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Regulations of the People's Republic of China on Foreign Exchange

Administration

(Promulgated by Decree No. 193 of the State Council of the People's Republic of China on January 29, 1996; revised in accordance with the Decision of the State Council on Amending the Regulations of the People's Republic of China on Foreign Exchange Control on January 14, 1997; and revised and adopted at the 20th Executive Meeting of the State Council on August 1, 2008, promulgated by Decree No. 532 of the State Council of the People's Republic of China on August 5, 2008, and effective as of the date of promulgation)

Chapter I General Provisions

Article 1 These Regulations are formulated for the purpose of improving foreign exchange administration and promoting an equilibrium in the balance of payments and the sound development of the national economy.

Article 2 The foreign exchange administration department of the State Council and its local offices (hereinafter collectively referred to as the exchange administration agencies) shall, in accordance with law, perform the duties of foreign exchange administration and shall be responsible for implementation of these Regulations.

Article 3 The term "foreign exchange" in these Regulations refers to the following means of payment and assets denominated in foreign currencies and used in international settlements:

- (1) foreign currencies in cash, including banknotes and coins;
- (2) documents or instruments payable in foreign currencies, including negotiable instruments, bank deposit certificates, bank cards, etc.;
- (3) securities denominated in foreign currencies, including bonds, stocks, etc.;
- (4) Special Drawing Rights; and
- (5) other assets denominated in foreign currencies.

Article 4 These Regulations shall be applicable to all activities by domestic entities or individuals in relation to foreign exchange receipts and payments or foreign exchange operations, and to all activities within the territory of the People's Republic of China by foreign entities or individuals in relation to foreign exchange receipts and payments or foreign exchange operations.

Article 5 The State imposes no restrictions on international payments and transfers of current account transactions.

Article 6 The State applies a balance of payments statistics and reporting system.

The foreign exchange administration department of the State Council shall compile statistics on and monitor the balance of payments, and publish these statistics on a regular basis.

Article 7 Financial institutions conducting foreign exchange operations shall, in accordance with the provisions of the foreign exchange administration department of the State Council, open foreign exchange accounts for their clients and handle foreign exchange operations through such accounts.

Financial institutions conducting foreign exchange operations shall, in accordance with law, report to the exchange administration agencies on the foreign exchange receipts and payments of their clients and on changes in their clients' foreign exchange accounts.

Article 8 Foreign currencies are prohibited from circulation and shall not be quoted for pricing or settlement within the territory of the People's Republic of China, unless otherwise provided for by the State.

Article 9 Foreign exchange receipts of domestic entities and individuals may be repatriated to or placed outside the territory of the People's Republic of China; the foreign exchange administration department of the State Council shall specify the conditions, time limits, etc. of the repatriation and outside placement in light of the situation in the balance of payments and the needs for foreign exchange administration.

Article 10 The foreign exchange administration department of the State

Council shall hold, manage, and operate the national foreign exchange reserves in accordance with law, and shall follow the principles of safety, liquidity, and profitability.

Article 11 In cases of occurrence or possible occurrence of a serious disequilibrium in the balance of payments, or a severe crisis in the national economy, the State may adopt safeguards, controls and other necessary measures to deal with the balance of payments.

Chapter II Foreign Exchange Administration for Current Account Transactions

Article 12 Foreign exchange receipts and payments for current account transactions shall be based on bona fide and legal transactions. Financial institutions conducting foreign exchange settlement and sale operations shall, in accordance with the provisions of the foreign exchange administration department of the State Council, exercise due diligence in checking the authenticity of the transaction documents and their consistency with the receipts and payments in foreign exchange.

The exchange administration agencies have the power to supervise and inspect the matters specified in the preceding paragraph.

Article 13 Foreign exchange receipts for current account transactions may, in accordance with the relevant provisions of the State, be retained or sold to financial institutions conducting foreign exchange settlement and sale operations.

Article 14 Foreign exchange payments for current account transactions shall be made with the foreign exchange owned by the payers or purchased from financial institutions conducting foreign exchange settlement and sale operations, as specified by the foreign exchange administration department of the State Council relating to the administration of payments and purchases of foreign exchange, and on the basis of valid documents.

