

Provisions on the Administration of the Settlement, Sale and Payment of Foreign Exchange of the PRC

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Chapter I — General Provisions

Article 1 — These Provisions are formulated to regulate the settlement, sale and payment of foreign exchange and to realize the convertibility of the Renminbi under the current account.

Article 2 — Banks engaged in foreign exchange business shall handle the settlement and sale of foreign exchange, the opening of foreign exchange accounts and external payment business in accordance with these Provisions and the business scope approved by the People’s Bank of China and the State Administration of Foreign Exchange.

Article 3 — Foreign exchange receipts of domestic institutions shall, unless otherwise provided by the State, be repatriated to China in a timely manner.

Article 4 — Domestic institutions, resident individuals, institutions stationed in China and persons coming to China shall handle the settlement and purchase of foreign exchange, the opening of foreign exchange accounts and external payment in accordance with these Provisions.

Article 5 — When domestic institutions and resident individuals handle external receipts and payments through banks engaged in foreign exchange business, they shall handle balance of payments statistical reporting in accordance with the Measures for the Reporting of Balance of Payments Statistics and the relevant provisions.

Chapter II — Settlement, Sale and Payment of Foreign Exchange under the Current Account

Article 6 — Except for the scope and amounts limited by Articles 7, 8 and 10 of these Provisions, the following foreign exchange obtained by domestic institutions shall be settled:

- (1) foreign exchange income from exports, from re-export goods where payment precedes receipt, and from other transaction activities; trade export foreign exchange settled by documentary letters of credit/letters of guarantee and documentary collection may be settled against valid commercial documents, while trade export foreign exchange settled by remittance shall be settled against export receipt verification forms;
- (2) foreign exchange income from winning international bidding under overseas loans;
- (3) foreign exchange income from the sale of duty-free commodities within China under customs supervision;
- (4) foreign exchange income from the provision of commodities or services by the transportation industry (including all modes of transport) and ports (including airports), post and telecommunications (excluding international remittances), advertising, consulting, exhibitions, consignment sales, maintenance and other industries and various agency businesses;
- (5) various foreign exchange fees and fines collected by administrative and judicial organs;
- (6) foreign exchange income from the transfer of intangible assets such as land use rights, copyrights, trademark rights, patent rights, non-patented technology and goodwill; provided that where the above intangible assets are owned by individuals, they need not be settled;
- (7) foreign exchange profits remitted back by enterprises investing abroad, foreign exchange recovered under foreign aid projects, and foreign exchange income from overseas assets;
- (8) foreign exchange income from foreign claims and returned foreign exchange deposits;
- (9) foreign exchange income from leasing real estate and other foreign exchange assets;
- (10) foreign exchange income obtained by insurance institutions from accepting foreign exchange insurance;
- (11) net income of financial institutions that have obtained the License for Operating Foreign Exchange Business from their foreign exchange business;
- (12) foreign exchange income from foreign donations, grants and aid;
- (13) other foreign exchange that shall be settled as prescribed by the State Administration of Foreign Exchange.

Article 7 — The following foreign exchange of domestic institutions (excluding foreign-invested enterprises) may, upon application to the State Administration of Foreign Exchange and its branches (hereinafter referred to as the “foreign exchange administration”), be deposited in foreign exchange accounts opened with banks engaged in foreign exchange business and settled in accordance with the provisions:

- (1) business foreign exchange received in the course of their business by companies engaged in overseas contracted projects and in the provision of labor services, technical cooperation and other services abroad;
- (2) foreign exchange collected and paid on behalf of others by institutions engaged in agency business for foreign or overseas businesses;

(3) foreign exchange temporarily received pending payment or temporarily received pending settlement, including tender deposits and performance bonds remitted from abroad, foreign exchange receipts from re-export trade where receipt precedes payment, foreign exchange remittances from international remittance business handled by postal and telecommunications departments, foreign exchange prepaid by foreign tourism institutions received by first-class travel agencies, foreign exchange received by railway departments from overseas insured-value transportation business, and foreign exchange deposits and mortgage funds collected by customs;

(4) premiums received by insurance institutions from foreign exchange insurance, pending overseas reinsurance and pending settlement.

