Provisions on Foreign Exchange Administration of Cross-Border Guarantees (Hui Fa No. 29, 2014)

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Chapter I — General Provisions

Article 1 — For the purposes of improving the foreign exchange administration of cross-border guarantees, regulating the receipt and payment activities under cross-border guarantees, and promoting the sound and orderly development of cross-border guarantee business, these Provisions are formulated in accordance with the Property Law of the People's Republic of China, the Guarantee Law of the People's Republic of China, the Regulations of the People's Republic of China on Foreign Exchange Administration and other laws and regulations.

Article 2 — For the purposes of these Provisions, "cross-border guarantee" means a guarantee provided by a guarantor to a creditor in writing, which is legally binding and undertakes to perform the relevant payment obligations in accordance with the guarantee contract, and which may give rise to cross-border receipt and payment of funds or cross-border transfer of ownership of assets and other balance-of-payments transactions.

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Article 3 — Based on the place of registration of the parties to a guarantee, cross-border guarantees are classified into domestic guarantees for foreign loans, foreign guarantees for domestic loans, and other forms of cross-border guarantees.

A "domestic guarantee for foreign loan" means a cross-border guarantee where the guarantor is registered within the domestic territory and both the debtor and the creditor are registered outside the domestic territory.

A "foreign guarantee for domestic loan" means a cross-border guarantee where the guarantor is registered outside the domestic territory and both the debtor and the creditor are registered within the domestic territory.

"Other forms of cross-border guarantees" means cross-border guarantee situations other than the domestic guarantees for foreign loans and foreign guarantees for domestic loans referred to above.

Article 4 — The State Administration of Foreign Exchange and its branches (hereinafter the "foreign exchange authority") shall be responsible for regulating the various balance-of-payments transactions arising from cross-border guarantees.

Article 5 — Domestic institutions providing or accepting cross-border guarantees shall comply with national laws and regulations and the provisions of the competent industry authorities, and shall complete the relevant foreign exchange administration formalities in accordance with these Provisions.

All parties to a guarantee shall observe business ethics and act honestly and in good faith when engaging in cross-border guarantee business.

Article 6 — The foreign exchange authority shall implement registration-based administration of domestic guarantees for foreign loans and foreign guarantees for domestic loans.

Where a domestic institution handles domestic-guarantee-for-foreign-loan business, it shall complete domestic-guarantee-for-foreign-loan registration in accordance with these Provisions; where a registered domestic guarantee for a foreign loan is performed, the guarantor may handle the performance on its own; after performance, external creditor's right registration shall be completed in accordance with these Provisions.

Where a domestic institution handles foreign-guarantee-for-domestic-loan business, it shall meet the relevant conditions specified in these Provisions; where a registered foreign guarantee for a domestic loan is performed, the creditor may handle the receipt related to the performance on its own; after performance, the domestic debtor shall complete external debt registration formalities in accordance with these Provisions.

Article 7 — Where a domestic institution provides or accepts other forms of cross-border guarantees, it shall comply with the relevant foreign exchange administration provisions.

Chapter II — Domestic Guarantee for Foreign Loan

Article 8 — In handling domestic-guarantee-for-foreign-loan business, a guarantor may sign a domestic-guarantee-for-foreign-loan contract on its own, provided that it complies with national laws and regulations, the provisions of the competent industry authorities and foreign exchange administration provisions.

Article 9 — After signing a domestic-guarantee-for-foreign-loan contract, the guarantor shall complete domestic-guarantee-for-foreign-loan registration in accordance with the following provisions.

Where the guarantor is a bank, the guarantor shall report the relevant data of the domestic-guarantee-for-foreign-loan business to the foreign exchange authority through a data interface program or other means.

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Where the guarantor is a non-bank financial institution or an enterprise (hereinafter a "non-bank institution"), it shall complete the signing registration formalities for the domestic guarantee for foreign loan at the local foreign exchange authority within 15 working days after signing the guarantee contract. Where the main terms of the guarantee contract are changed, the signing change registration formalities for the domestic guarantee for foreign loan shall be completed.

The foreign exchange authority shall conduct procedural review of, and complete registration for, the registration applications of non-bank institution guarantors in accordance with the principles of authenticity and compliance.

Article 10 — Banks and non-bank financial institutions providing domestic guarantees for foreign loans as guarantors shall have the corresponding business qualification for guarantee operations in accordance with the provisions of the competent industry authorities.