Article 15 The foreign exchange administration department of the State Council shall specify limits and reporting requirements on foreign currencies in cash

which may be carried in or out of the territory of the People's Republic of China.

Chapter III Foreign Exchange Administration for Capital Account Transactions

Article 16 Direct investments within the territory of the People's Republic of China by foreign entities or individuals shall be registered with the exchange administration agencies after being approved by the relevant departments.

Issuances and transactions of securities or derivatives within the territory of the People's Republic of China by foreign entities or individuals shall conform to the provisions of the State on market access, and shall be registered in accordance with the provisions of the foreign exchange administration department of the State Council.

Article 17 Overseas direct investments or overseas issuances or transactions of securities or derivatives by domestic entities or individuals shall be registered in accordance with the provisions of the foreign exchange administration department of the State Council. Where prior approval or maintenance for the record by the relevant department is required by the provisions of the State, the approval or recording procedures shall be completed prior to the registration of the foreign exchange.

Article 18 The State undertakes quota management of external debts. External debts shall be borrowed in accordance with the relevant provisions of the State, and shall be registered with the exchange administration agencies.

The foreign exchange administration department of the State Council shall be responsible for the statistics and monitoring of external debts nationwide, and shall publish these statistics on a regular basis.

Article 19 Where an external guarantee is provided, the provider shall submit an application to the exchange administration agency, which shall then make a decision whether or not to approve the application by taking into account the applicant's assets and liabilities, etc.; where the scope of the applicant's business is subject to approval by the relevant department as specified by the State, the approval procedures shall be completed before the application is submitted to the exchange

administration agency. After conclusion of an external guarantee contract, the applicant shall register the external guarantee with the exchange administration agency.

The preceding paragraph shall not be applicable to external guarantees provided for onlent loans upon approval of the State Council in order to utilize loans from foreign governments or international financial organizations.

Article 20 Banking institutions may directly provide commercial lendings overseas within the approved scope of their business. Where any other domestic entity is to provide commercial lendings overseas, it shall submit an application to the exchange administration agency, which shall make a decision whether or not to approve the application by taking into account the applicant's assets and liabilities, etc.; where the scope of the business of such an entity is subject to approval by the relevant department as specified by the State, the approval procedures shall be completed before the application is submitted to the exchange administration agency.

Commercial lendings provided overseas shall be registered in accordance with the provisions of the foreign exchange administration department of the State Council.

Article 21 Where foreign exchange receipts for capital account transactions are retained or sold to financial institutions conducting foreign exchange settlement and sale operations, approval shall be obtained from the exchange administration agencies, unless no approval is required as specified by the State.

Article 22 Foreign exchange payments for capital account transactions shall be made with the foreign exchange owned by the payers or purchased from financial institutions conducting foreign exchange settlement and sale operations, as specified by the foreign exchange administration department of the State Council relating to the administration of payments and purchases of foreign exchange, and on the basis of valid documents. Where approval by the exchange administration agency is required by the provisions of the State, the approval procedures shall be completed prior to the payments in foreign exchange.

After a foreign-invested enterprise that is terminated in accordance with law has completed liquidation and paid taxes in accordance with the relevant provisions of the

State, the income in RMB owned by the foreign investor may be converted into foreign currency through a financial institution conducting foreign exchange settlement and sale operations and may be remitted abroad.

Article 23 Foreign exchange and RMB funds after conversion for capital account transactions shall be used for the purposes approved by the relevant departments and exchange administration agencies. The exchange administration agencies have the power to supervise and inspect the use of foreign exchange and RMB funds after conversion for capital account transactions and the changes in the relevant accounts.

Chapter IV Administration of Foreign Exchange Operations of Financial Institutions

Article 24 Where financial institutions conduct or terminate foreign exchange settlement and sale operations, approval shall be obtained from the exchange administration agencies; where other foreign exchange operations are conducted or terminated, approval shall be obtained from the exchange administration agencies or from the financial supervisory authorities according to their respective functions and duties.

