Interim Provisions on Administrative or Disciplinary Sanctions for Acts in Violation of Foreign Exchange Control Provisions

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

Approved by the State Council on December 16, 1998; promulgated by Decree No. 7 of the Ministry of Supervision, the Ministry of Personnel, the People's Bank of China, the General Administration of Customs and the State Administration of Foreign Exchange on January 25, 1999; amended in accordance with the Decision of the State Council on Repealing and Amending Certain Administrative Regulations on January 8, 2011.

Article 1 — These Provisions are formulated for the purpose of maintaining the order of the State's foreign exchange administration, punishing acts in violation of foreign exchange administration provisions, and preventing financial risks.

Article 2 — These Provisions apply to State functionaries and to the staff of financial institutions approved to conduct foreign exchange business and of State-owned foreign trade and economic cooperation enterprises.

For the purposes of these Provisions, "financial institutions approved to conduct foreign exchange business" means Chinese-funded banks, non-bank financial institutions and their branches approved to conduct foreign exchange business.

For the purposes of these Provisions, "State-owned foreign trade and economic cooperation enterprises" means State-owned foreign trade companies, State-owned production enterprises that import and export on their own account, State-owned enterprises with the right to import and export, and enterprises in which State-owned assets hold a controlling or dominant position.

Article 3 — Where an act listed in these Provisions in violation of foreign exchange administration provisions is committed, in addition to administrative penalties imposed in accordance with law, the relevant responsible persons shall be given administrative sanctions or disciplinary sanctions in accordance with these Provisions; where the act constitutes a crime, criminal liability shall be pursued in accordance with law.

Article 4 — Where a staff member of a financial institution approved to conduct foreign exchange business or of a State-owned foreign trade and economic cooperation enterprise commits any of the following acts of fraudulently purchasing foreign exchange, the staff member shall be given the sanction of probation within the Party or of retained employment under surveillance if the amount is less than 100,000 US dollars, and shall be given the sanction of dismissal if the amount is 100,000 US dollars or more:

(1) forging or altering vouchers and documents such as customs declaration forms, import certificates and approval documents of foreign exchange administration departments;

(2) using or trading in forged or altered vouchers and documents such as customs declaration forms, import certificates and approval documents of foreign exchange administration departments;

(3) repeatedly using vouchers and documents such as customs declaration forms, import certificates and approval documents of foreign exchange administration departments;

(4) providing Renminbi funds or other services knowing that they will be used for fraudulently purchasing foreign exchange;

(5) fraudulently purchasing foreign exchange by any other means.

Where an entity commits any of the acts in the preceding paragraph, the leading personnel bearing direct responsibility and other directly responsible persons shall be given disciplinary sanctions in accordance with

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the preceding paragraph.

Article 5 — Where a staff member of a financial institution approved to conduct foreign exchange business or of a State-owned foreign trade and economic cooperation enterprise commits any of the following acts of illegal arbitrage of foreign exchange, the staff member shall be given the sanction of warning, demerit, or serious demerit if the amount is less than 100,000 US dollars; shall be given the sanction of demotion or removal from office if the amount is 100,000 US dollars or more but less than 1,000,000 US dollars; and shall be given the sanction of retained employment under surveillance or dismissal if the amount is 1,000,000 US dollars or more:

(1) in violation of State provisions, paying in Renminbi or paying in kind for import payments or other similar expenditures that should be paid in foreign exchange, except for lawful barter trade;

(2) paying expenses in China in Renminbi for another person while the other party pays foreign exchange;

(3) providing Renminbi funds or other services knowing that they will be used for illegal arbitrage of foreign exchange;

(4) illegally arbitraging foreign exchange by any other means.

Where an entity commits any of the acts in the preceding paragraph, the leading personnel bearing direct responsibility and other directly responsible persons shall be given disciplinary sanctions in accordance with the preceding paragraph.

Article 6 — Where a staff member of a financial institution approved to conduct foreign exchange business or of a State-owned foreign trade and economic cooperation enterprise commits any of the following acts of evading foreign exchange, the staff member shall be given the sanction of removal from office if the amount is less than 100,000 US dollars; shall be given the sanction of retained employment under surveillance if the amount is 100,000 US dollars or more but less than 1,000,000 US dollars; and shall be given the sanction of dismissal if the amount is 1,000,000 US dollars or more:

(1) in violation of State provisions, depositing foreign exchange abroad without authorization;

(2) failing to sell foreign exchange to designated foreign exchange banks in accordance with State provisions;

(3) remitting or carrying foreign exchange out of the territory in violation of State provisions;

(4) carrying or mailing out of the territory foreign currency deposit certificates or foreign currency negotiable securities without the approval of foreign exchange administration departments;

(5) providing Renminbi funds or other services knowing that they will be used for evading foreign exchange;

(6) evading foreign exchange by any other means.

Where an entity commits any of the acts in the preceding paragraph, the leading personnel bearing direct responsibility and other directly responsible persons shall be given disciplinary sanctions in accordance with the preceding paragraph.

