5.5. Cross-Border Money Transfers

If you are living in a country without capital controls, an international money transfer might be just as easy as entering the relevant bank information of the recipient in your online banking platform. China, though, has implemented strong capital controls to prevent transactions without a real business background to prevent especially capital outflow. This is in the responsibility of the SAFE, the State Administration for Foreign Exchange.
In general, SAFE issues regulations controlling all the inflow and outflow of foreign currencies to and from China. The enforcement of these regulations is happening by your local bank in cooperation with the local SAFE bureau. The local bank might come up with additional requirements. Some of the following explanations might therefore not be exactly the same in your case while your bank might have additional requirements that are not mentioned here. Please also note that at least for Chinese banks, in general there is one bank account for each currency.

SAFE classification

Every company that wants to do cross-border trade has to register with the local SAFE to be entered into the "Trading Company List," leading also to a rating, classifying it either as a Class A, B or C company with Class A being the highest class.
If there are any violations of SAFE rules, a downgrading might occur which will lead to heavier control by the bank (Class B) or even has to pre-apply with SAFE for every international remittance (Class C).
If a company has been downgraded, it can be reviewed after 12 months to (re-)gain a higher classification.
SAFE can conduct offsite inspections by comparing the import and export data to the real money flows and, if there remain unclarified items, an onsite inspection which can lead to copying of relevant documents, interviews with senior management or even to searches of documents within the company.
In serious violations of rules the company can also be removed from the trading company list, making international payments impossible.

How SAFE works and type of payments

Especially for cross-border trade, the basic idea behind the SAFE controls is that for every international settlement there must be a corresponding lawful business transaction behind it. Money transfers are limited to the underlying transaction minus the relevant taxes.

Outbound payments for imported goods

To approve your payments, the bank will compare your payment applications with the data from customs.
The following three cases can be distinguished:

Remittance after goods arrival

After a Chinese entity entered an import contract with foreign currency as underlying currency and the goods have arrived at the defined custom port, the importer will make the customs declaration including:

- Customs declaration form
- Invoice and import contract
- Bill of lading
- Import license/permits (if required)
- Other documents if required by customs.

During the import, the goods and their value get registered in the customs system, the goods get cleared and the customs clearance documents get issues.
To pay for the goods, the import contract, invoice and the customs declaration form have to be presented to the bank together with:

  - Application form including the bank information of the beneficiary. The form has to be chopped with company chop and legal representative chop.
  - Special explanations required by the bank, e.g. for exchange rates.

Remittance for goods in transfer

Since the goods did not arrive at customs yet, a money transfer can only be done if it can be proven that the goods were already exported in the other country and are on their way.
For Sea Freight this can be done by the Bill of Lading, for Railway or Airfreight there is at least right now (June 2018) no corresponding proof and the payment has to be delayed until the goods arrive in China.
It is important to note that all of these documents must match each other to prevent any problems during remittance, e.g. the names of the trading partner, purchases material and prices must match for:

- Contract
- Invoice
- Customs declaration
- Beneficiary of the remittance
- And any other possible related document

If there are deviations of any kind, problems can be expected.

Payments in advance / down-payments:

These can only be processed if on the contract and invoice it is clearly stated that the payment is a "Payment in Advance."

Outbound payments for services

For outbound payments of services, withholding taxes, VAT and surcharges might have to be considered and paid by the local customer on behalf of the service provider before transferring the amount net of these taxes out.
Service contracts have to be registered with the tax bureau within 30 days of concluding the contract and might require a detailed description of the incurred services, the runtime of the contract and the payment terms.
For each payment, the withholding tax has to be filed and paid and the payment itself has to be registered.
Payments above an equivalent of 50,000 USD have to be filed with the local tax bureau, no matter if it is by individuals or by companies.
Please keep in mind that you need to check the double taxation agreement between China and the country of the supplier if there are beneficial policies in place, e.g. reduced tax rates.