The net income from the above foreign exchange shall be sold in full to designated foreign exchange banks within the prescribed time.

Article 8 — Foreign exchange stipulated in donation, grant and aid contracts for external payment may be retained only after approval by the foreign exchange administration.

Article 9 — The following foreign exchange may be retained:

(1) foreign exchange of foreign embassies and consulates in China, international organizations and other institutions in China of overseas legal persons;

(2) foreign exchange of resident individuals and persons coming to China.

Article 10 — Foreign-invested enterprises may retain foreign exchange income under the current account within the maximum amount verified by the foreign exchange administration; the excess shall be sold to designated foreign exchange banks or sold through the foreign exchange swap center.

Article 11 — For settlement of foreign currency cash exceeding the equivalent of USD 10,000, the person settling shall provide the designated foreign exchange bank with authentic identity certificates and proof of the source of the foreign exchange, and the designated foreign exchange bank shall register the settlement and report it to the foreign exchange administration for filing.

Article 12 — Domestic institutions and resident individuals, institutions stationed in China and persons coming to China that are permitted under Articles 7, 8, 9 and 10 of these Provisions to open foreign exchange accounts shall, in accordance with the relevant provisions on foreign exchange account administration, go to banks engaged in foreign exchange business to complete the account opening procedures.

Article 13 — For external payment of foreign exchange for the following trade and non-trade operational purposes, domestic institutions shall pay from their foreign exchange accounts or purchase from designated foreign exchange banks against valid commercial documents and the listed valid credentials corresponding to the mode of payment:

(1) for import trade settled by documentary letters of credit/letters of guarantee, where foreign exchange is purchased at the time of opening the letter of credit, the import contract, import payment verification form and letter of credit application shall be presented; where foreign exchange is purchased at the time of payment, valid commercial documents required by the letter of credit settlement method shall also be provided. Verification must be handled against the original import goods customs declaration form;

(2) for import trade settled by documentary collection, the import contract, import payment verification form, import payment notice and valid commercial documents required by the documentary collection settlement method shall be presented. Verification must be handled against the original import goods customs declaration form;

(3) for import trade settled by remittance, the import contract, import payment verification form, invoice, original import goods customs declaration form and original transport documents shall be presented; where

the “consignee” on the bill of lading and the “operating unit” on the customs declaration form are inconsistent with the name of the buyer specified in the import contract, the agency agreement between the two parties shall also be provided;

(4) for advance payment for imports not exceeding 15% of the total contract amount, or exceeding 15% but not exceeding the equivalent of USD 100,000, the import contract and import payment verification form shall be presented;

for imports under items (1) through (4) above, where the goods are subject to import quota management or special product import management, licenses or import certificates issued by the relevant departments shall also be provided; where the goods are subject to automatic registration, the completed registration form shall also be provided.

(5) for transportation fees and insurance premiums under imports, the import contract and original receipts for transportation fees and insurance premiums shall be presented;

(6) for dark commissions (dark discounts) under exports not exceeding 2% of the total contract amount and open commissions (open discounts) not exceeding 5%, or commissions exceeding the above proportions but not exceeding the equivalent of USD 10,000, the export contract or commission agreement, settlement water bill or account credit notice shall be presented; for transportation fees and insurance premiums under exports, the export contract and original receipts for transportation fees and insurance premiums shall be presented;

(7) for the balance payment under imports, the import contract, import payment verification form and goods inspection acceptance certificate shall be presented;

(8) for incidental expenses such as data fees, technology fees and information fees under imports and exports, the import contract or export contract, import payment verification form or export receipt verification form, invoice or fee receipt, and a written explanation signed by the person in charge of the importing or exporting unit shall be presented;

(9) for foreign exchange used to purchase commodities from bonded zones and to purchase exhibits entering China for foreign exhibitions, valid credentials and valid commercial documents stipulated in items (1) through (8) shall be presented;

(10) for the import of intangible assets such as patent rights, copyrights, trademarks and computer software, the import contract or agreement shall be presented;

(11) for foreign exchange for refunds and compensation under exports, the settlement water bill or account credit notice, claim agreement, claim settlement certificate and proof of offset against export receipt verification shall be presented;

(12) for tender deposits required for overseas contracted projects, tender documents shall be presented; for performance bonds and advanced project payments, the contract shall be presented.

