Regulation on Foreign Exchange Administration of the PRC

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(Promulgated by Order No. 193 of the State Council of the People’s Republic of China on January 29, 1996; amended in accordance with the Decision of the State Council on Amending the Regulation on Foreign Exchange Administration of the People’s Republic of China on August 5, 2008, promulgated by Order No. 532 of the State Council)

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Chapter I — General Provisions

Article 1 — This Regulation is enacted for the purpose of strengthening foreign exchange administration, facilitating the balance of international payments, and promoting the sound development of the national economy.

Article 2 — The foreign exchange administration authority of the State Council and its local branches (hereinafter referred to as “foreign exchange administration authorities”) shall perform their foreign exchange administration duties in accordance with the law and shall bear the responsibilities provided for in this

Regulation.

Article 3 — The term “foreign exchange” as used in this Regulation means the following means of payment and assets expressed in foreign currency that may be used for international settlement:

(1) foreign currency in cash, including banknotes and coins; (2) foreign currency payment instruments, including instruments, bank deposit certificates, and postal savings certificates; (3) foreign currency marketable securities, including government bonds, corporate bonds, and stocks; (4) special drawing rights; (5) other foreign exchange assets.

Article 4 — Foreign exchange receipts and payments by domestic entities, individuals, foreign diplomatic missions and consulates in China, representative offices of international organizations in China, and other foreign institutions in China shall be governed by this Regulation, unless otherwise provided by laws or administrative regulations.

Article 5 — The state shall not restrict regular international payments and transfers.

Article 6 — The state shall implement a system of administration of the balance of international payments.

The foreign exchange administration authority of the State Council shall conduct statistics, monitoring, and early warning in respect of the balance of international payments, and shall publish the relevant information on the balance of international payments in accordance with the law.

Article 7 — Financial institutions operating foreign exchange business shall open foreign exchange accounts for clients and handle foreign exchange business in accordance with the provisions of the foreign exchange administration authority of the State Council.

Article 8 — The renminbi shall be used for pricing and settlement within the territory of the People’s Republic of China, unless otherwise provided by the state.

Article 9 — Foreign exchange receipts of domestic entities, foreign diplomatic missions and consulates in China, representative offices of international organizations in China, and other foreign institutions in China may be transferred abroad or deposited abroad in accordance with the relevant provisions of the state.

Article 10 — The foreign exchange administration authority of the State Council shall perform its foreign exchange administration duties in accordance with the law, and all entities and individuals shall have the right to report acts in violation of foreign exchange administration provisions.

The foreign exchange administration authority shall keep confidential the identity of the reporting party and reward the reporting party in accordance with the relevant provisions. Where the reporting entity or individual requests a reply, the foreign exchange administration authority shall provide the investigation result in a timely manner.

Chapter II — Current Account Foreign Exchange Administration

Article 11 — Current account foreign exchange receipts may either be retained or sold to a financial institution operating settlement and sale of foreign exchange according to the operating will of the entity or individual.

Article 12 — Current account foreign exchange payments by domestic entities shall be made on the basis of valid documents such as commercial documents as prescribed by the foreign exchange administration authority of the State Council, and shall be purchased from or paid out of foreign exchange accounts at financial institutions operating settlement and sale of foreign exchange on the basis of valid documents.

Article 13 — The scope, proportion, and conditions for foreign exchange retained or deposited abroad by entities relating to current account foreign exchange receipts shall be prescribed by the foreign exchange administration authority of the State Council.

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Article 14 — Current account foreign exchange receipts and payments by individuals who are required to handle foreign exchange purchase or payment formalities as prescribed by the foreign exchange administration authority of the State Council shall be handled in accordance with the provisions of the foreign exchange administration authority on the basis of valid documents.

Article 15 — The foreign exchange administration authority of the State Council shall have the right to implement total volume control for current account foreign exchange payments and collections when the balance of international payments experiences serious imbalances or the national economy faces a crisis. The plan for such implementation shall be reported by the foreign exchange administration authority of the State Council to the State Council for approval.