Article 25 The exchange administration agencies shall undertake comprehensive position management of the foreign exchange operations of financial institutions. The specific measures in this regard shall be formulated by the foreign exchange administration department of the State Council.

Article 26 Where a financial institution's capital funds or profits or its mismatched assets denominated in domestic and foreign currencies need to be converted between RMB and foreign currency, approval shall be obtained from the exchange administration agencies.

Chapter V The RMB Exchange Rate and Administration of the Foreign Exchange Market

Article 27 The RMB exchange rate follows a market-oriented, managed floating regime.

Article 28 Financial institutions conducting foreign exchange settlement and sale operations, and other institutions that satisfy the conditions prescribed by the foreign exchange administration department of the State Council, may trade foreign exchange in the inter-bank foreign exchange market in accordance with the provisions of the foreign exchange administration department of the State Council.

Article 29 Trading in the foreign exchange market shall follow the principles of transparency, equality, fairness, and good faith.

Article 30 The types of currencies traded and the forms of trading in the foreign exchange market shall be prescribed by the foreign exchange administration department of the State Council.

Article 31 The foreign exchange administration department of the State Council shall supervise and administer the foreign exchange market nationwide in accordance with law.

Article 32 The foreign exchange administration department of the State Council may, in light of changes in the foreign exchange market and the requirements of the monetary policies, adjust excessive fluctuations in the foreign exchange market in accordance with law.

Chapter VI Supervision and Administration

Article 33 The exchange administration agencies shall perform their functions and duties in accordance with law and have the power to take the following measures:

- (1) to make on-the-spot inspections of financial institutions conducting foreign exchange operations;
- (2) to enter places of suspected foreign exchange violations, and to conduct investigations and obtain evidence;
- (3) to query an entity or individual that handles foreign exchange receipts or

payments or foreign exchange operations, requiring an explanation of the matters directly relevant to a case under investigation for foreign exchange violation;

(4) to examine and copy transaction documents and other materials directly relevant to a case under investigation for foreign exchange violation;

(5) to examine and copy financial and accounting records and other relevant documents of the parties involved in, or the entities and individuals directly relevant to, a case under investigation for foreign exchange violation, and to seal any documents and materials which might be transferred, concealed, or destroyed;

(6) to inquire about the accounts, other than the individuals' savings accounts, of the parties involved in, or the entities and individuals directly relevant to, a case under investigation for foreign exchange violation, with approval of the responsible person of the foreign exchange administration department of the State Council or the exchange administration agency at the provincial level; and

(7) where evidence shows that illegal funds or other involved property have been or might have been transferred or concealed, or that important evidence has been or might have been concealed, forged, or destroyed, to apply to a people's court to freeze or seal the said funds, property, or evidence.

All relevant entities and individuals shall cooperate with the exchange administration agencies in their supervision and inspection, presenting truthful explanations for related matters and providing relevant documents and other materials, and they shall not refuse to do so, and shall not obstruct the said agencies or conceal the facts.

Article 34 When the exchange administration agency conducts supervision, inspection, or investigation in accordance with law, there shall be at least two officers conducting the supervision, inspection, or investigation, and the officers shall produce their identification documents. Where there are less than two officers in the supervision, inspection, or investigation or the officers fail to produce their identification documents, the entity or individual subject to supervision, inspection, or investigation shall have the right to refuse.

Article 35 Domestic entities involved in foreign exchange operations shall

submit financial and accounting statements, statistics, and other documents as specified by the foreign exchange administration department of the State Council.

Article 36 Upon discovery of their clients' foreign exchange violations, the financial institutions conducting foreign exchange operations shall report the cases to the exchange administration agencies in a timely manner.

Article 37 The foreign exchange administration department of the State Council may obtain information necessary for the performance of its foreign exchange administration duties from the relevant departments and institutions of the State Council, which shall provide the said information.

The foreign exchange administration department of the State Council shall keep the relevant departments and institutions of the State Council informed of the work on foreign exchange administration.

Article 38 Any entity or individual has the right to report any foreign exchange violations.

The exchange administration agencies shall maintain the confidentiality of the reporting persons, and shall, in accordance with the provisions, reward the reporting persons and the entities or individuals who perform meritorious deeds in investigating and penalizing foreign exchange violations.

