Regulations on Land Reclamation of China (the PRC)

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Chapter I — General Provisions

Article 1 — These Regulations are formulated in accordance with the Land Administration Law of the People's Republic of China for the purpose of implementing the basic State policy of cherishing and rationally utilizing land and genuinely protecting cultivated land, regulating land reclamation activities, strengthening land reclamation administration, and improving the social, economic and ecological benefits of land use.

Article 2 — The term "land reclamation" as used in these Regulations means the activity of taking remedial measures with respect to land damaged by production and construction activities and natural disasters so as to render it usable.

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Article 3 — Land damaged by production and construction activities shall be reclaimed by the production and construction unit or individual (hereinafter the land reclamation obligor) under the responsibility for reclamation on the principle of "whoever damages, reclaims." However, land damaged by production and construction activities for which the land reclamation obligor cannot be determined due to historical reasons (hereinafter historically damaged land) shall be organized and reclaimed by the people's government at or above the county level. Land damaged by natural disasters shall be organized and reclaimed by the people's government at or above the county level.

Article 4 — Production and construction activities shall use land economically and intensively, occupying no cultivated land or as little cultivated land as possible; with respect to land lawfully occupied, effective measures shall be taken to reduce the area of damaged land and mitigate the degree of land damage. Land reclamation shall adhere to the principles of scientific planning, measures suited to local conditions, comprehensive treatment, economic feasibility and rational utilization. Reclaimed land shall be used first for agriculture.

Article 5 — The competent department of land and resources under the State Council shall be responsible for the supervision and administration of land reclamation nationwide. The competent departments of land and resources of the local people's governments at or above the county level shall be responsible for the supervision and administration of land reclamation within their respective administrative areas. Other relevant departments of the people's governments at or above the county level shall properly perform the work related to land reclamation in accordance with these Regulations and their respective duties.

Article 6 — The preparation of land reclamation plans, the implementation of land reclamation projects and the acceptance of land reclamation shall comply with the national standards for land reclamation; where there are no national standards, they shall comply with the industry standards for land reclamation. The formulation of national standards and industry standards for land reclamation shall, based on such factors as the type and degree of land damage, the natural geographical conditions and the feasibility of reclamation, determine by category the reclamation methods, objectives and requirements for different types of damaged land.

Article 7 — The competent departments of land and resources of the local people's governments at or above the county level shall establish a land reclamation monitoring system to promptly keep abreast of the damage to land resources and the effects of land reclamation within their respective administrative areas. The competent department of land and resources under the State Council and the competent departments of land and resources of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall establish and improve land reclamation information management systems to collect, summarize and publish land reclamation data and information.

Article 8 — The competent departments of land and resources of the people's governments at or above the county level shall, according to their duties, strengthen the supervision and inspection of land reclamation. Units or individuals under inspection shall truthfully report the relevant circumstances and provide the necessary materials. No unit or individual may disrupt or obstruct land reclamation work or damage land reclamation projects, facilities or equipment.

Article 9 — The State encourages and supports scientific research and technological innovation in land reclamation and promotes advanced land reclamation technologies. Units and individuals that have made outstanding contributions to land reclamation work shall be commended by the people's governments at or above the county level.

Chapter II — Reclamation of Land Damaged by Production and Construction Activities

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Article 10 — The following damaged land shall be reclaimed by the land reclamation obligor: (1) land damaged by surface excavation such as open-pit mining, brick and tile firing, and sand excavation and earth borrowing; (2) land with surface subsidence caused by underground mining and the like; (3) land occupied and compressed by stockpiled solid waste such as mining stripping materials, waste rock, slag and fly ash; and (4) land damaged by temporary occupation for infrastructure construction such as energy, transport and water conservancy, and for other production and construction activities.

Article 11 — The land reclamation obligor shall prepare a land reclamation plan in accordance with the land reclamation standards and the provisions of the competent department of land and resources under the State Council.

Article 12 — A land reclamation plan shall include the following contents: (1) an overview of the project and the state of land use in the project area; (2) analysis and prediction of damaged land and evaluation of the feasibility of land reclamation; (3) the objectives and tasks of land reclamation; (4) the quality requirements to be met and the measures to be adopted for land reclamation; (5) the land reclamation works and investment estimates (budget estimates); (6) the arrangement of land reclamation expenses; (7) the work plan and schedule of land reclamation; and (8) other contents prescribed by the competent department of land and resources under the State Council.

Article 13 — The land reclamation obligor shall submit the land reclamation plan together with the relevant approval materials when completing the formalities for applying for construction land or mining rights. Where the land reclamation obligor fails to prepare a land reclamation plan or the land reclamation plan does not meet the requirements, the people's government with the power of approval shall not approve the construction land, and the competent department of land and resources with the power of approval shall not issue the mining license. Where construction land formalities were completed or a mining license was obtained before the implementation of these Regulations, and the land reclamation obligor continues to engage in production and construction activities after the implementation of these Regulations that cause land damage, the land reclamation obligor shall, in accordance with the provisions of the competent department of land and resources under the State Council, supplementarily prepare a land reclamation plan.

