

Chapter 1

History and evolution

¶1-100 Introduction

Foreign exchange control, also known as foreign exchange administration, refers to the adoption of measures by the central government or currency authority of a country or region (hereinafter called "exchange authority") in relation to foreign exchange income and expenditure, selling and buying, pricing, settlement and market, effected through legislation or promulgation of relevant regulations, stipulations or decrees in order to carry out the intended foreign exchange administration, coordination, organisation or restriction.

Foreign exchange control has a long history and exists in almost every country. All countries, whether developed or developing, implement foreign exchange control directly or indirectly to realise relevant macroeconomic goals.

As early as 1944 at the establishment of the International Monetary Fund (IMF), in order to stabilise the exchange rates of its member countries, IMF began to collect statistics of its members' balance of payments. Also, to unify statistical standards and provide guidelines to its member countries, IMF edited and published five editions of the *IMF Balance of Payments Manual* (BPM) in 1948, 1950, 1961, 1977 and 1993 respectively. Currently the fifth edition of this manual (BPM5) is effective. In the manual, IMF defines relevant terms such as balance of payments, system of national accounts, current account, capital account, etc. Member countries must compile their statements of balance of payments based on these unified terms and report the status of these statements to IMF. IMF thereby supervises its members' relevant policies and provides loans to those which are in an adverse balance of payments situation so as to maintain the stability of their exchange rates.

Because the international economic and financial environment has changed significantly since BPM5 was published in 1993, The IMF Committee on Balance of Payments Statistics has released the sixth edition of the *Balance of Payments and International Investment Position Manual* (BPM6) in early 2009, which updates BPM5. BPM6 is expected to go into effect gradually from 2009.

All countries deliberately interfere or do not interfere with market exchange rates in order to promote their exports through the depreciation of their currencies, thereby accelerating economic growth. As a matter of fact, the relevant laws, stipulations and decrees relating to foreign exchange control are so extensive and multifarious that few people can comprehend and put them into practice quickly. To counter this situation, IMF, as the supervisory

organisation in charge of international foreign exchange control affairs, has been editing and publishing the *Annual Report on Exchange Arrangements and Exchange Restrictions* since 1950, and introducing and imposing foreign exchange control arrangements and restrictions on IMF member countries and regions. These arrangements and restrictions will hopefully ensure the smooth running of each country's currency, banking and finance operations and keep the equilibrium of balance of payments.

In many ways, foreign exchange control arrangements and restrictions are used in practically every national economy, including China. However, considerable differences exist among national laws and regulations depending on the different levels of economic development.

¶1-200 History of foreign exchange control in the world

The conversion of currencies and the corresponding foreign exchange control policies originated from international trade. The history of international trade is more than one thousand years, but the history of foreign exchange control is only about 95 years. The wide time gap between the history of international trade and practice of foreign exchange control is due to the developments of transnational trade and the relative monetary system. The rest of this section provides a brief history of international foreign exchange control. A good understanding of the historical background of foreign exchange control from the international perspective will assist readers in gaining a better understanding of the origin and evolution and therefore policies of foreign exchange control in China.

Gold standard monetary system

Before the First World War in 1914, leading countries in the world adopted the gold standard monetary system wherein currencies could be exchanged for gold freely according to the rate stipulated by a particular country's law and wherein currencies could be freely circulated, exchanged, imported and exported. Settlement for international trade was practically unrestricted. That is to say, almost no foreign exchange control existed at the time.

After the First World War broke out, some countries scrambled for gold in preparation of the war. Gradually the free international circulation of gold was suspended. The gold standard monetary system was soon abandoned due to the great differences between the gold reserves of different countries. The paper currency began to circulate instead of gold, and almost every belligerent state prohibited the free trading of foreign exchange so as to prevent itself from outflow of funds and enormous exchange rate fluctuations. Gold export was also forbidden.

After the Great Recession from 1929 to 1933, the United States of America (US) gave up the gold standard monetary system, indicating the complete collapse of this system. From then to the end of the Second World War, the international monetary system was thrown into confusion, and the typical foreign exchange control method was depreciation of the main currencies. This is the initial stage of foreign exchange control in the world.

Bretton Woods System

Two world wars directly resulted in the appearance and expansion of foreign exchange control. After the Second World War broke out, with the collapse of the gold standard monetary system, the international financial market was in serious disorder. In view of the chaotic situation, 44 countries took part in the *Bretton Woods* conference held in the US. In this conference, IMF was established and a new monetary system emerged with the IMF Agreement going into effect.

The new system is called the *Bretton Woods System* and the US dollar (USD) became the core of this system. Arrangements included linking the USD with gold and linking other currencies with the USD. The exchange rates of these other currencies were decided according to their gold content. These exchange rates were the official rates which were relatively fixed.

All the foreign exchange rates of the currencies linked to the USD were only allowed to float within a very narrow range: up and down at no more than 1% respectively. If the market rate of a currency fluctuated beyond this range, the central bank of the country of that currency was to interfere with the markets to keep the exchange rate stable. A member of IMF could apply for USD loans from IMF to keep the equilibrium of the balance of payments.

However, with the rapid economic development of other countries such as Germany and Japan, the US could not provide enough gold to maintain the exchange rate of the USD, and had to devalue the USD with a big margin in 1960 and 1963 respectively. The *Bretton Woods System* began to collapse in August 1971 with the announcement by the US that the exchange of the USD to gold was to be terminated.