Chapter VII Legal Liability

Article 39 Where anyone transfers foreign exchange abroad in violation of the provisions, or transfers capital abroad by fraudulent means, or commits any other act of foreign exchange evasion, the exchange administration agency shall order the involved foreign exchange to be repatriated within a specific time limit and shall impose a fine of not more than 30 percent of the amount of foreign exchange involved; if the circumstances are serious, a fine of not less than 30 percent of the amount of foreign exchange involved but not more than the total amount involved shall be imposed; if a crime is committed, criminal liability shall be investigated in accordance with law.

Article 40 Where anyone receives or pays, in violation of the provisions, funds in foreign exchange which should be received or paid in RMB, or purchases foreign exchange from a financial institution conducting foreign exchange settlement and sale operations on the basis of fake or invalid transaction documents, or commits any other act of illegal foreign exchange arbitrage, the exchange administration agency shall order the funds involved in the illegal foreign exchange arbitrage to be reconverted and shall impose a fine of not more than 30 percent of the amount of foreign exchange involved in the illegal arbitrage; if the circumstances are serious, a fine of not less than 30 percent of the amount of foreign exchange involved in the illegal arbitrage but not more than the total amount involved shall be imposed; if a crime is committed, criminal liability shall be investigated in accordance with law.

Article 41 Where anyone remits foreign exchange into the territory of the People's Republic of China in violation of the provisions, the exchange administration agency shall order corrections to be made and shall impose a fine of not more than 30 percent of the amount of foreign exchange involved; if the circumstances are serious, a fine of not less than 30 percent of the amount of foreign exchange involved but not more than the total amount involved shall be imposed.

Where anyone illegally settles foreign exchange, the exchange administration agency shall order the funds used for the illegal settlement of foreign exchange to be reconverted and shall impose a fine of not more than 30 percent of the amount of money involved.

Article 42 Where anyone carries foreign exchange in or out of the territory of the People's Republic of China in violation of the provisions, the exchange administration agency shall issue a warning and may impose a fine of not more than 20 percent of the amount of foreign exchange involved. Where the laws or administrative regulations provide that a penalty shall be imposed by the Customs, such provisions shall prevail.

Article 43 Where anyone without authorization raises an external loan, issues bonds overseas, provides an external guarantee, or commits any other act in violation of the external debt administration, the exchange administration agency shall issue a

warning and impose a fine of not more than 30 percent of the amount of money involved.

Article 44 Where anyone, in violation of the provisions, changes the use of foreign exchange, or the use of RMB funds after conversion, the exchange administration agency shall order corrections to be made, and shall confiscate the illegal gains and impose a fine of not more than 30 percent of the amount of money involved; if the circumstances are serious, a fine of not less than 30 percent of the amount of money involved but not more than the total amount involved shall be imposed.

Where anyone, in violation of the provisions, uses foreign currency within the territory of the People's Republic of China for pricing or settlement, or transfers foreign exchange, or commits any other act of illegal use of foreign exchange, the exchange administration agency shall order corrections to be made, shall issue a warning, and may impose a fine of not more than 30 percent of the amount of money involved.

Article 45 Where anyone trades foreign exchange without authorization or in disguised way, illegally buys and sells foreign exchange, or illegally recommends another person to buy or sell foreign exchange, and if the amount thereof is relatively large, the exchange administration agency shall issue a warning, confiscate the illegal gains, and impose a fine of not more than 30 percent of the amount of money involved; if the circumstances are serious, a fine of not less than 30 percent of the amount of money involved but not more than the total amount involved shall be imposed; if a crime is committed, criminal liability shall be investigated in accordance with law.

Article 46 Where anyone conducts foreign exchange settlement and sale operations without approval, the exchange administration agency shall order corrections to be made and shall confiscate the illegal gains, if any; if the illegal gains amount to 500,000 yuan, a fine of not less than the amount of the illegal gains but not more than five times that amount shall be imposed in addition; if there are no illegal gains or the illegal gains do not amount to 500,000 yuan, a fine of not less than

500,000 yuan but not more than 2,000,000 yuan shall be imposed; if the circumstances are serious, the relevant department shall order suspension of operations for rectification or shall revoke the business license; if a crime is committed, criminal liability shall be investigated in accordance with law.