Chapter III — Capital Account Foreign Exchange Administration

Article 16 — Foreign exchange receipts under the capital account may either be retained or sold to a financial institution operating settlement and sale of foreign exchange according to the operating will of the entity, subject to approval by the foreign exchange administration authority.

Article 17 — Foreign exchange payments under the capital account for borrowing foreign debts or providing external guarantees shall be handled through financial institutions operating foreign exchange business on the basis of valid documents and approval documents from the foreign exchange administration authority, after completing the corresponding registration formalities.

Foreign exchange payments under the capital account for direct investment by foreign investors shall be handled through financial institutions operating foreign exchange business on the basis of valid documents, after completing the corresponding registration formalities with the foreign exchange administration authority.

Article 18 — The state shall administer external debts by means of registration.

The foreign exchange administration authority of the State Council shall be responsible for the statistics and monitoring of external debts of the state, and shall publish external debt information on a regular basis.

Article 19 — The provision of external guarantees shall be subject to application to the foreign exchange administration authority, which shall decide whether to approve upon examination; approval from the relevant department shall be obtained in advance in accordance with the provisions of the state where so required.

Article 20 — Financial institutions of the banking industry shall not, without approval, operate foreign exchange business under the capital account, and shall not, without approval, borrow funds from abroad or issue bonds denominated in foreign currency abroad. Verification formalities shall be completed in accordance with the provisions of the state where so required.

Article 21 — The foreign exchange administration authority of the State Council shall have the right to implement control measures for capital account foreign exchange payments and collections when the balance of international payments experiences serious imbalances or the national economy faces a crisis, including but not limited to restrictions on cross-border capital transfers, restrictions on capital account transactions, and temporary suspension or restriction of the conversion of relevant foreign exchange under the capital account. The plan for implementing such control measures shall be reported by the foreign exchange administration authority of the State Council to the State Council for approval.

Article 22 — The administration of foreign exchange in connection with the issuance, listing, or trading of securities or derivative products outside China by domestic entities shall be prescribed separately by the foreign exchange administration authority of the State Council in accordance with this Regulation and relevant laws and administrative regulations, and reported to the State Council for approval.

Chapter IV — Foreign Exchange Operations by Financial Institutions

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Article 23 — Where financial institutions or other institutions are established with the approval of the relevant competent authorities and intend to operate or terminate foreign exchange business, an application shall be filed with the foreign exchange administration authority; upon approval by the foreign exchange administration authority, they may operate or terminate such business.

The scope and conditions under which financial institutions may operate foreign exchange business under their capital accounts shall be approved by the foreign exchange administration authority.

Article 24 — Financial institutions operating foreign exchange business shall act in accordance with the principles of safety, liquidity, and profitability, and shall handle settlement and sale of foreign exchange business in accordance with the relevant provisions of the foreign exchange administration authority.

Article 25 — Financial institutions shall accept the supervision and inspection of the foreign exchange administration authorities, and shall submit to the foreign exchange administration authorities balance sheets relating to foreign exchange business, income statements, and other financial and accounting reports and materials in accordance with the relevant provisions of the foreign exchange administration authority.

Chapter V — RMB Exchange Rate and Foreign Exchange Market Administration

Article 26 — The renminbi exchange rate shall implement a managed floating exchange rate system based on market supply and demand, adjusted with reference to a basket of currencies.

Article 27 — The foreign exchange market shall be administered by the foreign exchange administration authority of the State Council in accordance with the law, and the trading currency pairs, forms, and methods shall be prescribed by the foreign exchange administration authority of the State Council.

Article 28 — The People’s Bank of China shall adjust the exchange rate in the inter-bank foreign exchange market in accordance with monetary policy goals and the market supply and demand conditions for foreign exchange.