Article 11 — The use of funds under a domestic guarantee for a foreign loan shall comply with the following provisions:

(1) Funds under a domestic guarantee for a foreign loan may be used only for relevant expenditures within the normal business scope of the debtor, and may not be used to support the debtor's transactions outside its normal business scope, may not fabricate a trade background for arbitrage, and may not be used for other forms of speculative transactions.

(2) Without the approval of the foreign exchange authority, the debtor may not directly or indirectly repatriate the funds under the guarantee for use within the domestic territory through domestic lending, equity investment or securities investment.

Article 12 — When handling domestic-guarantee-for-foreign-loan business, the guarantor shall review the debtor's subject qualifications, the use of funds under the guarantee, the expected source of repayment funds, the likelihood of performance of the guarantee and the relevant transaction background, conduct due diligence on compliance with domestic and foreign laws and regulations, and supervise in an appropriate manner the debtor's use of the funds under the guarantee in accordance with its declared purposes.

Article 13 — Where the guarantor's payment obligation under a domestic guarantee for a foreign loan expires, the debtor repays the debt under the guarantee, or the guarantee is performed, the guarantor shall complete the registration cancellation formalities for the domestic guarantee for foreign loan.

Article 14 — Where performance of a domestic guarantee for a foreign loan occurs, a guarantor that is a bank may handle the external payment under the performance on its own.

Where the guarantor is a non-bank institution, it may, by presenting the guarantee registration documents, handle the foreign exchange purchase and external payment under the performance directly at a bank. Before the overseas debtor repays the debt owed to the domestic guarantor as a result of the guarantor's performance, the guarantor must, without the approval of the foreign exchange authority, suspend the signing of new domestic-guarantee-for-foreign-loan contracts.

Article 15 — Where performance of a domestic guarantee for a foreign loan occurs, the domestic guarantor or counter-guarantor that becomes an external creditor shall complete external creditor's right registration formalities in accordance with the provisions.

Article 16 — Domestic individuals may act as guarantors and handle domestic-guarantee-for-foreign-loan business with reference to non-bank institutions.

Chapter III — Foreign Guarantee for Domestic Loan

Article 17 — A domestic non-financial institution borrowing loans or obtaining credit lines from domestic financial institutions may, on the premise of satisfying all of the following conditions, accept a guarantee

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provided by an overseas institution or individual and sign a foreign-guarantee-for-domestic-loan contract on its own:

(1) the debtor is a non-financial institution registered and operating within the domestic territory;

(2) the creditor is a financial institution registered and operating within the domestic territory;

(3) the subject of the guarantee is a loan in domestic or foreign currency (excluding entrusted loans) provided by a financial institution, or a binding credit line; and

(4) the form of the guarantee complies with domestic and foreign laws and regulations.

Without approval, domestic institutions may not handle foreign-guarantee-for-domestic-loan business beyond the above scope.

Article 18 — Where a domestic debtor engages in foreign-guarantee-for-domestic-loan business, the domestic financial institution granting the loan or providing the credit line shall report the relevant data of the foreign-guarantee-for-domestic-loan business to the foreign exchange authority on a centralized basis.

Article 19 — Where performance of a foreign guarantee for a domestic loan occurs, the domestic debtor shall, before repaying its debt to the overseas guarantor and without the approval of the foreign exchange authority, suspend the signing of new foreign-guarantee-for-domestic-loan contracts; where a foreign-guarantee-for-domestic-loan contract has been signed but the loan has not been drawn or has not been fully drawn, the domestic debtor shall, without the approval of the local foreign exchange authority, suspend the handling of new drawdowns.

The outstanding principal balance of the external liabilities formed by a domestic debtor as a result of performance of a foreign guarantee for a domestic loan shall not exceed its audited net assets at the end of the preceding year.

When applying to a creditor to handle foreign-guarantee-for-domestic-loan business, a domestic debtor shall truthfully and completely provide the creditor with information on its debt defaults, external debt registration and debt repayment in relation to foreign-guarantee-for-domestic-loan business it has already handled.

Article 20 — Where performance of a foreign guarantee for a domestic loan occurs overseas, the domestic debtor shall complete short-term external debt signing registration and the relevant information filing formalities at the local foreign exchange authority. The foreign exchange authority shall conduct post-hoc verification of the compliance of the debtor's foreign-guarantee-for-domestic-loan business at the external debt signing registration stage.

Chapter IV — Foreign Exchange Administration of Security Interests

Article 21 — The foreign exchange authority shall not review the legality of the security interests created by the parties to a guarantee. The parties to a guarantee shall confirm on their own that the contents of the guarantee contract comply with domestic and foreign laws and regulations and the provisions of the competent industry authorities.