Article 14 — The land reclamation obligor shall carry out land reclamation work in accordance with the land reclamation plan. Mining enterprises shall also conduct dynamic monitoring and evaluation of land damage. Where the production and construction cycle is long and reclamation needs to be implemented in stages, the land reclamation obligor shall make unified planning and coordinated implementation of the land reclamation work and the production and construction activities, and determine the objectives and tasks, project planning and design, expense arrangements, project implementation schedule and completion time limits for each stage of land reclamation according to the progress of production and construction.

Article 15 — The land reclamation obligor shall include the land reclamation expenses in the production cost or the total investment of the construction project.

Article 16 — The land reclamation obligor shall establish a quality control system for land reclamation, comply with the land reclamation standards and the environmental protection standards, protect soil quality and the ecological environment, and avoid polluting the soil and groundwater. The land reclamation obligor shall first strip the topsoil of the cultivated land, forest land and grassland to be damaged, and the stripped topsoil shall be used for the reclamation of the damaged land. Using heavy metal pollutants or other toxic and harmful substances as backfill or fill materials is prohibited. Where land polluted by heavy metal pollutants or other toxic and harmful substances fails to meet the relevant national standards after reclamation, it shall not be used for planting edible crops.

Article 17 — The land reclamation obligor shall, before December 31 of each year, report to the competent department of land and resources of the local people's government at or above the county level the circumstances of land damage, the use of land reclamation expenses and the implementation of land

reclamation works in that year. The competent departments of land and resources of the local people's governments at or above the county level shall strengthen supervision of the land reclamation obligor's use of land reclamation expenses and implementation of land reclamation works.

Article 18 — Where the land reclamation obligor fails to reclaim the land, or still fails to pass the reclamation acceptance after rectification, it shall pay land reclamation fees, and the relevant competent department of land and resources shall organize the reclamation on its behalf. In determining the amount of land reclamation fees, comprehensive consideration shall be given to such factors as the type of land before damage, the actual damaged area, the degree of damage, the reclamation standards, the reclamation purpose and the engineering quantity required to complete the reclamation tasks. The specific measures for the collection, use and administration of land reclamation fees shall be formulated by the finance and price departments under the State Council in consultation with the relevant departments under the State Council. The land reclamation fees paid by the land reclamation obligor shall be used exclusively for land reclamation. No unit or individual may withhold, encroach upon or divert them.

Article 19 — With respect to State-owned land used by other units or individuals, or land owned by peasant collectives, that is damaged in production and construction activities, the land reclamation obligor shall, in addition to being responsible for reclamation, pay loss compensation to the units or individuals that suffered the loss. The loss compensation shall be determined through consultation between the land reclamation obligor and the units or individuals that suffered the loss according to the actual loss caused; where consultation fails, the parties may apply to the competent department of land and resources of the people's government at the place where the land is located for mediation or file a civil action in the people's court in accordance with law.

Article 20 — Where the land reclamation obligor fails to perform its land reclamation obligations in accordance with law, the people's government with the power of approval shall not approve its application for new construction land; and the competent department of land and resources with the power of approval shall not approve its application for a new mining license or for the renewal, change or cancellation of a mining license.

Chapter III — Reclamation of Historically Damaged Land and Land Damaged by Natural Disasters

Article 21 — The competent departments of land and resources of the people's governments at or above the county level shall conduct surveys and evaluations of historically damaged land and land damaged by natural disasters.

Article 22 — The competent departments of land and resources of the people's governments at or above the county level shall, on the basis of surveys and evaluations, prepare special land reclamation plans in accordance with the overall plans for land use, determine the key areas for reclamation and the objectives, tasks and requirements of reclamation, and organize implementation after reporting to the people's government at the same level for approval.

Article 23 — With respect to historically damaged land and land damaged by natural disasters, the people's governments at or above the county level shall invest funds for reclamation, or attract social investment for reclamation on the principle of "whoever invests, benefits." Where the holders of land rights are clear, supporting and preferential measures may be adopted to encourage the holders of land rights to reclaim the land on their own.

Article 24 — The State administers the reclamation of historically damaged land and land damaged by natural disasters by project. The competent departments of land and resources of the people's governments at or above the county level shall determine the annual reclamation projects according to the special land reclamation plans and the annual arrangement of land reclamation funds.