Article 29 — The foreign exchange administration authority of the State Council shall supervise and administer foreign exchange market transactions and order in accordance with the law, and shall prevent and control foreign exchange risks through monitoring, early warning, macro-prudential management, and other measures in accordance with the law.

Chapter VI — Supervision and Administration

Article 30 — The foreign exchange administration authorities shall supervise and inspect the foreign exchange receipts and payments of entities and individuals, foreign exchange purchases and sales, exchange rate levels, and other matters in accordance with their duties and powers. Entities and individuals subject to supervision and inspection shall cooperate and shall not refuse or obstruct.

Article 31 — When performing their duties, foreign exchange administration authorities shall have the right to take the following measures:

(1) entering the premises of the entity or individual under inspection to conduct on-site inspections; (2) consulting and duplicating the relevant financial and accounting materials, documents, and records of the entity or individual under inspection, and examining the relevant foreign exchange receipts and payments; (3) requiring the entity or individual under inspection to provide explanations in respect of relevant matters; (4) inquiring about the foreign exchange receipts and payments of the entity or individual under inspection at financial institutions; (5) applying for the freezing of accounts or the sealing up of documents related to illegal foreign exchange receipts and payments; (6) investigating and punishing illegal acts involving foreign exchange.

Article 32 — The foreign exchange administration authority may, when performing its duties in accordance with the law, adopt the following measures:

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(1) sealing up and seizing evidence connected with illegal foreign exchange activities, applying to the judicial authority for freezing deposits; and (2) requesting the exit and entry administration authority to prevent a party suspected of involvement in illegal foreign exchange activities from exiting the country, or to detain the relevant party.

Article 33 — The relevant administrative departments of the State Council shall provide the foreign exchange administration authority of the State Council with the information necessary for foreign exchange administration and shall share information.

Article 34 — Foreign exchange administration authorities shall keep confidential the trade secrets and personal privacy learned in the course of performing their duties in accordance with the law.

Chapter VII — Legal Liability

Article 35 — Where foreign exchange receipts or payments under the current account are conducted on the basis of forged or altered valid documents, or on the basis of reused valid documents, foreign exchange administration authorities shall order the return of the illegally purchased or paid foreign exchange, impose a fine of not more than 30 percent of the amount of illegal foreign exchange, and confiscate the illegal gains.

Article 36 — Where foreign exchange collection or payment has been conducted without completing the required registration formalities, foreign exchange administration authorities shall order rectification, issue a warning, and impose a fine of not more than 30 percent of the amount involved.

Article 37 — Where any entity or individual purchases foreign exchange by improper means such as splitting to evade the prescribed limits, or where foreign exchange is purchased using loans from financial institutions and transferred abroad, foreign exchange administration authorities shall order the return of the illegally purchased foreign exchange, impose a fine of not more than 30 percent of the amount of illegal foreign exchange, and confiscate the illegal gains. Where the circumstances are serious, a fine of not less than 30 percent of the amount of illegal foreign exchange may be imposed.

Article 38 — Where any entity or individual changes the purpose of foreign exchange or use of foreign exchange settlement funds without authorization, foreign exchange administration authorities shall order rectification, confiscate the illegal gains, and impose a fine of not more than 30 percent of the amount involved. Where the circumstances are serious, a fine of not less than 30 percent of the amount involved may be imposed.

Article 39 — Where any entity or individual illegally settles foreign exchange in violation of the provisions, the foreign exchange administration authority shall order the return of the illegally settled foreign exchange and impose a fine of not more than 30 percent of the amount of the illegally settled foreign exchange.

Article 40 — Where any entity or individual operates foreign exchange business without approval, the foreign exchange administration authority shall confiscate the illegal gains and may impose a fine of not more than five times the amount of the illegal gains upon the financial institution or individual that so operates without approval. Where there are no illegal gains or the illegal gains are less than 500,000 yuan, a fine of not less than 500,000 yuan and not more than 2,000,000 yuan shall be imposed. Where the case constitutes a crime, criminal liability shall be pursued in accordance with the law.