Article 14 — For the following trade and non-trade operational external payments of domestic institutions, banks engaged in foreign exchange business shall pay or exchange from their foreign exchange accounts against the payment list provided by the user, with subsequent verification:

(1) import payments by duty-free goods companies approved by the State Council for the sale of duty-free commodities within the prescribed scope;

(2) payment by civil aviation, maritime transport and railway departments (institutions) of overseas international through-transportation fees, equipment maintenance fees, station and port usage fees, fuel supply fees, insurance premiums, non-financing lease fees and other service fees;

(3) payment by civil aviation, maritime transport and railway departments (institutions) of meals and allowances for international operating personnel;

(4) payment by postal and telecommunications departments of international postal and telecommunications service fees.

Article 15 — For the following external payment foreign exchange of domestic institutions, after the foreign exchange administration has verified their authenticity, payment shall be made from their foreign exchange accounts or exchanged at designated foreign exchange banks:

(1) advance payments exceeding the proportion and amount prescribed in Article 13(4) of these Provisions;

(2) commissions exceeding the proportion and amount prescribed in Article 13(6) of these Provisions;

(3) external payments under re-export trade where payment precedes receipt;

(4) repayment of interest on foreign debts;

(5) withdrawal of foreign currency cash exceeding the equivalent of USD 10,000.

Article 16 — For repayment of interest on foreign exchange loans from domestic Chinese-funded financial institutions by domestic institutions, the Registration Certificate for Foreign Exchange (Re-lending) Loans, the loan contract and the interest payment notice from the creditor shall be presented, and payment shall be made from their foreign exchange accounts or exchanged at designated foreign exchange banks.

Article 17 — Non-trade and non-operational foreign exchange of organs, public institutions and social organizations within the fiscal budget shall be handled in accordance with the Interim Provisions on the Financial Administration of Non-Trade and Non-Operational Foreign Exchange.

Article 18 — For the following non-operational foreign exchange of domestic institutions outside the fiscal budget, payment shall be made from their foreign exchange accounts or exchanged at designated foreign exchange banks against the listed valid credentials:

(1) foreign exchange for holding exhibitions, investment promotion, training and the filming of films and television programs abroad, against contracts, payment notices from overseas institutions and approval documents from the competent authorities;

(2) external publicity fees, foreign aid fees, foreign exchange donations, membership fees of international organizations, and registration fees and enrollment fees for participating in international conferences, against approval documents and related correspondence from the competent authorities;

(3) establishment expenses and annual budget funds for representative offices or offices established abroad, against the approval documents for the establishment of the institutions issued by the competent authorities and the budget statements;

(4) examination fees paid abroad by the overseas examination coordination institutions of the State Education Commission, against external contracts and bills or settlement notices from overseas examination institutions;

(5) expenses required for handling trademark and copyright registration abroad, applying for patents, and legal and consulting services, against contracts and invoices;

(6) expenses for official trips abroad, against the approval documents for overseas missions issued by state-authorized departments.

Non-operational foreign exchange other than items (1) through (6) above shall, after the foreign exchange administration has verified its authenticity, be paid from their foreign exchange accounts or exchanged at designated foreign exchange banks.

Article 19 — Foreign exchange for private purposes of resident individuals shall be handled in accordance with the Measures for the Exchange of Foreign Exchange by Resident Individuals for Private Purposes and the Provisions on the Remittance Abroad of Foreign Exchange Deposits of Resident Individuals.

Article 20 — After resident individuals emigrate and leave the country, the following legitimate Renminbi income may be exchanged at designated foreign exchange banks authorized by the foreign exchange administration against their identity certificates and the listed valid credentials:

- (1) interest on Renminbi deposits, against the Renminbi deposit interest statement;
- (2) rent from leasing real estate, against the real estate lease contract and certification from the real estate lease administration department;
- (3) income from other assets, against relevant certification materials and income statements.

