Investing in Asia Pacific

A guide on foreign direct investments

May 2022

HSBC | Opening up a world of opportunity

Navigating the landscapes of Asia with you

We understand that venturing into new markets can be daunting, therefore, having local knowledge and expertise can help ease the process.

With more than 60,000 employees in Asia Pacific and one of the largest network in 19 markets – our pool of specialists will provide you with trusted information, making your journey in investing into any of these diverse markets a greater experience.

Whether you are new to Asia, or expanding your existing presence, this document will help you navigate through the incorporation options, account types, funding, and repatriation options.

Let us help connect you to opportunities.

Mainland China | Overview

Moderately Restricted

Incorporation Options

1. Wholly Foreign Owned Enterprises (WFOE)
2. Sino-Foreign Equity Joint Ventures (EJV)
3. Cooperative Joint Venture (CJV)
4. Partnerships
5. Joint Stock Companies
6. Representative Office (RO)

Types of Accounts

1. Local Currency Account (RMB)
2. Foreign Currency Account (FCY)

Funding Options

Intercompany loans
Allowed via Entrusted Loans

Foreign direct investment
Allowed

Debt capital markets
Allowed

FX controls
Yes

Mainland China | Incorporation options in detail

1. Wholly Foreign Owned Enterprises (WFOE)	2. Sino-Foreign Equity Joint Ventures (EJV)	3. Cooperative Joint Ventures (CJV)
◆ 100% owned by foreign investors ◆ Approval must be obtained from Chinese government ◆ The registered capital of a WOFE must be consistent with the scale of the intended operations (total investment amount) ◆ Foreign investors can make capital contributions in the form of freely convertible foreign currencies or certified RMB profits from other foreign invested enterprises	◆ Public EJV is a limited liability Chinese legal entity, formed by one or more Chinese parties and one or more foreign parties, where at least 25% of the joint venture's shareholding has to be held by foreign investor(s) ◆ Investors in an EJV share profits and losses strictly in accordance with their respective contributions to the registered capital of the venture ◆ Approval must be obtained from the local Ministry of Commerce agency ◆ Capital contributions to an EJV can take the form of cash, capital goods, industrial property rights and other assets	◆ CJV is sometimes referred to as a contractual joint venture between foreign entities and Chinese entities ◆ Investors in a CJV share profits and losses in accordance with the provisions set out in the cooperative contract ◆ There is no minimum foreign contribution required to initiate a CJV ◆ The contributions made by investors are not required to be in a monetary value and can include capital goods, industrial property rights and other assets ◆ The parties can agree on the distribution of profits at a ratio that is different from that of the parties' capital contribution

Note: The most common entities used by foreign investors are wholly foreign owned enterprises, representative offices and equity joint ventures.

Mainland China | Incorporation options in detail (cont')

4. Partnerships	5. Joint Stock Companies	6. Representative Office (RO)
◆ Both general partnerships and limited liability partnerships can be set up in Mainland China ◆ A General Partnership is composed of general partners who have unlimited joint and several liability for the debts of the partnership ◆ A Limited Liability Partnership will comprise general partners and limited partners with limited partners having their liability limited to the subscribed capital contributions	◆ Joint Stock Companies, also known as companies limited by shares, are primarily set up for investors who wish to list shares on the stock market ◆ Foreign investors are not permitted to set up Joint Stock Companies alone and must engage Chinese partners	◆ ROs are established for liaison purposes and are not permitted to generate any income. The activities they are permitted to undertake include: making contacts, research and marketing, technical exchange and extending volume growth of products ◆ ROs are not granted separate legal entity status and therefore all obligations and liabilities must be borne by the parent company

Note: The most common entities used by foreign investors are wholly foreign owned enterprises, representative offices and equity joint ventures.