Where anyone conducts foreign exchange operations other than foreign exchange settlement and sale operations without approval, the exchange administration agency or the financial supervisory authority shall impose a penalty in accordance with the provisions of the preceding paragraph.

Article 47 Where a financial institution is found involved in any of the following circumstances, the exchange administration agency shall order corrections to be made within a specified time limit, and shall confiscate the illegal gains and impose a fine of not less than 200,000 yuan but not more than 1,000,000 yuan; if the circumstances are serious or no corrections are made within the specified time limit, the exchange administration agency shall order termination of the relevant business operations:

(1) failing to exercise due diligence in checking the authenticity of the transaction documents and their consistency with the receipts and payments in foreign exchange when handling receipts and payments for current account transactions;

(2) handling receipts and payments for capital account transactions in violation of the provisions;

(3) conducting foreign exchange settlement and sale operations in violation of the provisions;

(4) violating the comprehensive position management of foreign exchange operations; or

(5) violating the administration of trading in the foreign exchange market.

Article 48 Where any of the following circumstances are found, the exchange administration agency shall order corrections to be made, shall issue a warning, and may impose a fine of not more than 300,000 yuan for an entity, or a fine of not more than 50,000 yuan for an individual:

(1) failing to compile or report the balance of payments statistics as required by

the provisions;

(2) failing to submit documents such as financial and accounting statements and statistics as required by the provisions;

(3) failing to produce valid documents or producing false documents in violation of the provisions;

(4) violating the provisions on the administration of foreign exchange accounts;

(5) violating the provisions on foreign exchange registration; or

(6) refusing to cooperate with, or obstructing, the exchange administration agencies in their supervision, inspection, or investigation in accordance with law.

Article 49 Where a domestic entity violates the provisions on foreign exchange administration, it shall be penalized in accordance with these Regulations, and in addition, the person in charge with competent accountability and any other person with competent accountability shall be sanctioned; a director, supervisor, or senior manager with competent accountability to a financial institution, or any other person with competent accountability, shall be issued a warning and fined not less than 50,000 yuan but not more than 500,000 yuan; if a crime is committed, criminal liability shall be investigated in accordance with law.

Article 50 Where a staff member of the exchange administration agency commits illegal activities for personal gain, abuses his power, or neglects his duties, he shall be investigated for criminal liability in accordance with law if he has committed a crime; if his act does not constitute a crime, he shall be sanctioned in accordance with law.

Article 51 Where a party disagrees with a specific administrative act performed by the exchange administration agency, it or he may apply for administrative reconsideration in accordance with law; if the party disagrees with the decision of the administrative reconsideration, it or he may bring administrative suit in a people's court in accordance with law.

Chapter VIII Supplementary Provisions

Article 52 As used in these Regulations:

(1) “Domestic entities” refers to State organs, enterprises, institutions, public organizations, or the armed forces, etc. within the territory of the People’s Republic of China, excluding foreign diplomatic and consular agencies in China and representative offices of international organizations in China.

(2) “Domestic individuals” refers to Chinese citizens, or foreign nationals who have continuously lived in the People’s Republic of China for more than one year, excluding foreign diplomats in China and resident representatives of international organizations in China.

(3) “Current account transactions” refers to the transaction items in the balance of payments involving goods, services, income, and current transfers, etc.

(4) “Capital account transactions” refers to the transaction items in the balance of payments leading to changes in external assets and liabilities, including capital transfers, direct investments, portfolio investments, derivatives, loans, etc.

Article 53 Non-financial institutions that intend to conduct foreign exchange settlement and sale operations shall obtain approval from the foreign exchange administration department of the State Council. The specific measures for administration in this regard shall be formulated separately by the foreign exchange administration department of the State Council.

Article 54 These Regulations shall be effective as of the date of promulgation.

本译本仅供参考，若有歧义，请以中文版本为准。

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