Article 21 — For the remittance abroad of after-tax profits and dividends of foreign investors of foreign-invested enterprises, the board of directors' profit distribution resolution shall be presented, and payment shall be made from their foreign exchange accounts or exchanged at designated foreign exchange banks.

For after-tax Renminbi wages and other legitimate income of foreign, overseas Chinese, Hong Kong, Macao and Taiwan employees of foreign-invested enterprises, exchange at designated foreign exchange banks shall be handled against certification materials.

Article 22 — For dividends that shall be paid in foreign currency as prescribed, after tax payment, payment shall be made from their foreign exchange accounts or exchanged at designated foreign exchange banks against the board of directors' profit distribution resolution.

Article 23 — For legitimate Renminbi income of institutions stationed in China and persons coming to China that needs to be remitted abroad, exchange at designated foreign exchange banks authorized by the foreign exchange administration shall be handled against certification materials and fee statements.

Article 24 — For Renminbi proceeds from the sale of articles, equipment and appliances for personal use brought in from abroad or purchased within China by institutions stationed in China and persons coming to China, where the proceeds need to be remitted abroad, exchange at designated foreign exchange banks authorized by the foreign exchange administration shall be handled against the business registration certificate or personal identity certificate and the sale voucher.

Article 25 — Foreigners, overseas Chinese, and Hong Kong, Macao and Taiwan compatriots temporarily coming to China who have unused Renminbi remaining upon departure may, against their passports and the original exchange water bills (valid for six months), exchange it back into foreign exchange and take it out of the country.

Chapter III — Settlement, Sale and Payment of Foreign Exchange under the Capital Account

Article 26 — Foreign exchange under the capital account of domestic institutions shall be deposited in foreign exchange accounts opened with banks engaged in foreign exchange business.

Article 27 — The following foreign exchange of domestic institutions shall not be settled without approval by the foreign exchange administration:

- (1) foreign exchange remitted in by overseas legal persons or natural persons as investment;
- (2) foreign exchange obtained from overseas loans and the issuance of foreign currency bonds and stocks;
- (3) other foreign exchange income under the capital account approved by the State Administration of Foreign Exchange.

Domestic foreign exchange loans other than export bills purchased, and international commercial loans borrowed by Chinese-funded enterprises, shall not be settled.

Article 28 — Foreign exchange income from the sale of real estate and other assets abroad by domestic institutions shall, except for the amount limited by Article 10 of these Provisions, be sold to designated foreign exchange banks.

Article 29 — For repayment of principal of foreign exchange loans from domestic Chinese-funded financial institutions by domestic institutions, the Registration Certificate for Foreign Exchange (Re-lending) Loans, the loan contract and the principal repayment notice from the creditor institution shall be presented, and payment shall be made from their foreign exchange accounts or exchanged at designated foreign exchange banks.

Article 30 — For the following foreign exchange use under the capital account of domestic institutions, application shall be made to the foreign exchange administration against the listed valid credentials, and payment shall be made from their foreign exchange accounts or exchanged at designated foreign exchange banks against the approval document of the foreign exchange administration:

- (1) repayment of principal of foreign debts, against the Foreign Debt Registration Certificate, the loan contract and the principal repayment notice from the creditor institution;
- (2) foreign exchange for performance under external guarantees, against the guarantee contract, the Foreign Exchange Guarantee Registration Certificate issued by the foreign exchange administration and the payment notice from the overseas institution;
- (3) remittance of funds for overseas investment, against the approval documents of the competent state authorities and the investment contract;
- (4) registered capital of the Chinese investor of a foreign-invested enterprise that, upon approval, needs to be contributed in foreign exchange, against the approval documents of the competent state authorities and the contract.

Article 31 — For the increase, transfer or other disposal of the foreign exchange registered capital of foreign-invested enterprises, the board of directors' resolution shall be presented and, after verification by the foreign exchange administration, payment shall be made from their foreign exchange accounts or exchanged at designated foreign exchange banks against the foreign exchange sale notice issued by the foreign exchange administration; for investment within China of the foreign exchange registered capital of investment-oriented foreign-invested enterprises and capital increase or reinvestment within China of profits obtained by the foreign party, the approval documents of the foreign exchange administration shall be presented.

