

Regulations of the PRC on Customs Affairs Guarantee

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Article 1 — These Regulations are formulated in accordance with the Customs Law of the People's Republic of China and other relevant laws for the purposes of regulating customs affairs guarantee, improving the efficiency of customs clearance, and safeguarding customs supervision and administration.

Article 2 — These Regulations apply to the provision of guarantee to the Customs by a party concerned, by which it undertakes to perform legal obligations, and to the handling of customs affairs guarantee for the party by the Customs.

Article 3 — Customs affairs guarantee shall follow the principles of legality, good faith, and the unity of rights and responsibilities.

Article 4 — Under any of the following circumstances, a party concerned may apply to the Customs to provide guarantee before completing the customs formalities, so as to require the advance release of the goods:(1) the tariff classification, dutiable value, or place of origin of the imported or exported goods has not yet been determined;(2) valid customs declaration documents have not yet been provided;(3) the tax payable has not yet been paid within the tax payment period;(4) the late declaration fee has not yet been paid; or(5) other customs formalities have not yet been completed.Where the State imposes restrictive provisions on goods and articles entering or leaving the territory and the required permits or certificates cannot be provided, or under other circumstances in which guarantee is not permitted under laws or administrative regulations, the Customs shall not handle the guarantee-based release.

Article 5 — Where a party concerned applies to handle any of the following specific customs business, it shall provide guarantee in accordance with the customs provisions:(1) a transport enterprise undertaking road transport of goods between the Mainland and Hong Kong or Macao, or undertaking domestic road transport of goods under customs supervision;(2) the temporary entry or exit of goods and articles;(3) the entry of goods for repair and the exit of goods for processing;(4) the import of leased goods;(5) the transit of goods and means of transport;(6) the temporary storage of goods under customs supervision outside the customs surveillance zones;(7) the pledging of goods under customs supervision to financial institutions; or(8) the handling of relevant customs business for bonded goods.Where a party concerned fails to provide guarantee or the guarantee provided does not conform to the provisions, the Customs shall not handle the specific customs business listed in the preceding paragraph.

Article 6 — Where the taxpayer of imported or exported goods shows obvious signs of transferring or concealing the dutiable goods and other property within the prescribed tax payment period, the Customs may order the taxpayer to provide guarantee; where the taxpayer is unable to provide guarantee, the Customs shall take tax preservation measures in accordance with law.

Article 7 — Where goods, articles, or means of transport suspected of violating the law should be, or have been, detained or sealed up by the Customs in accordance with law, the party concerned may provide guarantee to the Customs to apply for exemption from, or release of, the detention or sealing up.Where the goods, articles, or means of transport suspected of violating the law cannot be, or are inconvenient to be, detained, the party concerned or the person in charge of the means of transport shall provide guarantee of

equivalent value to the Customs; where no guarantee of equivalent value is provided, the Customs may detain other property of equivalent value of the party concerned. Where the goods, articles, or means of transport suspected of violating the law are prohibited from entering or leaving the territory, or must be used as evidence in their original form, or should be confiscated in accordance with law, the Customs shall not handle the guarantee.

Article 8 — Where a legal person or any other organization is punished by the Customs and, before the fine, the illegal gains, or the equivalent value of the goods, articles, or smuggled means of transport that should be recovered in accordance with law has been fully paid, its legal representative or principal responsible person leaves the territory, the legal representative or principal responsible person shall provide guarantee to the Customs; where no guarantee is provided, the Customs may notify the exit administration authority to prevent the legal representative or principal responsible person from leaving the territory. The preceding paragraph shall apply to a natural person who leaves the territory after being punished by the Customs.

Article 9 — Where guarantee should be provided for the import of goods subject to provisional anti-dumping measures or provisional countervailing measures, or where the consignor or consignee of imported or exported goods or the right holder of intellectual property applies to handle matters related to customs protection of intellectual property rights, the customs affairs guarantee shall be handled in accordance with these Regulations. Where laws or administrative regulations provide otherwise, such provisions shall prevail.

Article 10 — A party concerned that satisfies all of the following conditions for two consecutive years may apply to the Customs directly under the General Administration of Customs for exemption from guarantee, and shall handle the relevant formalities in accordance with the customs provisions: (1) passing the customs verification-based audit; (2) an annual rate of errors in import and export customs declarations of not more than 3%; (3) no arrears of tax payable; (4) no administrative penalty imposed by the Customs and no adverse record with the relevant administrative departments; and (5) no criminal liability pursued, among others. Where a party concerned no longer satisfies the conditions prescribed in the preceding paragraph, the Customs shall cease to apply the exemption from guarantee to it.

Article 11 — Where a party concerned handles the same type of customs business on multiple occasions within a certain period, it may apply to the Customs for providing a general guarantee. Where the Customs accepts the general guarantee, the party concerned need not provide guarantee separately when handling such type of customs business. The scope of application, the guarantee amount, the guarantee term, and the circumstances of termination of the general guarantee shall be prescribed by the General Administration of Customs.

Article 12 — A party concerned may provide guarantee with property and rights recognized by the Customs in accordance with law; the specific scope of the guarantee property and rights shall be prescribed by the General Administration of Customs.