Mainland China | Account types in detail

Account Type	Local Currency Account	Foreign Currency Account
Resident	Yes	Yes
Non-Resident	Yes	Yes

Mainland China | RMB resident account types and purposes

	Inflow	Outflow	Comments
Capital account	◆ To receive capital funds from oversea	◆ Payments for current items and approved capital-items	◆ Overseas corporate investors can open >1 accounts and no restriction on a/c opening location (i.e. entity registered in Shanghai can open accounts in Beijing and free transfers between same-named accounts) ◆ Registration and verification of RMB capital account can be done by bank via RCPMIS
Basic account	◆ Receive RMB collections	◆ All RMB payments including cash withdrawals and salary/bonus payments which can only be effected from this basic account	◆ Only one basic account can be opened (irrespective of the number of banks used)
General account	◆ Receive RMB collections	◆ All RMB payments except for cash drawing (Some cities do not allow salary payment from general accounts)	◆ Multiple accounts can be opened
Special account	◆ Specified collections by local regulators ◆ Overseas corporate investors buy state owned equity	◆ Specified payments by local regulators	◆ Local regulators approval required for account opening ◆ Overseas corporate investors can open one special account for special projects (i.e. trade in carbon emission)
Loan account	◆ Receive RMB bank loans	◆ All RMB payments except for cash drawing ◆ Supporting documents might be required	◆ Multiple accounts can be opened
Temporary account	◆ Fund collection due to temporary business operations	◆ Payments, transfers and settlements due to temporary business operations ◆ Cash withdrawals such as the agent capital injection and verification	◆ Used for temporary needs and used within a specified time period

More information can be found on https://www.hsbc.com.cn/1/2/commercial-banking/international-banking/account

Cross-border transactions and foreign exchange are heavily regulated in Mainland China. Almost all of these transactions require certain supporting documents. Please check with the Relationship Managers or Cash Management Managers directly if there are any specific queries related to this area.

Mainland China | FCY resident account types and purposes

	Inflow	Outflow	Comments
Capital account	◆ To receive capital funds from the parent company	◆ Payments for current items and approved capital-items	◆ Supporting documents are NOT required for each outflow transaction for qualified enterprises
Settlement account	◆ Collections for current items in foreign currency	◆ Payments for current items and approved capital items	◆ SAFE* approval not required
Foreign debt special accounts	◆ To receive loan proceeds from overseas	◆ As specified in the loan agreement ◆ SAFE approval required for conversion	◆ Foreign Debt registration and SAFE approval for account opening required
Foreign currency loan account	◆ To receive the loan proceeds from onshore foreign currency loans by banks or through Entrusted Loans	◆ Payments for current items and approved capital items	◆ Exchange to RMB not allowed ◆ SAFE approval not required ◆ Loan agreement required

* SAFE stands for State Administration of Foreign Exchange

Cross-border transactions and foreign exchange are heavily regulated in Mainland China. Almost all of these transactions require certain supporting documents. Please check with the Relationship Managers or Cash Management Managers directly if there are any specific queries related to this area.

Mainland China | Foreign direct investment options

Capital Injection (FCY)

- Multiple capital accounts for FCY can be with different banks
- FCY capital accounts can also be opened in a different location other than the entity's incorporation location

Restrictions:

- Foreign currency can be converted to RMB at will or at the point of disbursement
- FCY injected capital proceeds and the converted RMB funds can only be used within corporate's business scope. Such funding is forbidden to be used for:
  - Activities outside of corporate's business scope or forbidden by Chinese laws
  - Security investment or other investment products except for bank principal guaranteed products
  - Entrusted loans to unaffiliated entities, except for corporate's business scope are allowed
  - Construction or purchase not self-used properties, except for real estate companies

Capital Injection (RMB)

- Foreign Invested Enterprise (FIE) can open more than one RMB capital accounts and there is no longer restriction on the location of accounts
- The RMB capital funds can be freely transferred between RMB capital accounts under the same name

Restrictions:

- Such funding is forbidden to be used for:
  - Activities outside of corporate's business scope or forbidden by Chinese laws
  - Directly or indirectly invested in security and derivative market
  - Entrusted loans to unaffiliated entities
  - Construction or purchase not self-used properties, except for real estate companies

General work flow

Foreign Direct Investment Registration	Capital Account Opening and fund injection	Capital Confirmation	Fund Disbursement
1-3 working days*	**3 to 6 weeks***	**1-3 working days***	**1-3 working days***
FDI application form Business License MOFCOM approval Other documents if applicable	Account Opening Form KYC documents	Conducted by bank	

* The working around time mentioned as above is estimated based on the experience and is for reference only. Please check with bank on latest guidance before execution.

