors’ investment in Mainland China shall be made in foreign currency, with the exception that a foreign investor can use RMB profits derived from its onshore subsidiaries. On February 25, 2011, MOFCOM issued the *Circular of the Ministry of Commerce on Issues Concerning Administration of Foreign Investment* (商务部关于外商投资管理有关问题的通知(商资函[2011]72号)) under which a foreign investor is permitted to invest in Mainland China with offshore RMB funds in the form of capital contribution to its newly-established onshore subsidiaries, capital increase in its existing onshore subsidiaries, acquisition of onshore enterprises and/or provision of loans to such entities. According to the circular, a case-by-case approval from central MOFCOM is required for the RMB investment. However, the pre-conditions and time frame for such approval still remain unclear on paper and untested in practice.

## RMB Foreign Debts

Pilot programs for onshore enterprises to borrow foreign debts denominated or made in RMB<sup>1</sup> have been launched in Shanghai<sup>2</sup> and Fujian Province<sup>3</sup> in the past few months. The pilot schemes allow local enterprises (including foreign-invested enterprises (“FIEs”) as well as domestic companies) to borrow RMB directly from offshore entities. For such cross-border RMB borrowing, the onshore enterprises shall follow the registration/approval procedures set up by SAFE for foreign debts in foreign currency. For instance, an FIE’s borrowing of RMB foreign debts is subject to the same foreign debt “headroom” limitation as the borrowing of foreign debts in foreign currency. Therefore, the aggregate amount of both RMB and foreign currency foreign debt of an FIE shall not exceed the difference between its total investment amount and registered capital. Also, as with foreign debt in foreign currency, an FIE borrowing RMB foreign debt only requires SAFE registration (but not approval). Moreover, the Fujian circular provides that the use of the RMB foreign debts is subject to the Provisional Rules of Foreign Debts (2003), which could potentially forbid on-lending of offshore RMB funds in China.

For more information of the MOFCOM circular, please visit the following Chinese language link:

<http://www.mofcom.gov.cn/aarticle/b/f/201103/20110307428320.html?2129913941=272279557>

For the full text of the Shanghai and Fujian SAFE circulars, please refer to the following Chinese language links:

[http://events.whitecase.com/china\\_newsletter/Shanghai\\_SAFE\\_Circular\\_042011.pdf](http://events.whitecase.com/china_newsletter/Shanghai_SAFE_Circular_042011.pdf)

[http://events.whitecase.com/china\\_newsletter/Fujian\\_SAFE\\_Circular\\_042011.pdf](http://events.whitecase.com/china_newsletter/Fujian_SAFE_Circular_042011.pdf)

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<sup>1</sup> If a foreign debt has any one of the following factors, it is subject to restrictions on RMB foreign debts: (i) it is denominated in RMB, (ii) utilisation is made in RMB, or (iii) repayment of principals and/or interest is made in RMB.

<sup>2</sup> The Circular regarding Foreign Exchange Issues in relation to Shanghai Local Institutions borrowing RMB Foreign Debt dated January 14, 2011 (关于上海辖内机构借用人民币外债所涉外汇管理有关问题的通知(上海汇发[2011]4号)).

<sup>3</sup> The Circular regarding Foreign Exchange Issues in relation to Local Institutions borrowing RMB Foreign Debt dated November 30, 2011 (闽汇[2010]228号关于境内机构借用人民币外债有关问题的通知).

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- Tier One in China Banking & Finance (Foreign Firms)—*Chambers Asia, 2009*

Our noted areas of expertise include acquisition finance, bank advisory, credit transactions, derivatives, leasing and other asset-backed activity, and structured finance. In China and globally, our experienced team is intimately familiar with every aspect of deal structure, negotiation and documentation, and we aim to give precisely the right level and type of support at each stage of the deal—starting with strategic advice on alternative structures through negotiation and documentation, keeping your deal on track.

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