Provisions on Foreign Exchange Administration of Outbound Direct Investment by Domestic Institutions

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Chapter I — General Provisions

Article 1 — These Provisions are formulated, in accordance with the Foreign Exchange Administration Regulations of the People’s Republic of China and other relevant laws and regulations, for the purpose of promoting and facilitating outbound direct investment activities of domestic institutions, regulating the foreign exchange administration of outbound direct investment, and promoting the basic equilibrium of China’s balance of payments.

Article 2 — For the purposes of these Provisions, “outbound direct investment” means the act by which a domestic institution, after approval by the competent authority for outbound direct investment, establishes abroad, or obtains ownership of, control over, or the right of operation and management of, an existing enterprise or project, by means of establishment (wholly-owned, equity-joint-venture or contractual-joint-venture), merger and acquisition, equity participation or otherwise.

Article 3 — The State Administration of Foreign Exchange and its branches (hereinafter the “foreign exchange authorities”) shall supervise and administer the foreign exchange receipts and payments and the

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foreign exchange registration of domestic institutions in connection with outbound direct investment.

Article 4 — A domestic institution may use its own foreign exchange funds, domestic foreign exchange loans that comply with the relevant provisions, Renminbi purchased for foreign exchange, or physical objects, intangible assets and other sources of foreign exchange assets approved by the foreign exchange authorities to make outbound direct investment. The profits derived by a domestic institution from outbound direct investment may also be retained abroad for use in its outbound direct investment.

The "own foreign exchange funds" referred to in the preceding paragraph include foreign exchange funds held in accounts such as current account foreign exchange accounts and the capital accounts of foreign-invested enterprises.

Article 5 — The State Administration of Foreign Exchange may, in light of China's balance-of-payments situation and the state of outbound direct investment, adjust the scope of sources of foreign exchange funds for outbound direct investment by domestic institutions, the methods of administration thereof, and the relevant policies on the retention abroad of profits derived from outbound direct investment.

Chapter II — Foreign Exchange Registration and Remittance of Funds for Outbound Direct Investment

Article 6 — The foreign exchange authorities shall implement a system of foreign exchange registration and record-filing for outbound direct investment by domestic institutions and for the assets and related rights and interests formed thereby.

When handling foreign exchange registration for outbound direct investment with the local foreign exchange authority, a domestic institution shall explain the sources of foreign exchange funds for its outbound investment.

Article 7 — After obtaining approval from the competent authority for outbound direct investment, a domestic institution shall, with the following materials, handle foreign exchange registration for outbound direct investment with the local foreign exchange authority:

(1) a written application, together with a completed Outbound Direct Investment Foreign Exchange Registration Application Form (see Annex 1);

(2) explanatory materials on the sources of foreign exchange funds;

(3) the valid business license or registration certificate of the domestic institution, and its organization code certificate;

(4) the approval document or certificate issued by the competent authority for outbound direct investment in respect of the investment;

(5) where preliminary expenses have been remitted abroad, the relevant explanatory documents and remittance vouchers; and

(6) other materials required by the foreign exchange authorities.

After verifying that the aforesaid materials are correct, the foreign exchange authority shall register the relevant particulars in the relevant business system and issue an outbound direct investment foreign exchange registration certificate to the domestic institution. The domestic institution shall rely on this certificate to handle foreign exchange receipts and payments under outbound direct investment.

Where multiple domestic institutions jointly undertake a single outbound direct investment, the foreign exchange authority at the place where each domestic institution is located shall issue an outbound direct investment foreign exchange registration certificate to the relevant domestic institution respectively, and register the relevant particulars in the relevant business system.

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Article 8 — A domestic institution shall, with the approval document of the competent authority for outbound direct investment and the outbound direct investment foreign exchange registration certificate, handle the procedures for the remittance abroad of outbound direct investment funds with a designated foreign exchange bank. The designated foreign exchange bank shall handle the procedures for it after conducting authenticity review.

The cumulative amount of outbound direct investment funds remitted abroad by a designated foreign exchange bank for a domestic institution shall not exceed the total amount of outbound direct investment foreign exchange funds previously registered by the domestic institution with the foreign exchange authority in the relevant business system.

