



Regulations on Foreign Exchange System of the People's Republic of China

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Decree No. 532 of the State Council of the People's Republic of China

The *Regulations on Foreign Exchange System of the People's Republic of China*, reviewed and passed in the 20th executive meeting of the State Council on August 1, 2008, are hereby released and shall come into force simultaneously.

Wen Jiabao

Premier of the People's Republic of China

August 5, 2008

Regulations on Foreign Exchange System of the People's Republic of China

(Issued in the Decree No. 193 of the State Council on January 29, 1996, amended in accordance with the *Decision of the State Council to Revise the Regulations on Foreign Exchange System of the People's Republic of China* on January 14, 1997, and revised and passed in the 20th executive meeting of the State Council on August 1, 2008.)

Chapter I General Provisions

Article 1 These regulations are formulated with a view to improving foreign exchange administration, maintaining an equilibrium in the balance of payments and promoting sound economic development.

Article 2 The foreign exchange administration department of the State Council and its local offices (hereinafter referred to collectively as "the exchange administration agencies") shall exercise foreign exchange administration in accordance with laws and regulations and assume the responsibility for the implementation of these regulations.

Article 3 Foreign exchange, as referred to in these regulations, includes the following means of payments and assets denominated in foreign currency for international settlement:

- (1) cash in foreign currency, including banknotes and coins;
- (2) documents or instruments payable in foreign currency, including, among others, negotiable instruments, bank deposits, bank cards;
- (3) securities denominated in foreign currency, including, among others, bonds and stocks;
- (4) Special Drawing Rights,
- (5) other assets denominated in foreign currency.

Article 4 These regulations shall govern all activities in relation to receipts and payments in foreign exchange or foreign exchange operations of domestic entities and domestic individuals, and, receipts and payments in foreign exchange or foreign exchange operations of foreign entities and foreign individuals in the People's Republic of China.

Article 5 International payment and transfer in foreign exchange for current account transactions shall not be subject to government restrictions.

Article 6 The government undertakes a reporting system for balance of payments statistics.

The foreign exchange administration department of the State Council shall take the responsibility for compiling and monitoring balance of payments statistics, and publish these statistics on a regular basis.

Article 7 Financial institutions conducting foreign exchange operations shall conduct business operations through foreign exchange accounts opened for their clients in accordance with the regulations enacted by the foreign exchange administration department of the State Council.

Financial institutions duly authorized for foreign exchange operations shall report their clients' foreign exchange receipts and payments, and changes in foreign exchange accounts opened for their clients to the exchange administration agencies in accordance with laws and regulations.

Article 8 Foreign currency is prohibited from circulation and shall not be quoted for pricing or settlement in the territory of the People's Republic of China unless otherwise regulated by the government.

Article 9 Foreign exchange receipts of domestic entities and domestic individuals may be repatriated into or placed outside of the People's Republic of China. The foreign exchange administration department of the State Council shall determine the conditions, time limits and other factors of repatriation or overseas placement on the basis of the balance of payments situation and the need for foreign exchange administration.

Article 10 The foreign exchange administration department of the State Council shall hold, manage and operate foreign exchange reserves in accordance with laws and regulations, and follow the principles of safety, liquidity and profitability.

Article 11 In case of occurrence, or possible occurrence, of serious disequilibrium in the balance of payments or a severe crisis of the national economy, the government may adopt safeguards, controls or other necessary measures.

Chapter II Foreign Exchange Administration on Current Account Transactions

Article 12 Receipts and payments in foreign exchange for current account transactions shall have bona fide and legitimate transaction backgrounds. Financial institutions duly authorized for foreign exchange purchase and sale operations shall exercise due diligence in checking the authenticity of transaction documents and their consistency with the receipts and payments in foreign exchange in accordance with the regulations issued by the foreign exchange administration department of the State Council.

The foreign exchange administration agencies have the right to supervise and conduct inspections under the aforesaid regulation.

Article 13 Foreign exchange receipts for current account transactions may be retained or sold to financial institutions duly authorized for foreign exchange sale and purchase operations in accordance with the relevant regulations of the government.