Mainland China | Optimisation of RMB Capital Injection: PBOC Notice 330 [2020] effective from 4 Feb 2021

Item	BEFORE PBOC Notice 330 [2020]	AFTER PBOC Notice 330 [2020]
Simplify and enlarge the scope of domestic usage of RMB proceeds under capital item (including RMB FDI capital injection, overseas financing, offshore listing)	◆ When domestic usage, except qualified enterprises in the Free Trade Zone, all enterprises should provide documents to bank for checking before the payment ◆ RMB proceeds under FDI and overseas financing are not allowed for entrusted loan	◆ Qualified enterprises can enjoy the simplified process of RMB capital funds disbursement in the local market ◆ RMB proceeds under FDI and overseas financing can be used in entrusted loan to the related companies.
Remove the requirements of opening RMB special accounts	◆ When foreign investor uses RMB dividend to reinvest domestic market, the investor is required to open RMB domestic re-investment account and investee is required to open RMB capital account ◆ RMB capital account is required in the domestic re-investment activity, and other RMB special accounts are required in domestic M&A or equity transfer	◆ RMB special accounts are no longer required in said activities

Mainland China | Foreign direct investment options

Offshore Borrowing (Foreign Debt)

Target customer:

- FIE/WOFE/JV borrowing from affiliated entity overseas
- Domestic corporates and financial institution excluding government financing vehicle and real estate industry

Overseas party: No restriction

Usage of proceeds:

- Complied with borrower’s business scope and shareholder loan agreement
- Investing borrowed funds in areas which are not part of domestic borrower’s business scope is prohibited

Borrowing quota:

Option 1: Foreign Debt Quota [total investment – registered capital] (currently applicable to FIE only)

a) Both RMB and FCY use this quote
b) Loans use up the FDQ permanently
c) FDQ is revolving for FCY short term loan (tenor < 1year, including 1 year)
d) One time extension only for RMB loan without using FDQ

Option 2: Macro-prudential management [2 * net assets of onshore borrower]

a) Both RMB and FCY use this quota

Implications to corporates:

a) Corporates can compare the two calculation methods based on their financial standing and decide which method is more beneficial
b) In principle, corporates could choose to adopt either one calculation method. However it is not allowed to be changed once the way of calculation is determined

Approval: Filling with SAFE/PBOC

Tenor: No restriction

Foreign Debt (FCY)

Quota usage amount:

- Outstanding balance of the short term foreign debt (could be re-utilised once repaid) and the accumulative amount of mid / long term foreign debt (FDQ used up permanently). (i.e. Short term borrowing <1yr, including 1 year, will release borrowing gap once repaid, long term borrowings >1yr will permanently utilise borrowing gap even after repayment)

Number of foreign debt accounts:

- The borrower can open two FCY foreign debt accounts locally for one FCY foreign debt contract

Foreign Debt (RMB)

Quota usage amount:

- All RMB foreign debt whether long tenor (>1year) or short tenor (<1year, including 1 year) shall occupy foreign debt quota (FDQ) based on the accumulative amount (发生额).
- The first rollover of a RMB foreign loan does not occupy additional the FDQ but each subsequent rollover of a RMB foreign loan will occupy additional the FDQ by the amount of that loan.

Number of foreign debt accounts:

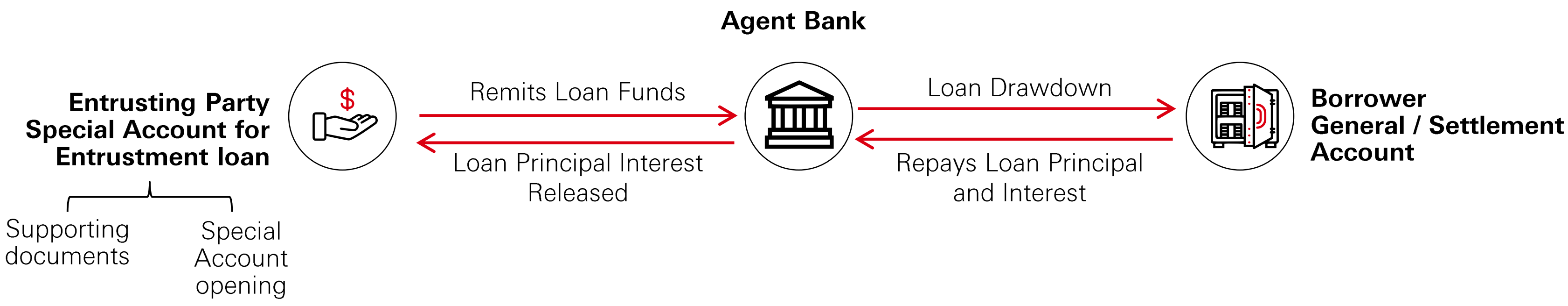
- The borrower can open multiple RMB foreign debt accounts for one RMB foreign debt contract.

