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Foreign Direct Investment Using Offshore Renminbi Enabled

The Ministry of Commerce (“MOFCOM”) issued the Circular on Issues Concerning Cross-border RMB Direct Investment (the “Circular”) on October 12, 2011. The Circular sets out the regulatory framework for foreign direct investment in China using offshore RMB funds legally obtained. Key features of the Circular are set out below.

Offshore RMB

“Offshore RMB” that may be used for direct investment includes (i) RMB acquired by foreign investors through cross-border RMB trade settlements, (ii) RMB received by foreign investors as proceeds from profit distribution, sale of equity, capital reduction, liquidation or early return of investment from a foreign-invested enterprise, and (iii) RMB acquired by foreign investors through issuing RMB bonds or shares overseas.

Investment restrictions

Cross-border direct investment in RMB cannot be indirectly or directly used in China to invest in negotiable securities or financial derivatives or to make entrusted loans. The exceptions to this are private placement of shares or transfer by agreement of shares of a listed company in China that have been approved by MOFCOM in accordance with the rules on strategic investments in listed companies by foreign investors.

Approval procedures

Approval procedures and limits for local MOFCOM authorities to approve foreign direct investments generally also apply for investment with offshore RMB. However, for investments that satisfy one of the following tests, approval to use offshore RMB must be obtained from MOFCOM at central

government level: (i) the amount of the capital contribution to be made in RMB is RMB300 million or more, (ii) the investment is in the financing guarantee, finance leasing, micro-financing or auction industry, (iii) the investment is in an investment holding companies, foreign invested venture capital or equity investment enterprises, or (iv) the investment is in an industry subject to the macroeconomic control by the state such as the cement, iron, steel, electrolytic aluminum and ship building industries.

In addition to the documents required under existing regulations, investors or foreign-invested enterprises must also submit (i) proof or a description of the source of RMB funds, (ii) an explanation of the intended use of such funds, and (iii) a completed prescribed information form. The relevant MOFCOM authority is required to review the form within five working days. Foreign-invested enterprises applying to change their approved currency of capital contribution from a foreign currency to RMB must submit to MOFCOM the amended constitution documents and relevant board or shareholders resolutions.

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