Article 14 Foreign exchange payments for current account transactions may be made with foreign exchange owned by the payer, or with the foreign exchange purchased from financial institutions duly authorized for foreign exchange sale and purchase operations with the presence of such valid documents as specified by the foreign exchange administration department of the State Council.

Article 15 The foreign exchange administration department of the State Council shall determine the limits and reporting requirements of foreign currency allowed to be carried into or out of the People's Republic of China.

Chapter III Foreign Exchange Administration on Capital Account Transactions

Article 16 Direct investments within territory of the People's Republic of China by foreign entities and foreign individuals shall be registered with the foreign exchange administration agencies after being approved by the relevant authorities.

Issuance and transactions of securities or derivatives in the People's Republic of China by foreign entities or foreign individuals shall be made in accordance with the regulations governing market entry, and be registered in accordance with the regulations made by the foreign exchange administration department of the State Council.

Article 17 Overseas direct investment and overseas issuance or transactions of securities or derivatives by domestic entities and domestic individuals shall be registered in accordance with the regulations made by the foreign exchange administration department of the State Council. Where prior approval of, or registration with, the relevant authorities is required in pursuance of the regulations of the government, the approval or registration procedures shall be completed prior to the foreign exchange registration.

Article 18 The government undertakes quota management on external debt. External borrowing shall be undertaken in accordance with relevant regulations of the government and shall be registered with the foreign exchange administration agencies.

The foreign exchange administration department of the State Council shall take the responsibility for compiling and monitoring external debt statistics and publish these statistics on a regular basis.

Article 19 In the case of offering an external guarantee, an application shall be made to the foreign exchange administration agencies. The foreign exchange administration agencies may either approve or reject the application taking into account the applicant's assets and liabilities, and other relevant factors. Where the scope of business operations of domestic entities requires approval from the relevant authorities in accordance with the regulations of the government, such approval shall be obtained before making the application to the foreign exchange administration agencies. After signing an external guarantee contract, the applicant shall register the external guarantee with the exchange administration agencies.

The external guarantee offered for onlend loans with the permission of the State Council, and with a view to utilizing loans provided by foreign governments or international financial organizations is not subject to the aforesaid regulation.

Article 20 Banking institutions may issue overseas commercial lendings directly within the scope of their approved business operations. Other domestic entities shall make an application to the foreign exchange administration agencies in the case of issuing overseas commercial lendings. The foreign exchange administration agencies may either approve or reject the application taking into account the applicant's assets and liabilities, and other relevant factors. Where the scope of business operations of domestic entities requires approval of relevant authorities in accordance with the regulations of the government, such approval shall be obtained before making the application to the foreign exchange administration agencies.

Overseas commercial lendings shall be registered in accordance with the regulations made by the foreign exchange administration department of the State Council.

Article 21 Receipts in foreign exchange for capital account transactions may be retained or sold to financial institutions duly authorized for foreign exchange sale and purchase operations with the approval of the foreign exchange administration agencies, unless no approval is required in accordance with the regulations of the government.

Article 22 Payments in foreign exchange for capital account transactions shall be made with the foreign exchange owned by the payer, or with the foreign exchange purchased from financial institutions duly authorized for foreign exchange sale and purchase operations upon presentation of valid documents specified by the foreign exchange administration department of the State Council. Where approval of the foreign exchange administration agencies is required in pursuance of the regulations of the government, the approval shall be obtained prior to the payment in foreign exchange.

Foreign investor's Renminbi income in a legally terminated foreign invested enterprise which has completed liquidation procedures and fulfilled tax obligations in accordance with the relevant regulations of the government may be converted into foreign currency through financial institutions duly authorized for foreign exchange sale and purchase operations and remitted out of the People's Republic of China.

Article 23 Foreign exchange or converted Renminbi receipts for capital account transactions shall be used for the purpose approved by the foreign exchange administration agencies in accordance with the relevant regulations of the government. The foreign exchange administration agencies have the right to conduct supervision and inspection of the use of foreign exchange or converted Renminbi receipts and changes of relevant accounts.