Note: FIE stands for Foreign Invested Enterprise

Mainland China | Foreign direct investment options

Local Entrusted Loan

- Direct inter-company loans not allowed in Mainland China
- Entrusted loans via bank are available to facilitate inter-company financing. Entrustment loans suitable in scenarios involving one-off lending of a fixed amount for a fixed time period (medium term)
- Entrusting Party (EP) cannot be financial asset management company or company with loan license and other regulatory restricted industry



Regulation: CBRC Notice 2 [2018]

- Bilateral Entrusted Loans (EL) are governed by this regulation, EL under cash pooling is out of scope
- EP should confirm borrower, and ensure EL fund source and use is compliant with laws and regulations
- Agent bank should not select borrower on behalf of EP, fund EP for EL drawdown, fund borrower for EL repayment, provide guarantee on EL, or bear credit risk
- Agent bank should assess borrower's credit exposure with consideration of outstanding EL size
- EP needs to have a dedicated bank account with Agent Bank for EL service

Mainland China | Fund repatriation options

Dividend Payments

- A foreign invested enterprise can only repatriate profit after its registered capital has been injected within the time limits as set out in the company's Article of Association
- FIE generally can only repatriate profit once a year after the annual audit and tax compliance process. This is to ensure a 25% Corporate Income Tax (CIT) had been paid up with regard to the profit to be distributed
- The FIE can only distribute dividends out of its accumulated profits, that is to say, the accumulated losses from the previous year must be more than offset by the profits
- Payment currency should be the same with Board Resolution states on dividend payment part
- A wholly foreign owned enterprises has to place 10% of its annual after-tax profits into a mandatory surplus reserve fund until it reaches 50% of the FIE's registered capital
- Positive profit in both the dividend year and last year
- Supporting documents will be required ahead of payment process

Document Requirements

- Payment Instruction (submitted via either e-channel platforms or paper-based cross-border payment application form)
- RMB Cross-Border Payment Declaration Form - Only required when dividend payment currency is in RMB
- Related Board Resolution for the dividend arrangement (original)
- Tax Registration Form (original) - Required if payment amount is above USD50k (excluded)
- Audit Report of latest financial year (original or copy with company chop)
- Capital Verification Report (copy with company chop)
- Special Audit Report for the related years (original) – Required if the dividend payment is for the previous years' dividend distribution

Note: The above checklist is for reference only. Please check with the bank on latest checklist before execution

Mainland China | Fund repatriation options

Cross-border Intragroup Lending

- Foreign or domestic enterprises lending to an affiliated entity overseas
- Sources of funds:
  - RMB outbound lending: self owned funds
  - FCY outbound lending: self owned, pool, conversion, domestic bank loan
- Lending quota:
  - RMB outbound lending: up to 50% of the equity of onshore lender
  - FCY outbound lending: up to 30% of the equity of onshore lender

Document Requirements

Cross-border intragroup lending

- Approval from SAFE is required

RMB outbound lending

- Onshore lender shall be in operations over 1Y
- In general, the onshore entity should have positive owner's equity, positive net profit and positive net cash flow (excluding cash generated from financing activities)

FCY outbound lending

- Onshore lender has not violated FX regulation in the past three years

Cross-border Cash Pool

- Available schemes:

1) RMB cross-border cash pool (PBOC No.279 scheme)
2) RMB cross-border cash pool (SFTZ scheme)
3) RMB cross-border cash pool (FTE/FTN scheme)
4) RMB and FCY cross-border cash pool (SAFE No.7 scheme)
5) RMB and FCY cross-border cash pool (SFTZ scheme)

Document Requirements

- Cross-border cash pool
- Approval from local PBOC/SAFE is required

Note: For other regulatory requirements (e.g. eligibility, quota, etc.), please check with your local HSBC representatives

Important notice

重要声明

HSBC