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## “投注差”抑或“全口径”？——2018 年第一季度中国跨境融资政策及实务

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2017 年 1 月 12 日，中国人民银行（“央行”）发布了《中国人民银行关于全口径跨境融资宏观审慎管理有关事宜的通知》（银发〔2017〕9 号）（“9 号文”）。9 号文明确规定，过渡期内外商投资企业可以在现行“投注差”管理模式和 9 号文宏观审慎管理模式（“全口径”）下任选一种模式适用<sup>1</sup>。

### 三种模式

目前，一年的过渡期已经结束。综合我所去年一年在中国各省市的实践，我们注意到，各地在解释及执行这项政策过程中略有差异，出现了以下三种不同模式：

#### 一是以北京为代表的模式（“北京模式”）

要么选择“投注差”，要么选择“全口径”；一经选定，不得变更。在目前的行政实践中按照这种方式管理外债的城市还包括江苏常熟等部分城市。

<sup>1</sup> 关于 9 号文件的详细解读，请参见本所“China Newsletter”2017 年 8 月刊。

## Borrowing Gap or Full-coverage? — Cross-border financing policies and practices in China in the first quarter of 2018

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On January 12, 2017, the People's Bank of China (“Central Bank”) issued the Notice of the People's Bank of China on Full-coverage Macro-prudent Management of Cross-border Financing (Yin Fa [2017] No. 9) (“Document No. 9”). Document No. 9 clearly stipulates that foreign-invested enterprises (“FIEs”) is allowed to choose to adopt either the difference between total investment and registered capital management mode (“Borrowing Gap”) or the macro-prudent management mode (“Full-coverage”) during the transition period.

### Three Modes

The above mentioned transition period of one year has now expired. Based on our practice in various provinces and cities in China last year, we noticed that there are three different modes in the interpretation and implementation of this policy:

#### The first is the Mode of Beijing (“Beijing mode”)

The choice can be made between Borrowing Gap and Full-coverage; once selected, no further changing is allowed. In the current administrative practice, the authorities that manage foreign loan with the Beijing mode include cities like Changshu in Jiangsu Province.

<sup>1</sup> For details of Document No. 9, please refer to China Newsletter, Issue August 2017.

## 二是以上海为代表的模式（“上海模式”）

“投注差”和“全口径”之间可以单向转换，即若外商投资企业已选择“投注差”，该外商投资企业可随时申请转换为“全口径”。但若已选择的“全口径”，则该外商投资企业不得再转换成“投注差”模式。江苏南通等部分城市也适用该外债管理模式。

## 三是以广州为代表的模式（“广州模式”）

要么选择“投注差”，要么选择“全口径”；选定后，仍可更改。值得注意的是，广州外管局认为两种计算方式不同，所以企业在更改模式之前，都必须先还掉之前借的外债，并在外管局办理完该笔外债的注销登记后方可申请新的外债借款方式。至于这种转换是否有时间限制，目前没有规定，尚需国家外管局或央行出台进一步的规定。

具体哪些省市采取上述三种模式，本所可为您进一步确认。实践中，在外商投资企业注册资本本少于 1200 万美金的情况下，采取“全口径”模式所融的资金有可能要高于“投注差”，但采取“全口径”模式所融资的具体金额还取决于外债期限和融资币种，特别是外商投资企业净资产额等因素。

此外，在“投注差”模式下，长期外债额度即使在该长期外债返还之后仍不能释放，即不可再使用该部分投注差获得外债；但在“全口径”模式下，外债实行余额管理，一旦外债返还，该部分外债所对应的额度即可释放，可使用该部分额度获取新的外债。在“全口径”模式下，主管外汇当局为核实外商投资企业净资产规模，一般会要求外商投资企业提供经审计师事务所审计的财务报表等。

总的来说，“投注差”和“全口径”模式各有特点，“全口径”作为新的融资模式具有较多优势，但“全口径”模式不是必然在各种情况下都优于“投注差”模式。在涉及外债管理新政策出台之前，广州模式显然比北京模式具有更大的灵活性，融资企业一旦发现所采取的模式不能满足自身的融资需求或者不及另一种，仍可及时更改。

## The second is the Mode of Shanghai (“Shanghai mode”)

The change between Borrowing Gap and Full-coverage can only be made in one direction. If FIEs have chosen Borrowing Gap, they may apply at any time to convert it to Full-coverage. However, if Full-coverage is selected, the FIEs are not allowed convert it to Borrowing Gap anymore. Some cities like Nantong of Jiangsu Province also apply the Shanghai mode.

## The third is the Mode of Guangzhou (“Guangzhou mode”)

Either Borrowing Gap or Full-coverage can be chosen; once selected, it can still be changed. It is important to note that Guangzhou Administration of Foreign Exchange is of the view that the calculation methods of these two modes are different. Therefore, before the change of mode, the foreign loans borrowed prior to the change must be paid off. Only after the registration of the previously borrowed foreign loans has been cancelled at the Administration of Foreign Exchange is the conversion into a new mode allowed. Currently, there are no regulations on the time limit for such conversion, which will be subject to further rules or regulations by the State Administration of Foreign Exchange or the Central Bank.