Article 9 — Within 60 days from the date of occurrence of any of the following circumstances, a domestic institution shall, with its outbound direct investment foreign exchange registration certificate, the approval or record-filing document of the competent authority for outbound direct investment and the relevant authenticity certification materials, handle foreign exchange registration, alteration or record-filing procedures for outbound direct investment with the local foreign exchange authority:

(1) where the domestic institution retains abroad the profits derived from outbound direct investment, or the capital-account foreign exchange income derived from capital reduction, share transfer or liquidation of the overseas enterprise in which it has invested, for use in establishing, merging with, acquiring or taking an equity interest in an unregistered overseas enterprise, it shall handle foreign exchange registration procedures for outbound direct investment in respect of the aforesaid direct investment activities;

(2) where the basic information of a registered overseas enterprise, such as its name, operating term, joint-venture partners and the mode of joint venture and cooperation, changes, or where circumstances such as capital increase, capital reduction, equity transfer or exchange, or merger or division occur, the domestic institution shall handle alteration procedures for outbound direct investment foreign exchange registration in respect of the aforesaid changes;

(3) where a registered overseas enterprise undergoes a major event not involving a change in capital, such as long-term equity or creditor investment or external guarantee, the domestic institution shall handle foreign exchange record-filing procedures for outbound direct investment in respect of the aforesaid major event.

Article 10 — Where the equity held by a domestic institution in an overseas enterprise is deregistered due to share transfer, bankruptcy, dissolution, liquidation, expiry of the operating term or other reasons, the domestic institution shall, within 60 days from the date of obtaining the relevant certification materials from the competent authority for outbound direct investment, handle the procedures for deregistration of outbound direct investment foreign exchange registration with the local foreign exchange authority with the relevant materials.

Article 11 — A domestic institution may, in accordance with the Foreign Exchange Administration Regulations of the People’s Republic of China and other relevant provisions, provide commercial loans or financing-type external guarantees to its outbound direct investment enterprise.

Article 12 — Where a domestic institution invests in a country or region subject to foreign exchange control, it may, in accordance with the relevant provisions, open a special foreign exchange account in another country or region not subject to foreign exchange control, for use in the receipt and payment of foreign exchange funds related to such investment.

Chapter III — Remittance of Preliminary Expenses for Outbound Direct Investment

Article 13 — “Preliminary expenses for outbound direct investment” means the expenses related to outbound direct investment that a domestic institution needs to pay abroad before establishing an investment project or enterprise abroad, including but not limited to:

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(1) the deposit required to be paid, in accordance with the law of the place where the project is located or the requirements of the transferor, for the acquisition of the equity of an overseas enterprise or the rights and interests in overseas assets;

(2) the bid security required to be paid in the course of tendering and bidding for an overseas project; and

(3) the expenses required, before making outbound direct investment, for conducting market surveys, leasing office premises and equipment, employing personnel, and engaging overseas intermediary institutions to provide services.

Article 14 — The preliminary expenses remitted abroad by a domestic institution shall generally not exceed 15% (inclusive) of the total amount of outbound direct investment (hereinafter the "total outbound direct investment amount") for which the domestic institution has applied to the competent authority for outbound direct investment, and the domestic institution shall apply to the local foreign exchange authority with the following materials:

(1) a written application (including the total outbound direct investment amount, the capital contributions of each party and the modes of contribution, and a description of the amount, purpose and source of funds of the required preliminary expenses, etc.);

(2) the valid business license or registration certificate of the domestic institution, and its organization code certificate;

(3) the relevant documents of the domestic institution's participation in the tender, merger or acquisition, or joint-venture or cooperation project (including letters of intent, memoranda or framework agreements signed by the Chinese and foreign parties, etc.);

(4) the written application already submitted by the domestic institution to the competent authority for outbound direct investment;

(5) a written undertaking issued by the domestic institution on the use of the preliminary expenses; and

(6) other relevant materials required by the foreign exchange authorities.

Where the preliminary expenses for outbound direct investment to be remitted abroad genuinely need to exceed 15% of the total outbound direct investment amount, the domestic institution shall apply to the branch of the State Administration of Foreign Exchange (including the foreign exchange administration department) at the place where it is located with the aforesaid materials.

The designated foreign exchange bank shall, with the approval instrument issued by the foreign exchange authority, handle the procedures for the purchase and payment of foreign exchange for the domestic institution, and promptly report the relevant information back to the foreign exchange authority.