Article 13 — Where a party concerned provides guarantee to the Customs by a letter of guarantee, the letter of guarantee shall designate the Customs as the beneficiary and shall state the following particulars: (1) the basic information of the guarantor and the guaranteed party; (2) the legal obligations to be guaranteed; (3) the guarantee amount; (4) the guarantee term; (5) the guarantee liability; and (6) other matters requiring explanation. The guarantor shall affix its seal to the letter of guarantee and indicate the date thereon.

Article 14 — The guarantee provided by a party concerned shall be commensurate with the legal obligations it is required to perform. Except for the circumstances prescribed in paragraph 2 of Article 7 of these Regulations, the guarantee amount shall be determined in accordance with the following standards: (1) for guarantee provided for the advance release of goods, the guarantee amount shall not exceed the maximum total amount of tax that may be borne; (2) for guarantee provided for handling specific customs business, the guarantee amount shall not exceed the maximum total amount of tax that may be borne, or the amount prescribed by the General Administration of Customs; (3) for guarantee provided upon order due to obvious

signs of transferring or concealing the dutiable goods and other property, the guarantee amount shall not exceed the maximum total amount of tax that may be borne;(4) for guarantee provided for exemption from, or release of, the detention or sealing up of the relevant goods, articles, or means of transport, the guarantee amount shall not exceed the equivalent value of such goods, articles, or means of transport; and(5) for guarantee provided for leaving the territory before the fine, the illegal gains, or the equivalent value of the goods, articles, or smuggled means of transport that should be recovered in accordance with law has been fully paid, the guarantee amount shall be equivalent to the fine, the amount of the illegal gains, or the equivalent value of the goods, articles, or smuggled means of transport that should be recovered in accordance with law.

Article 15 — To handle a guarantee, the party concerned shall submit a written application and truthful, lawful, and valid certificates of property and rights, proof of identity or qualifications, and other materials.

Article 16 — The Customs shall, within five working days from the date of receipt of the materials submitted by the party concerned, examine the relevant property and rights and decide whether to accept the guarantee. Where a party concerned applies to handle a general guarantee, the Customs shall examine and decide whether to accept the guarantee within ten working days. A guarantee that conforms to the provisions shall take effect from the date on which the Customs decides to accept it. For a guarantee that does not conform to the provisions, the Customs shall notify the party concerned in writing of the non-acceptance and state the reasons.

Article 17 — Where, before the expiry of the time limit for the guaranteed party to perform its legal obligations, the guarantor and the guaranteed party request to change the content of the guarantee for special reasons, they shall submit a written application and the relevant supporting materials to the Customs that accepted the guarantee. The Customs shall, within five working days from the date of receipt of the materials submitted by the parties concerned, decide whether to approve the change and notify the parties concerned in writing; where the change is not approved, the reasons shall be stated.

Article 18 — Where the guaranteed party fails to perform the relevant legal obligations within the prescribed time limit, the Customs may, in accordance with law, offset the guarantee property and rights against the obligations. Where the party concerned provides guarantee by a letter of guarantee, the Customs may directly require the guarantor bearing joint and several liability to perform the guarantee liability. The performance of the guarantee liability by the guarantor does not exempt the guaranteed party from the obligation to handle the relevant customs formalities. The Customs shall handle the relevant customs formalities for the guaranteed party in a timely manner.

Article 19 — Where the guarantee property and rights are insufficient to offset the relevant legal obligations of the guaranteed party, the Customs shall notify the guaranteed party in writing to provide additional guarantee or perform the legal obligations.

Article 20 — Under any of the following circumstances, the Customs shall notify the party concerned in writing to handle the formalities for the return of the guarantee property and rights:(1) the party concerned has performed the relevant legal obligations;(2) the party concerned no longer engages in the specific customs business;(3) there is a surplus after the guarantee property and rights have been offset by the Customs; or(4) other circumstances requiring return.

Article 21 — Where, within three months from the date of service of the written notice of the Customs requiring the handling of the formalities for the return of the guarantee property and rights, the party concerned fails to handle the return formalities without justifiable reasons, the Customs shall issue a public announcement. Where, within one year from the date of issuance of the public announcement by the Customs, the party concerned still fails to handle the return formalities, the Customs shall sell or honor the guarantee property and rights in accordance with law and turn over the proceeds to the State treasury.

Article 22 — Where the Customs performs its duties, financial institutions and other relevant units shall provide assistance in accordance with law.

Article 23 — Where a guarantor or guaranteed party, in violation of these Regulations, provides guarantee by fraud, concealment, or other means, the Customs shall order it to continue to perform its legal obligations and impose a fine of not less than RMB 5,000 yuan but not more than RMB 50,000 yuan; where the circumstances are serious, the Customs may suspend the guaranteed party from engaging in the relevant customs business or revoke its registration for engaging in the relevant customs business.

Article 24 — Where a customs officer commits any of the following acts, he shall be given sanctions; where a crime is constituted, criminal liability shall be investigated in accordance with law: (1) illegally disposing of the guarantee property and rights; (2) illegally handling the relevant formalities for a guarantee that does not conform to the provisions, thereby causing losses to the interests of the State; (3) refusing to handle the relevant formalities for a guarantee that conforms to the provisions; or (4) other illegal acts related to customs affairs guarantee.

Article 25 — Where a guarantor or guaranteed party is dissatisfied with a specific administrative act of the Customs relating to customs affairs guarantee, it may apply for administrative reconsideration to the Customs at the next higher level or institute an administrative lawsuit in a people's court in accordance with law.

Article 26 — These Regulations shall be effective as of January 1, 2011.

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