Outbound payments for royalties

The following paragraph describes the rules for payments concerning services and royalties for the following payment types:

- Patents
- Copyrights
- Trademarks
- Know-how
- Technical services

The payments are classified by the total value that should be transferred:

- Below an equivalent of 50,000 USD, in general, no specific documentation for verification is required. If the nature of the payment is unclear, the bank still might require some documentation, though.
  While no the number of transactions of an equivalent below 50,000 USD is not limited and no tax recordation is required for it, it is forbidden to split payments into smaller payments to evade this threshold.
- For payments above an equivalent of 50,000 USD, the following documents must be provided to the bank:
  - Copy of the License/Transfer/Technical Service Agreement
  - Invoice and details about the calculation
  - Tax recordation from the State Administration for Tax
- For payments regarding technology, a registration document/approval letter of the Ministry of Commerce (MOFCOM), a foreign trade registration and—if a license is introduced by the shareholder—a board decision might be required.

Please note that some services, that might look valid from a western point of view, might fail the validity criteria in a Chinese point of view to constitute a lawful business transaction. As a rule of thumb, the paid service must bring a direct economic benefit to the Chinese entity or it might not be tax deductible. To ensure compliance regarding tax-deductible royalties and services, consider engaging a competent tax consultant who can handle the steps for you and ensure arm´s-length principle for the transaction to avoid risk.

Outbound payments for dividends

To remit profits and dividends back to your shareholder, the company has to provide a certificate that the relevant withholding taxes have been paid, a documented decision of the shareholders and a documented decision by the board.

Inbound payments for exported goods

For exporting goods resulting in inbound payments in foreign currency, there are also capital controls in place.
After the goods have been exported and the payment is received in foreign currency, the exporter can apply for receiving the payment.
If the exporter receives a pre-payment more than 30 days before export or receives the money more than 90 days after the export, it has to be registered with SAFE.
After the export, the exporting company can apply for the VAT refund at the tax authority.

Inbound payments for services

To receive inbound payments for services, the process is also similar with incoming goods: Since there are no custom declarations involved, the bank will still ask for details about the business behind the transaction, used exchange rates, etc.

"Stuck payments"

If a business partner transferred money to the foreign exchange account of a Chinese company and the payment does not get released by the bank, the business partner has to apply for returning the money to their bank account which has to be approved by the local entity.

Foreign exchange between the company's own bank accounts

While the inflowing and outflowing money is under strict control, at least changing foreign currency already on the bank accounts of a Chinese entity into Chinese Yuan is possible without big hassle.

Beware the time limits

The already-mentioned matching of remittances, documentation and the customs data is not without limitations:

- Remittances must be done within 90 days before the goods pass customs (for advance payments) or within 90 days after the goods pass customs (for payments for received goods).
- If these 90 days cannot be held, e.g. due to longer shipping time, the payment must be registered with SAFE 30 days after the goods passed customs (for received goods) or 30 days after the advance payment (for payments in advance).

Failing to keep these deadlines might lead to penalties by SAFE.

Best practices to avoid pitfalls

To prevent pitfalls, the following best practices should be considered:

- Since all the data in different systems must be congruent, make sure that the quality starts in the beginning with a well-defined contract/purchase order.
  Make sure that all the following documents are based on this document.
- It cannot be mentioned enough: Make sure that the business partners and contents in all documents match each other.
- Make sure that all the corresponding taxes have been paid before the remittance, e.g. corporate income tax and all relevant surcharges
- Depending on transportation time (e.g. long sea freight), make sure that the negotiated payment terms with the supplier match with the deadlines mentioned above. It might made sense to match INCOTERMS, payment terms in the contract and SAFE regulations.
- Make sure that the contract and the invoice have detailed items and prices for each item which match to each other.
- If the underlying contract is in one currency (e.g. EUR) and the invoice is in another currency (e.g. USD), the exchange rates between these two have to be explained. To prevent problems, use the same currency in all documents if reasonably possible. To align everything even further, use the spot exchange rate of the date of the invoice.
- If goods are imported/exported without a customs declaration, the transfer will be blocked by the bank. If you are planning to carry goods in your carry-on luggage to the customer or sending/receiving goods by express mail you should not expect that you can send/receive money afterwards.
  Also, if you order some goods at the international group-company of a supplier and the goods get delivered from the Chinese subsidy, there is no customs registration and therefore international payments will be blocked.
- When service contracts are being registered with the authorities you might be required to define the currency, the runtime and the total value to be transferred during the runtime. Be aware that a change of any of these details is next to impossible as long as the contract has not ended or the total value that you forecasted during registration has not been reached.