Article 15 — The preliminary expenses already remitted abroad by a domestic institution shall be included in the total outbound direct investment amount of the domestic institution. When handling the remittance abroad of outbound direct investment funds for the domestic institution, the designated foreign exchange bank shall deduct the amount of the preliminary expenses already remitted abroad.

Article 16 — Where a domestic institution has still not completed the approval procedures for the outbound direct investment project within six months from the date of remitting the preliminary expenses abroad, it shall repatriate the remaining funds in the overseas account to the domestic foreign exchange account from which the funds were originally remitted. Where the repatriated foreign exchange funds were purchased with Renminbi, the domestic institution may, with the original foreign exchange purchase voucher, handle foreign exchange settlement with the designated foreign exchange bank.

The local foreign exchange authority shall be responsible for supervising the repatriation by the domestic institution of the remaining preliminary expenses. Where it is genuinely necessary for the preliminary work,

the aforesaid six-month period may be appropriately extended upon approval by the foreign exchange authority that originally granted approval, but the maximum extension shall not exceed 12 months.

Chapter IV — Remittance Inward and Settlement of Foreign Exchange under Outbound Direct Investment

Article 17 — Where a domestic institution repatriates to China the profits derived from outbound direct investment, it may retain such profits in its current account foreign exchange account or handle foreign exchange settlement.

After verifying that materials such as the outbound direct investment foreign exchange registration certificate of the domestic institution, the relevant financial statements of the overseas enterprise and its profit disposal decision, and the annual inspection report of the preceding year are correct, the designated foreign exchange bank shall handle the procedures for the crediting or settlement of the outbound direct investment profits of the domestic institution.

Article 18 — The capital-account foreign exchange income obtained by a domestic institution as a result of capital reduction, share transfer or liquidation of an overseas enterprise established by it shall be credited through a special foreign exchange account for the realization of assets, or retained abroad upon approval by the foreign exchange authority. The opening and crediting of a special foreign exchange account for the realization of assets shall be approved by the local foreign exchange authority in accordance with the relevant provisions; the settlement of funds in the account shall be applied for directly with the designated foreign exchange bank in accordance with the relevant provisions.

Article 19 — Where a domestic institution transfers all or part of the equity of its outbound direct investment enterprise to another domestic institution, the relevant funds shall be paid in Renminbi within China. The equity transferor shall handle the alteration or deregistration procedures for outbound direct investment foreign exchange registration with the local foreign exchange authority, and the equity transferee shall handle the outbound direct investment foreign exchange registration procedures for the equity acquired with the local foreign exchange authority.

Chapter V — Supplementary Provisions

Article 20 — Domestic institutions (other than financial institutions) shall participate in the annual inspection in accordance with the relevant provisions on the joint annual inspection of outbound investment. Where multiple domestic institutions jointly undertake a single outbound direct investment, they shall participate in the foreign exchange annual inspection with the foreign exchange authority at the place where each is located respectively.

Article 21 — Direct investment made by domestic institutions in the Hong Kong Special Administrative Region, the Macao Special Administrative Region and the Taiwan region shall be administered by reference to these Provisions.

Article 22 — The foreign exchange administration of outbound direct investment by domestic financial institutions shall be implemented by reference to these Provisions. Where the relevant regulatory authorities have separate provisions on the use of funds in outbound direct investment by domestic financial institutions, such provisions shall prevail.

Article 23 — When handling business such as foreign exchange receipts and payments and foreign exchange registration under outbound direct investment, domestic institutions shall handle such business through the relevant business systems in accordance with the relevant provisions.

Designated foreign exchange banks shall report the information on foreign exchange receipts and payments under outbound direct investment back to the foreign exchange authority through the relevant business systems.

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Article 24 — Where a domestic institution violates these Provisions, the foreign exchange authority shall impose penalties in accordance with the Foreign Exchange Administration Regulations of the People's Republic of China and other relevant provisions; where the violation constitutes a crime, criminal liability shall be pursued in accordance with the law.

Article 25 — These Provisions shall be interpreted by the State Administration of Foreign Exchange.

Article 26 — These Provisions shall take effect on August 1, 2009. The other normative documents listed in Annex 2 shall be repealed simultaneously. Where previous regulations are inconsistent with these Provisions, these Provisions shall prevail.

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