Chapter IV — Supervision of the Settlement, Sale and Payment of Foreign Exchange

Article 32 — Foreign-invested enterprises may handle the settlement and sale of foreign exchange at designated foreign exchange banks, and may also buy and sell foreign exchange at foreign exchange swap centers; other domestic institutions, resident individuals, institutions stationed in China and persons coming to China may only handle the settlement and sale of foreign exchange at designated foreign exchange banks.

Article 33 — When making external payments from foreign exchange accounts, banks engaged in foreign exchange business shall, in accordance with the prescribed scope of foreign exchange account receipts and payments and the corresponding provisions of Chapters II and III of these Provisions, conduct review before handling payment.

Article 34 — After handling the sale and payment of foreign exchange, designated foreign exchange banks shall affix their seals to the corresponding valid credentials and valid commercial documents and retain them for future reference.

Article 35 — Designated foreign exchange banks shall, in accordance with the central parity rate of the Renminbi announced daily by the People's Bank of China and the prescribed buy-sell spread, determine the foreign exchange purchase and sale prices for customers and handle the settlement and sale of foreign exchange business.

Article 36 — Payment from foreign exchange accounts or purchase of foreign exchange for payment shall be handled on the date prescribed by the relevant settlement method or contract, and shall not be made in advance; except for foreign exchange used for the repayment of principal and interest and deposits for letters of credit/letters of guarantee, foreign exchange shall not be purchased in advance.

Article 37 — In order to enable units using foreign exchange with forward payment contracts or debt repayment agreements to avoid exchange rate risks, designated foreign exchange banks may, in accordance with the relevant provisions, handle forward purchase and sale of Renminbi and foreign currency and other hedging business for them.

Article 38 — For imports under barter trade, foreign exchange shall not be purchased or paid from foreign exchange accounts without approval by the foreign exchange administration.

Article 39 — Banks engaged in foreign exchange business shall, in accordance with the provisions, report settlement, sale and payment of foreign exchange reports to the foreign exchange administration. Designated foreign exchange banks shall establish an internal supervision system for the settlement and sale of foreign exchange, and shall promptly report any abnormal settlement and sale of foreign exchange situations to the local branch of the State Administration of Foreign Exchange.

Article 40 — Domestic institutions shall open foreign exchange accounts with banks engaged in foreign exchange business selected at their place of registration, and handle the settlement, purchase and payment of foreign exchange business in accordance with these Provisions. Domestic institutions opening foreign exchange accounts in other places or abroad shall apply to the foreign exchange administration. Foreign exchange income under the current account of foreign-invested enterprises may, upon approval, be deposited in foreign exchange settlement accounts opened with banks engaged in foreign exchange business selected at their place of registration.

Article 41 — Banks engaged in foreign exchange business and domestic institutions with settlement, purchase and payment of foreign exchange business shall unconditionally accept supervision and inspection by the foreign exchange administration and present and provide relevant materials. For violations of these Provisions, the foreign exchange administration may impose penalties of warning, confiscation of illegal income and fines; for banks engaged in foreign exchange business that violate these Provisions with serious circumstances, the foreign exchange administration may impose the penalty of suspension of their settlement and sale of foreign exchange business.

Chapter V — Supplementary Provisions

Article 42 — The State Administration of Foreign Exchange shall be responsible for the interpretation of these Provisions.

Article 43 — These Provisions shall take effect as of July 1, 1996. The Interim Provisions on the Administration of the Settlement, Sale and Payment of Foreign Exchange promulgated on March 26, 1994 shall be repealed simultaneously. Where other provisions conflict with these Provisions, these Provisions shall prevail.

Note: These Provisions have been amended by the Reply of the State Administration of Foreign Exchange on the Issue of Advance Purchase of Foreign Exchange for Deposits under Letters of Credit/Letters of Guarantee (Hui Fu [2001] No. 73).

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