Chapter IV Foreign Exchange Administration on Operations of Financial Institutions

Article 24 Financial institutions shall have the approval of the foreign exchange administration agencies for the operation or termination of foreign

exchange sale and purchase business. Financial institutions shall have the approval of the foreign exchange administration agencies or the financial supervisory authorities according to their division of supervisory responsibilities for the operation or termination of other foreign exchange business.

Article 25 The foreign exchange administration agencies undertake comprehensive position management in respect to the foreign exchange operations of financial institutions. Detailed measures shall be formulated by the foreign exchange administration department of the State Council.

Article 26 Currency conversion of financial institution's capital, profit and mismatched assets denominated in domestic and foreign currencies shall have the approval of the foreign exchange administration agencies.

Chapter V Renminbi Exchange Rate and Administration on Foreign Exchange Market

Article 27 The Renminbi exchange rate is in a managed floating regime based on market supply and demand.

Article 28 Financial institutions duly authorized for foreign exchange sale and purchase operations, and other entities which have complied with such conditions as specified by the foreign exchange administration department of the State Council, may participate in trading of foreign exchange in the inter-bank foreign exchange market in accordance with the regulations issued by the foreign exchange administration department of the State Council.

Article 29 Trading of foreign exchange in the market shall comply with the principles of transparency, equality, fairness, honesty and credibility.

Article 30 The trading currencies and formats in the foreign exchange market shall be specified by the foreign exchange administration department of the State Council.

Article 31 The foreign exchange administration department of the State Council shall supervise and manage domestic foreign exchange markets in accordance with laws and regulations.

Article 32 The foreign exchange administration department of the State Council may, on the basis of the changes in the foreign exchange market and monetary policy, smooth excessive fluctuations in the foreign exchange market in accordance with laws and regulations.

Chapter VI Supervision and Management

Article 33 The foreign exchange administration agencies shall carry out their responsibilities in accordance with laws and regulations and have the power to take the following measures:

- (1) Make on-the-spot inspection of financial institutions conducting foreign exchange operations;
- (2) Enter into suspected places of illegal foreign exchange activities, conduct investigation and obtain evidence;
- (3) Question the entities or individuals who have receipts or payments in foreign exchange or conduct foreign exchange operations and ask for explanation of matters directly relevant to the illegal foreign exchange activities under investigation;
- (4) Examine and copy materials such as transaction documents directly relevant to the illegal foreign exchange activities under investigation;
- (5) Examine and copy financial and accounting records and other relevant documents of the party involved in or entities and individuals directly relevant to the illegal foreign exchange activities under investigation; documents and records which could potentially be transferred, concealed or destroyed may be seized;
- (6) Examine accounts, other than individual savings accounts, of the party involved in, or entities and individuals directly relevant to, the illegal foreign exchange activities under investigation, subject to the permission of the foreign exchange administration department of the State Council or the foreign exchange administration agencies at the provincial level;
- (7) In the case that there is evidence of transfer or concealment of the money or other assets in question, or concealment, forgery or damage of important evidence, or there is evidence that it is possible for these to happen, make an application to a People's Court to freeze or seize the said money, assets or evidence.

Relevant entities and individuals shall co-operate with the foreign exchange administration agencies in the supervision and inspection, give honest explanations to relevant matters and provide relevant documents and other information. They shall not refuse to co-operate with, obstruct or conceal

things from the supervision and inspection.

Article 34 The foreign exchange administration agencies shall conduct supervision, inspection or investigation in accordance with laws and regulations. The supervision, inspection or investigation shall be carried out by no less than two officers, and the officers shall present identification documents before inspection or investigation. Otherwise, the entities or individuals subject to supervision, inspection or investigation have the right to refuse.

Article 35 Domestic entities conducting foreign exchange operations shall submit financial and accounting statements, statistics and other documents as specified by the foreign exchange administration department of the State Council.

Article 36 The financial institutions duly authorized for foreign exchange operations shall, upon detection, report illegal foreign exchange activities to the foreign exchange administration agencies in a timely manner.

Article 37 The foreign exchange administration department of the State Council may obtain the information necessary for taking the responsibility of foreign exchange administration from relevant government agencies and institutions of the State Council. Relevant government agencies and institutions shall provide the said information.