We may assist you to further assess which provinces and cities adopt which of the above mentioned three modes. In practice, in cases where the registered capital of an FIE is less than 12 million U.S. Dollars, it is likely that more foreign loans could be obtained under Full-coverage than under Borrowing Gap. However, the specific amount of foreign loan accessible under the Full-coverage mode also depends on the term and the currency of the foreign loan, especially the net assets of the FIEs.

In addition, according to Borrowing Gap, the long-term foreign loan quote can't be released, even after the long-term foreign loan is paid off. This means that it is no longer possible to use this part of the gap between total investment and registered capital to obtain foreign loan. On the other hand, the Full-coverage adopts the Account Balance Management method for foreign loan. Once the foreign loan is returned, the corresponding quote for the returned foreign loan will be released, which can then be used to obtain new foreign loans. Under Full-coverage, in order to verify the net asset amount of FIEs, the competent foreign exchange authority may generally require FIEs to provide audited financial statements.

In summary, the Borrowing Gap mode and the Full-coverage mode have their own features. Full-coverage, as a new financing mode, has many advantages, but it is by no means better than Borrowing Gap under all circumstances. In the absence of any new policy on foreign loan management, the Guangzhou mode obviously offers more flexibility than the other two modes. The financing enterprises can change the mode at any time if they believe that the chosen mode is not able to meet their fi-

### 三个建议

目前，外商投资企业在中国既可继续选择“投注差”管理模式融资，也可沿用“全口径”宏观审慎管理模式。面对这种双轨制，根据我们积累的实践与经验，我们谨提出以下三点建议：

一是在实际操作中，考虑到“投注差”模式在中国已实行十余年，相关的规定及程序已甚为成熟，外商投资企业在设立的过程中，“投注差”模式可继续约定在合同与章程中并快捷地获得外债融资。

二是外商投资企业不宜盲目地采取“全口径”模式，而应根据自身的实际情况，决定“全口径”与“投注差”孰优孰劣，并同时密切关注涉及外债管理的政策变化和各地行政机关的实际操作要求，因各地外汇管理局的解释有差异且经常变化。

三是企业应密切关注相关外债管理合规性要求，如及时进行合同备案和及时在系统中进行相应的信息更新、使用资金时应遵守相关要求，并注意外债期限与用途期限的匹配。同时，企业应密切注意跨境融资加权余额是否超过上限，如若违规，企业将面临被处罚，跨境融资被暂停甚至被征收风险准备金。

### 结语

9 号文件明确规定，外商投资企业跨境融资管理模式由中国人民银行、国家外汇管理局根据该通知总体实施情况评估后确定。根据我们向银监会的咨询，该事宜须由央行货政司评估并制定新的政策，以确定二者在未来究竟是替代关系还是并存关系。

在进一步的政策出台之前，虽然 9 号文对企业型融资主体具有显著的政策红利，但企业仍需理性思考，综合考量融资成本及业务空间，恰当地规划未来的跨境融资。如有需要，我们将很乐意提供支持。

nancing needs or it is not as well suited as the other mode.

### Three Suggestions

At present, FIEs can either stick to the financing mode of Borrowing Gap or adopt the macro-prudent management mode of Full-coverage. In the face of this dual system, based on our accumulated practice and experience, we would like to make the following three suggestions:

Firstly, in practice, since the Borrowing Gap mode has been implemented for more than ten years in China, the relevant provisions and procedures have been very well-developed. In the set-up process for FIEs, the Borrowing Gap may continue to be agreed upon in contracts and articles of associations for the purpose of obtaining foreign loan efficiently.

Secondly, FIEs should not simply adopt the Full-coverage mode. Instead, they are suggested to assess the advantages and disadvantages of Full-coverage and Borrowing Gap based on their own situations. Meanwhile, FIEs should also pay close attention to the policy changes on foreign loan management and the requirements of local administrative authorities in practice, because the interpretation of the Administration of Foreign Exchange varies in different areas and is in a state of constant changes.

Thirdly, FIEs should pay close attention to the compliance requirements of foreign loan management, such as timely contract registration and timely information update in the system. They should also comply with the relevant requirements when they use funds, and be careful of the matching of foreign loan terms and the use terms. At the same time, FIEs should attach importance to whether the weighted balance of cross-border financing exceeds the upper limit. In the case of violations, cross-border financing will be suspended. Enterprises will be fined and even be requested to pay risk reserves.

### Conclusion

Document No.9 clearly stipulates that the cross-border financing management mode of FIEs shall further be determined by the Central Bank and the State Administration of Foreign Exchange, upon evaluation of the overall implementation of the notice. According to our consultation with the China Bank Regulatory Commission, the Monetary Policy Department of the Central Bank is responsible for assessing this issue and formulating a new policy to determine whether Full-coverage should replace Borrowing Gap or they should coexist in the future.

Although Document No.9 offers significant benefits for the enterprises, they still need to properly plan the cross-border financing in the future by rationally evaluating their financing costs and business space, before introducing further policies. We will be glad to provide support if necessary.

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*„We must be continuously on alert for new developments to be able to master challenges in the best possible way. With curiosity and an innovative approach, we are creating forward-looking solutions.“*

*Rödl & Partner*

*„The building of human towers requires each team member to again and again attempt something new. In this way, we are able to rise above the challenge together.“*

*Castellers de Barcelona*



*„Each and every person counts“ – to the Castellers and to us.*

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