Article 22 — Cross-border receipt and payment and transaction matters arising between the guarantor and the creditor from the provision of security interests such as mortgage and pledge shall comply with any existing restrictive or procedural foreign exchange administration provisions.

Article 23 — Where the guarantor and the creditor are respectively located within and outside the domestic territory, or the place of registration of the security interest (or the location of the property or the source of proceeds) and either the guarantor or the creditor are respectively located within and outside the domestic territory, the domestic guarantor or domestic creditor shall complete the relevant foreign exchange administration formalities in accordance with the following provisions:

(1) Where at least two of the place of registration of the guarantor, the place of registration of the creditor, or the place of registration of the security interest (or the location of the property or the source of proceeds) are located within and outside the domestic territory respectively, the manner in which the guarantor realizes the security interest shall comply with the relevant legal provisions.

(2) Unless otherwise expressly provided, where the guarantor or creditor applies to remit out or receive the proceeds from disposal of the guaranteed property, it may apply directly to a domestic bank; after the bank has reviewed the authenticity and compliance of the guarantee performance and retained the necessary materials, the guarantor or creditor may handle the relevant foreign exchange purchase, foreign exchange settlement and cross-border receipt and payment.

(3) Where the ownership of the relevant guaranteed property is transferred between the guarantor and the creditor and cross-border investment foreign exchange registration is required in accordance with the provisions, the parties shall complete the relevant registration or change formalities.

Article 24 — Where a guarantor provides a security interest to a creditor for a third-party debtor, constituting a domestic guarantee for a foreign loan or a foreign guarantee for a domestic loan, it shall complete guarantee registration formalities in accordance with the relevant provisions on domestic guarantees for foreign loans or foreign guarantees for domestic loans, and comply with the relevant provisions.

Where a security interest registered with the foreign exchange authority is not lawfully created for any reason, the guarantor shall cancel the relevant registration with the foreign exchange authority.

Chapter V — Supplementary Provisions

Article 25 — Where a domestic institution provides or accepts cross-border guarantees other than domestic guarantees for foreign loans and foreign guarantees for domestic loans, it may sign the cross-border guarantee contract on its own on the premise of complying with domestic and foreign laws and regulations and these Provisions. Unless otherwise expressly provided by the foreign exchange authority, the guarantor and debtor need not complete registration or filing with the foreign exchange authority for other forms of cross-border guarantees.

Where a domestic institution handles other forms of cross-border guarantees, it may handle guarantee performance on its own. Where the external creditor's rights or debts under the guarantee require prior approval or verification, or changes to external creditor's rights or debts arise as a result of guarantee performance, the relevant approval or registration formalities shall be completed in accordance with the provisions.

Article 26 — A domestic debtor's external payment of guarantee fees may be handled by applying directly to a bank in accordance with the relevant provisions on foreign exchange administration of trade in services.

Article 27 — The guarantor and debtor shall not sign a cross-border guarantee contract while knowing or having reason to know that the performance obligation under the guarantee will definitely arise.

Article 28 — When the guarantor, debtor or creditor applies to a domestic bank to handle foreign exchange purchase and payment or receipt and settlement related to a cross-border guarantee, the domestic bank shall conduct due diligence review of the background of the cross-border guarantee transaction to determine that the guarantee contract complies with Chinese laws and regulations and these Provisions.

Article 29 — The approval, registration or filing of a cross-border guarantee contract by the foreign exchange authority, and the other administration matters and requirements specified in these Provisions, shall not constitute conditions for the effectiveness of the cross-border guarantee contract.

Article 30 — The foreign exchange authority shall regularly analyze the overall situation of domestic guarantees for foreign loans and foreign guarantees for domestic loans, and closely monitor the impact of cross-border guarantees on the balance of payments.

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Article 31 — The foreign exchange authority shall conduct verification and inspection of the cross-border guarantee business of domestic institutions, and all parties to a guarantee and domestic banks shall provide relevant materials as required by the foreign exchange authority. Where cross-border guarantee business is not handled in accordance with these Provisions and the relevant provisions, the foreign exchange authority shall impose penalties in accordance with the Regulations of the People's Republic of China on Foreign Exchange Administration.

Article 32 — The State Administration of Foreign Exchange may, for the purpose of safeguarding the balance of payments, make timely adjustments to the manner of administration of cross-border guarantees.

Article 33 — These Provisions shall be interpreted by the State Administration of Foreign Exchange.

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