The foreign exchange administration department of the State Council shall keep relevant government agencies and institutions informed of the work on foreign exchange administration.

Article 38 Any entity or individual has the right to report any activity in violation of foreign exchange regulations.

The foreign exchange administration agencies shall keep the reporter confidential, and reward the reporter and other entities or individuals who have helped in investigating and penalizing the activity in violation of foreign exchange regulations.

Chapter VII Legal Responsibilities

Article 39 To penalize foreign exchange evasion schemes, such as transferring foreign exchange abroad in violation of the regulations or transferring domestic capital abroad by fraudulent means, the foreign exchange administration agencies shall order the foreign exchange in question to be repatriated and impose a penalty not exceeding thirty percent of the amount involved in the evasion scheme; in the case of serious violations, the penalty imposed will be in the range of more than thirty percent and less than one hundred percent of the amount involved in the evasion scheme; in the case of criminal offence, a criminal prosecution shall proceed.

Article 40 To penalize illegal foreign exchange arbitrage in violation of the regulations, such as paying or receiving in foreign exchange for expenses which shall be paid or received in Renminbi or purchasing foreign exchange from financial institutions duly authorized for foreign exchange sale and purchase operations with fake or invalid transaction documents, the exchange administration agencies shall order the funds involved in the illegal arbitrage to be converted back and impose a penalty not exceeding thirty percent of the amount involved in the illegal arbitrage; in the case of serious violations, the penalty imposed will be in the range of more than thirty percent and less than one hundred percent of the amount involved in the illegal arbitrage; in the case of criminal offence, a criminal prosecution shall proceed.

Article 41 To penalize the foreign exchange inward remittance in violation of the regulations, the foreign exchange administration agencies shall order redress and impose a penalty not exceeding thirty percent of the amount in question; in the case of serious violations, the penalty imposed will be in the range of more than thirty percent and less than one hundred percent of the amount in question.

To penalize the illegal foreign exchange sales, the exchange administration agencies shall order the foreign exchange illegally surrendered to be converted back and impose a penalty not exceeding thirty percent of the amount in question.

Article 42 To penalize the carrying of foreign currency into or out of the People's Republic of China in violation of the regulations, the exchange administration agencies shall issue a warning, and may impose a penalty not exceeding twenty percent of the amount in question. If existing laws and regulations stipulate that cases of similar nature are in the jurisdiction of the Customs authority, those laws and regulations shall prevail.

Article 43 To penalize any activity in violation of the regulations governing external debt such as undertaking external borrowing, overseas bond issuance or external guarantee without permission, the foreign exchange administration agencies shall issue a warning and impose a penalty not exceeding thirty percent of the amount in question.

Article 44 To penalize the change of designated use of foreign exchange or converted Renminbi receipts without permission in violation of the regulations, the exchange administration agencies shall order redress, confiscate the illegal gains and impose a penalty not exceeding thirty percent of the amount in question; in the case of serious violations, the penalty imposed will be in the range of more than thirty percent and less than one hundred percent of the amount in question.

To penalize the illegal use of foreign exchange, such as the use of foreign exchange in the People's Republic of China for pricing or settlement and the transfer of foreign exchange in violation of the *Regulations*, the foreign exchange administration agencies shall order redress, issue a warning, and may impose a penalty not exceeding thirty percent of the amount in question.

Article 45 To penalize the unauthorized trading, disguised trading, illegal buying or selling, and the illegal brokerage trading of a relatively large amount of foreign exchange, the exchange administration agencies shall issue a warning, confiscate the illegal gains and impose a penalty not exceeding thirty percent of the amount in question; in the case of serious violations, the penalty imposed will be in the range of more than thirty percent and less than one hundred percent of the amount in question; in the case of criminal offence, a criminal prosecution shall proceed.