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Article 25 — Where the government invests in reclamation, the competent department of land and resources responsible for organizing the implementation of the land reclamation project shall organize the preparation of the land reclamation project design document, specifying the location, area, objectives and tasks, project planning and design, implementation schedule and completion time limit of the reclamation project. Where the holder of land rights reclaims the land on its own or social investment is made for reclamation, the holder of land rights or the investing unit or individual shall organize the preparation of the land reclamation project design document, and implement it after reporting to the competent department of land and resources responsible for organizing the implementation of the land reclamation project for examination and consent.

Article 26 — Where the government invests in reclamation, the relevant competent department of land and resources shall, in accordance with the provisions of the laws and regulations on bidding and tendering, determine the construction unit of the land reclamation project through public bidding. Where the holder of land rights reclaims the land on its own or social investment is made for reclamation, the construction unit of the land reclamation project shall be determined by the holder of land rights or the investing unit or individual in accordance with law.

Article 27 — The construction unit of a land reclamation project shall carry out reclamation in accordance with the land reclamation project design document. The competent department of land and resources responsible for organizing the implementation of the land reclamation project shall improve the project administration system and strengthen guidance, administration and supervision in project implementation.

Chapter IV — Acceptance of Land Reclamation

Article 28 — After completing the land reclamation tasks in accordance with the requirements of the land reclamation plan, the land reclamation obligor shall, in accordance with the provisions of the competent department of land and resources under the State Council, apply for acceptance to the competent department of land and resources of the local people's government at or above the county level at its locality, and the competent department of land and resources receiving the application shall conduct the acceptance together with the agriculture, forestry, environmental protection and other relevant departments at the same level. In conducting land reclamation acceptance, relevant experts shall be invited to conduct on-site surveys to verify whether the reclaimed land conforms to the land reclamation standards and the requirements of the land reclamation plan, verify the type, area and quality of the reclaimed land, and publicly announce the preliminary acceptance results and listen to the opinions of the relevant rights holders. Where the relevant rights holders raise objections to the completion of land reclamation, the competent department of land and resources shall, together with the relevant departments, conduct further verification and feed back the verification results to the relevant rights holders; where the circumstances are true, rectification opinions shall be put forward to the land reclamation obligor.

Article 29 — The competent department of land and resources responsible for organizing the acceptance shall, together with the relevant departments, complete the acceptance within 60 working days from the date of receipt of the land reclamation acceptance application; where the acceptance is passed, an acceptance confirmation shall be issued to the land reclamation obligor; where the acceptance is not passed, written rectification opinions shall be issued to the land reclamation obligor, listing the matters requiring rectification, and the land reclamation obligor shall re-apply for acceptance after completing the rectification.

Article 30 — After the completion of a government-invested land reclamation project, the competent department of land and resources responsible for organizing the implementation of the land reclamation project shall conduct preliminary acceptance in accordance with paragraph 2 of Article 28 of these Regulations. After the preliminary acceptance is completed, the competent department of land and resources responsible for organizing the implementation of the land reclamation project shall, in accordance with the provisions of the competent department of land and resources under the State Council, apply to the competent department of land and resources of the people's government at a higher level for final

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acceptance. The competent department of land and resources of the people's government at a higher level shall, together with the relevant departments, organize the acceptance in a timely manner. After the completion of a land reclamation project reclaimed by the holder of land rights on its own or reclaimed through social investment, the competent department of land and resources responsible for organizing the implementation of the land reclamation project shall, together with the relevant departments, conduct the acceptance.

Article 31 — Where land is reclaimed as agricultural land, the competent department of land and resources responsible for organizing the acceptance shall, together with the relevant departments, conduct follow-up evaluation of the effects of land reclamation within five years after the acceptance is passed, and put forward suggestions and measures for improving land quality.

Chapter V — Incentive Measures for Land Reclamation

Article 32 — Where the land reclamation obligor, within the prescribed time limit, reclaims and restores to their original state the agricultural land such as cultivated land, forest land and grassland damaged by production and construction activities, the cultivated land occupation tax already paid shall be refunded in accordance with the relevant State tax laws and regulations.

Article 33 — Where historically damaged land or land damaged by natural disasters that is reclaimed through social investment is State-owned land without a holder of the right of use, it may, with the approval of the people's government at or above the county level in accordance with law, be designated to the investing unit or individual for long-term crop farming, forestry, animal husbandry or fishery production. Where historically damaged land or land damaged by natural disasters that is reclaimed through social investment is land owned by peasant collectives or State-owned land with a holder of the right of use, the relevant competent department of land and resources shall organize the investing unit or individual and the holder of the land rights to sign a land reclamation agreement, specifying the objectives and tasks of reclamation and the use and benefit distribution of the reclaimed land.

Article 34 — Where the holders of the right of use of historically damaged and natural-disaster-damaged State-owned land, or the owners and holders of the right of use of historically damaged and natural-disaster-damaged land owned by peasant collectives, reclaim the damaged land as cultivated land on their own, subsidies shall be granted by the local people's government at or above the county level.