Article 41 — Where financial institutions operating foreign exchange business conduct foreign exchange business beyond the approved scope without authorization or in violation of the provisions on foreign exchange assets and liability ratio management, the foreign exchange administration authority shall order rectification, confiscate the illegal gains, and impose a fine of not less than 200,000 yuan and not more than 1,000,000 yuan. Where the circumstances are serious, a fine of not less than 200,000 yuan and not more than the amount of illegal gains shall be imposed upon the financial institution or individual that operates foreign exchange business beyond the approved scope without authorization.

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Article 42 — Where an entity or individual borrows foreign debts without completing registration formalities as required or providing external guarantees without approval, the foreign exchange administration authority shall issue a warning and impose a fine of not more than 30 percent of the amount involved.

Article 43 — Where foreign exchange receipts or payments under the capital account are handled in violation of the provisions on foreign exchange account administration, the foreign exchange administration authority shall order rectification, issue a warning, and impose a fine of not more than 300,000 yuan.

Article 44 — Where financial institutions operating foreign exchange business fail to submit balance sheets relating to foreign exchange business, income statements, and other financial and accounting reports and materials in accordance with the provisions, the foreign exchange administration authority shall order rectification and impose a fine of not more than 300,000 yuan. Where the circumstances are serious, the foreign exchange administration authority may order the cessation of the business in violation of the provisions.

Article 45 — Where financial institutions violate the provisions, fail to perform their obligations such as customer identification, and cause illegal foreign exchange activities to occur, the foreign exchange administration authority shall impose a fine of not less than 50,000 yuan and not more than 500,000 yuan.

Article 46 — Where entities or individuals violate other provisions on foreign exchange administration, the foreign exchange administration authority shall order rectification, issue a warning, and impose a fine of not more than 300,000 yuan.

Article 47 — Where foreign exchange administration authorities impose confiscation of illegal gains or fines in accordance with the provisions, the parties shall pay the amounts within the prescribed time limit. Where a party fails to pay within the prescribed time limit, the foreign exchange administration authority may apply to a people’s court for compulsory enforcement in accordance with the law.

Article 48 — Where foreign exchange administration authorities and their functionaries commit any of the following acts in the course of foreign exchange administration, criminal liability shall be pursued in accordance with the law where the case constitutes a crime; where the case does not constitute a crime, sanctions shall be imposed in accordance with the law:

(1) implementing administrative penalties beyond their authority in violation of the provisions; (2) failing to investigate and deal with illegal acts after discovering them or receiving reports thereof; (3) failing to implement supervisory, inspection, or management measures in accordance with the provisions; (4) retaliating against a reporting party in violation of the provisions; (5) failing to keep confidential the trade secrets and personal privacy of the parties concerned in accordance with the provisions.

Chapter VIII — Supplementary Provisions

Article 49 — The administration of foreign exchange in special economic zones and bonded supervision zones shall be prescribed separately by the foreign exchange administration authority of the State Council in accordance with the principles of this Regulation.

Article 50 — The administration of foreign exchange for border trade and border tourism shall be prescribed by the foreign exchange administration authority of the State Council in accordance with the principles of this Regulation.

Article 51 — The administration of foreign exchange in free trade zones shall be prescribed separately by the foreign exchange administration authority of the State Council in accordance with the relevant provisions.

Article 52 — The specific measures for the implementation of this Regulation shall be formulated by the foreign exchange administration authority of the State Council.

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Article 53 — This Regulation shall be applied mutatis mutandis to the administration of foreign exchange business of non-financial institutions.

Article 54 — This Regulation shall take effect as of the date of promulgation. The Provisional Regulation on Foreign Exchange Administration of the People's Republic of China promulgated by the State Council on December 18, 1980, and the measures for its implementation shall be repealed simultaneously.

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