Article 7 — Where a staff member of a financial institution approved to conduct foreign exchange business or of a State-owned foreign trade and economic cooperation enterprise illegally trades in foreign exchange outside the trading venues prescribed by the State for the purpose of profit, the staff member shall be given the sanction of removal from office if the amount is less than 50,000 US dollars or the unlawful gains are less than 10,000 yuan; shall be given the sanction of retained employment under surveillance if the amount is 50,000 US dollars or more but less than 100,000 US dollars, or the unlawful gains are 10,000 yuan or more but less than 30,000 yuan; and shall be given the sanction of dismissal if the amount is 100,000 US dollars or more, or the unlawful gains are 30,000 yuan or more.

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Where an entity commits the act in the preceding paragraph, the leading personnel bearing direct responsibility and other directly responsible persons shall be given disciplinary sanctions in accordance with the preceding paragraph.

Article 8 — Where a State-owned foreign trade and economic cooperation enterprise, through negligence in agency import business, causes another person to fraudulently purchase foreign exchange or to illegally arbitrage foreign exchange, the leading personnel bearing direct responsibility and other directly responsible persons shall be given disciplinary sanctions: warning, demerit or serious demerit if the amount is less than 100,000 US dollars; demotion or removal from office if the amount is 100,000 US dollars or more but less than 1,000,000 US dollars; and retained employment under surveillance or dismissal if the amount is 1,000,000 US dollars or more.

Article 9 — Where a financial institution approved to conduct foreign exchange business, through negligence in handling foreign exchange settlement, sale, payment or account-opening business, causes another person to fraudulently purchase foreign exchange, to illegally arbitrage foreign exchange or to evade foreign exchange, the leading personnel bearing direct responsibility and other directly responsible persons shall be given disciplinary sanctions: warning, demerit or serious demerit if the amount is less than 100,000 US dollars; demotion or removal from office if the amount is 100,000 US dollars or more but less than 1,000,000 US dollars; and retained employment under surveillance or dismissal if the amount is 1,000,000 US dollars or more.

Article 10 — Where a State functionary commits any of the acts listed in these Provisions in violation of foreign exchange administration provisions, such as fraudulently purchasing foreign exchange, illegally arbitraging foreign exchange, evading foreign exchange or illegally trading in foreign exchange, the functionary shall be given the sanction of demotion, removal from office or dismissal.

Article 11 — Where a State functionary of a customs or foreign exchange administration department conspires with a person committing an act of fraudulently purchasing foreign exchange, illegally arbitraging foreign exchange, evading foreign exchange or illegally trading in foreign exchange and provides convenience to the person, or provides services knowing that the vouchers and documents are forged or altered, or commits other acts of abusing power or practicing favoritism and fraud that cause another person to fraudulently purchase foreign exchange, illegally arbitrage foreign exchange or evade foreign exchange, the functionary shall be given the sanction of dismissal.

Where a State functionary of a customs or foreign exchange administration department neglects his or her duties and thereby causes another person to fraudulently purchase foreign exchange, illegally arbitrage foreign exchange or evade foreign exchange, the functionary shall be given the sanction of demotion or removal from office; where the circumstances are serious, the functionary shall be given the sanction of dismissal.

Article 12 — Where a leading personnel bearing direct responsibility fails to stop or investigate an act in violation of foreign exchange administration provisions occurring in his or her own entity, the personnel shall be given the sanction of warning, demerit or serious demerit if the circumstances are relatively serious, and shall be given the sanction of demotion or removal from office if the circumstances are serious.

Article 13 — Where a State functionary, by taking advantage of his or her power, shields an act in violation of foreign exchange administration provisions, or commits any other act obstructing the supervision and inspection of foreign exchange administration law enforcement, the functionary shall be given the sanction of removal from office or dismissal.

Where a staff member of a financial institution approved to conduct foreign exchange business or of a State-owned foreign trade and economic cooperation enterprise commits the act in the preceding paragraph, the staff member shall be given the sanction of retained employment under surveillance or dismissal.

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Where an entity commits the act in the first paragraph of this Article, the leading personnel bearing direct responsibility and other directly responsible persons shall be given administrative sanctions or disciplinary sanctions in accordance with the preceding two paragraphs, respectively.

Article 14 — Where a person voluntarily confesses an act in violation of foreign exchange administration provisions and surrenders the foreign exchange and unlawful gains, or voluntarily takes measures to avoid losses, or performs meritorious service, the administrative sanction or disciplinary sanction may be given in a lighter or mitigated form, or may be exempted.

Where a person conceals the truth, or practices fraud and gives false testimony, or conceals or destroys evidence, or refuses to provide the relevant documents, materials and evidentiary materials, the administrative sanction or disciplinary sanction shall be given in a heavier or aggravated form.

Article 15 — State-owned institutions that import and export on their own account and their staff members, if they commit the acts listed in these Provisions in violation of foreign exchange administration provisions, shall be handled by reference to these Provisions.

Article 16 — These Provisions shall enter into force as of the date of promulgation. Acts in violation of foreign exchange administration provisions that occurred after the entry into force of the Regulations of the People's Republic of China on Foreign Exchange Administration on April 1, 1996 and before the entry into force of these Provisions, and that have not yet been handled, shall be governed by these Provisions.

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