Article 46 To penalize the unauthorized operation of foreign exchange sale and purchase business, the foreign exchange administration agencies shall order the redress of the case, confiscate the illegal gains, if any, and where the illegal gains exceed RMB500,000, impose a penalty in the range of one to five times the amount in question; where there is no illegal gain or the illegal gains do not exceed RMB500,000, the penalty imposed will be in the range of RMB500,000 to RMB2,000,000; in the case of serious violations, the relevant authority shall order suspension of operations and rectification or revoke the license; in the case of criminal offense, a criminal prosecution shall proceed: To penalize unauthorized operation of foreign exchange business other than foreign exchange sale and purchase, the foreign exchange administration agencies or the financial supervisory authority shall use the aforesaid regulation as a reference.

Article 47 To penalize a financial institution carrying out any of the following listed activities, the exchange administration agencies shall order redress within a specified period, confiscate the illegal gains and impose a penalty in the range of RMB200,000 to RMB1,000,000; in the case of serious violations or failure to redress the case within the specified period, the foreign exchange administration agencies shall order termination of relevant business operations.

- (1) failure to check the authenticity of trading documents and their consistency with the receipts and payments in foreign exchange when conducting receipts and payments for current account transactions;
- (2) violation of the regulations on receipts and payments for capital account transactions;
- (3) violation of the regulations on foreign exchange sale and purchase business;
- (4) violation of the regulations on comprehensive position management of foreign exchange business;
- (5) violation of the regulations on trading in the foreign exchange market.

Article 48 To penalize any of the following listed activities, the foreign exchange administration agencies shall order redress, issue a warning, and may impose a penalty not exceeding RMB300,000 for entities or RMB50,000 for individuals:

- (1) failure to comply with the regulations on balance of payments statistics compilation and reporting;
- (2) failure to comply with the regulations on submitting documents such as financial and accounting statements and statistics.
- (3) failure to comply with the regulations on presenting valid documents or presenting unauthentic documents;
- (4) violation of the regulations on foreign exchange accounts management;
- (5) violation of the regulations on foreign exchange registrations;
- (6) refusal to co-operate with, or obstruction of the supervision, inspection or investigation conducted by the foreign exchange administration agencies

in accordance with the regulations.

Article 49 In respect of domestic entities which violate the foreign exchange regulations, in addition to imposing penalties in accordance with these regulations, the directly responsible person in charge and other directly responsible persons shall be disciplined; directly responsible directors, supervisors, senior management and other directly responsible persons in financial institutions shall be given a warning and a penalty in the range of RMB50,000 to RMB500,000; in the case of criminal offense, a criminal prosecution shall proceed.

Article 50 Any officer of the foreign exchange administration agencies who shows preferential treatment, commits irregularities, abuses his authority or neglects his duties shall be prosecuted for criminal liability in the case of criminal offense or, disciplined in accordance with the regulations in a case not constituting a criminal offense.

Article 51 If one party contests a specific administrative behavior conducted by the foreign exchange administration agencies, the party may make an appeal for administrative review in accordance with laws and regulations; if the party still contests the decision of the administrative review, the party may appeal to a People's Court in accordance with laws and regulations.

Chapter VIII Supplementary Provisions

Article 52 The definitions of the terms in these *Regulations* are as follows:

(1) "domestic entities" refers to, among others, government agencies, enterprises, public institutions, social organizations and armed forces, excluding foreign diplomatic agencies and consulates in the People's Republic of China and resident representative offices of international organizations in the People's Republic of China.

(2) "domestic individuals" refers to Chinese citizens and foreign nationals residing in the People's Republic of China for a continuous period in excess of one year, excluding foreign diplomats in the People's Republic of China and resident representatives of international organizations in the People's Republic of China.

(3) "current account transactions" refers to, among others, the transaction items in the balance of payments involving goods, services, income and current transfers.

(4) "capital account transactions" refers to the transaction items in the balance of payments leading to changes in external assets and liabilities, including, among others, capital transfer, direct investment, portfolio investment, financial derivatives, loans.

Article 53 Non-financial institutions shall have approval of the foreign exchange administration department of the State Council to operate foreign exchange sale and purchase business. Detailed regulations shall be formulated separately by the foreign exchange administration department of the State Council.

Article 54 The *Regulations* shall enter into force on its issuing date.

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