Article 35 — Where the local people's government at or above the county level reclaims historically damaged and natural-disaster-damaged construction land as cultivated land, it may, in accordance with the relevant State provisions, serve as a supplementary cultivated land quota when non-agricultural construction occupies cultivated land within the province, autonomous region or municipality directly under the Central Government.

Chapter VI — Legal Liability

Article 36 — Where a department responsible for the supervision and administration of land reclamation or any of its staff members commits any of the following acts, sanctions shall be imposed in accordance with law on the directly responsible persons in charge and other directly responsible persons; where the act of the directly responsible persons in charge and other directly responsible persons constitutes a crime, criminal responsibility shall be investigated in accordance with law: (1) approving construction land or approving mining licenses and the renewal, change or cancellation of mining licenses in violation of these Regulations; (2) withholding, encroaching upon or diverting land reclamation fees; (3) resorting to fraud in land reclamation acceptance; (4) failing to perform supervision and administration duties in accordance with law or failing to investigate and handle in accordance with law the acts discovered to violate these Regulations; (5) demanding or accepting money or property from others or seeking other benefits in examining land reclamation plans, implementing land reclamation projects, organizing land reclamation acceptance, or

conducting supervision and inspection; or (6) committing other acts of malpractices for personal gain, abuse of power or dereliction of duty.

Article 37 — Where a land reclamation obligor that completed construction land formalities or obtained a mining license before the implementation of these Regulations and continues to engage in production and construction activities after the implementation of these Regulations that cause land damage fails to supplementarily prepare a land reclamation plan as prescribed, it shall be ordered by the competent department of land and resources of the local people's government at or above the county level to make corrections within a prescribed time limit; where corrections are not made within the time limit, a fine of not less than RMB 100,000 but not more than RMB 200,000 shall be imposed.

Article 38 — Where the land reclamation obligor fails to include the land reclamation expenses in the production cost or the total investment of the construction project as prescribed, it shall be ordered by the competent department of land and resources of the local people's government at or above the county level to make corrections within a prescribed time limit; where corrections are not made within the time limit, a fine of not less than RMB 100,000 but not more than RMB 500,000 shall be imposed.

Article 39 — Where the land reclamation obligor fails to strip the topsoil of the cultivated land, forest land and grassland to be damaged as prescribed, it shall be ordered by the competent department of land and resources of the local people's government at or above the county level to make corrections within a prescribed time limit; where corrections are not made within the time limit, a fine of RMB 10,000 per hectare shall be imposed according to the land area that should have been subject to topsoil stripping.

Article 40 — Where the land reclamation obligor uses heavy metal pollutants or other toxic and harmful substances as backfill or fill materials, it shall be ordered by the competent environmental protection department of the local people's government at or above the county level to stop the illegal act and take treatment measures within a prescribed time limit to eliminate the pollution, and a fine of not less than RMB 100,000 but not more than RMB 500,000 shall be imposed; where treatment measures are not taken within the time limit, the competent environmental protection department may designate a unit with treatment capability to conduct treatment on its behalf, and the expenses required shall be borne by the violator.

Article 41 — Where the land reclamation obligor fails to report the circumstances of land damage, the use of land reclamation expenses or the implementation of land reclamation works as prescribed, it shall be ordered by the competent department of land and resources of the local people's government at or above the county level to make corrections within a prescribed time limit; where corrections are not made within the time limit, a fine of not less than RMB 20,000 but not more than RMB 50,000 shall be imposed.

Article 42 — Where the land reclamation obligor that should pay land reclamation fees in accordance with these Regulations fails to pay them, it shall be ordered by the competent department of land and resources of the local people's government at or above the county level to pay them within a prescribed time limit; where they are not paid within the time limit, a fine of not less than one time but not more than two times the land reclamation fees payable shall be imposed, and where the land reclamation obligor is a mining enterprise, the organ that issued the mining license shall revoke the mining license.

Article 43 — Where the land reclamation obligor refuses or obstructs the supervision and inspection by the competent department of land and resources, or resorts to fraud in accepting supervision and inspection, it shall be ordered by the competent department of land and resources to make corrections and a fine of not less than RMB 20,000 but not more than RMB 50,000 shall be imposed; where the responsible person constitutes a violation of public security administration, the public security organ shall impose a public security administration penalty in accordance with law; where the responsible person constitutes a crime, criminal responsibility shall be investigated in accordance with law. Where damaging land reclamation projects, facilities or equipment constitutes a violation of public security administration, the public security organ shall impose a public security administration penalty in accordance with law; where a crime is

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constituted, criminal responsibility shall be investigated in accordance with law.

Chapter VII — Supplementary Provisions

Article 44 — These Regulations shall be implemented as of the date of promulgation. The Provisions on Land Reclamation promulgated by the State Council on November 8, 1988 shall be repealed simultaneously.

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