During the period of time when the *Bretton Woods System* was operating smoothly, foreign exchange control measures were concentrated in the management of the exchange rates and foreign exchange and gold reserves so as to adjust the balance of payments. At the same time, the foreign exchange reserves of many countries were diversified from the unitary USD to multi-currencies on a large scale.

The floating exchange rate system

In October of 1973, with the complete termination of the official exchange system from the USD to gold under the *Bretton Woods System*, international foreign exchange control was characterised by some new features. First, many

countries adopted the floating exchange rate system though others continued with the fixed exchange rate, and fluctuations in the exchange rates fell to a large extent. Second, IMF, the international foreign exchange supervisory organisation, adopted more policy principles which related to the macroeconomy instead of principles previously adopted which mainly concentrated on the area of balance of payments. These changes indicated that mutual harmonisation of different countries in macroeconomy was the crux of the stability of the exchange rates. Third, the debt crisis of Latin America in the 1980s and the Asian financial crisis in 1997 showed that no enforcement method other than that of international cooperation could keep the exchange rates stable. Finally, due to the acute fluctuations of the exchange rates and the lowering of transparency of countries influenced by the fluctuations, risk exposure required all kinds of risk management tools, so derivatives and structured products were used in order to hedge the relevant risks. This situation greatly increased the difficulties of foreign exchange control.

The floating exchange rate system has operated for 35 years now, accompanied by liberalisation and globalisation of the world economy. But international foreign exchange remains a formidable challenge not only to China but also to the rest of the world.

¶1-300 History and evolution of foreign exchange control in China

China possesses a long history exceeding 2000 years from 221 BC when the Qin Dynasty first unified the whole of China. However, compared with agriculture, trade in China is not as developed. Before 1949 when the People's Republic of China (PRC) was founded, there was almost no systematic and independent foreign exchange control due to wars and colonisations. After the founding of PRC, the new government of China learned from the Soviet Union and adopted a centrally-planned economy system. The planned economy existed until 1978 when China began its reformation and opening to the outside world and began to transform from a planned economy to a market economy. The transformation period lasted about 15 years until 1993. From then on, China has adopted its current foreign exchange control system based on IMF standards and terms.

The history of foreign exchange control in China from 1949 happened in three stages:

- (1) Stage One from 1949 to 1978;
- (2) Stage Two from 1979 to 1993; and
- (3) Stage Three from 1993 to the present time.

Stage One: 1949–1978

In the two years following the founding of the PRC in 1949, the new government adopted a series of measures to establish China's foreign exchange control system. The People's Bank of China (PBC) was designated as the government agency to implement foreign exchange control. In 1953, with the initiation of the planned economy, foreign exchange control compliance in the planned economy was gradually shaped. China then implemented a "centralised administration, uniform operation" foreign exchange control policy. The major points of this policy included the following:

- The central government was to monopolise foreign trade and foreign exchange. Imports and exports were to be conducted by national foreign trade companies. All foreign exchange banking businesses were to be processed by the Bank of China (BOC), which at the time was a department of PBC.
- All foreign exchange income was to be sold to the central government. Any company, factory or other institution or individual was not allowed to possess foreign exchange unless prior approval was obtained.
- According to the policy of "imports subjected to exports, expenditure subjected to income", the State Planning Committee compiled the national imports and exports plan and the corresponding foreign exchange expenditure and income plan and allocated foreign exchange to parties which needed foreign exchange on a national level. Under these circumstances, the balance of payments of China could always be kept in equilibrium.
- The exchange rate of the Renminbi (RMB) to USD was fundamentally fixed at 2.4618 until 1973 when the *Bretton Woods System* collapsed. After 1973, with the floating exchange rate adopted by most countries and in order to avoid exchange risk of the export income, China implemented a relatively flexible exchange rate pricing system. Based on a basket of a few currencies, the RMB exchange rate was promptly adjusted according to the latest change in the floating exchange rate in international financial markets.
- Other than short-term borrowings from the Soviet Union, China implemented an extremely conservative policy whereby no foreign investment or foreign debt was allowed.

The above policies played a leading and positive role in the planned economy, but were inefficient as there was too much centralisation of foreign exchange control.

Stage Two: 1979–1993

With the initiation of reformation and opening to the outside world, the PRC took its seats (previously held by the Republic of China (Taiwan)) in IMF and the World Bank in 1980. Foreign exchange control in this period was in line with the macroeconomic policies of China. China adopted a combination of planned measures and measures suitable for the market:

- China's exchange authority was formally established in 1979. Then it was known as the State Administration of Exchange Control (SAEC), the predecessor of the State Administration of Foreign Exchange (SAFE).
- The policy of allowing foreign exchange to be retained instead of the previous "centralised administration, uniform operation" policy was adopted. Certain local governments and enterprises were allowed to retain a portion of the foreign exchange which they earned from exports, etc, though the foreign exchange must still be sold to the central government. If these local governments or enterprises needed to effect foreign exchange payments, they could buy foreign exchange against the RMB and quota certificates would be issued to them according to the retained proportion of the foreign exchange they earned. No prior approvals from SAEC were required.
- The foreign exchange swap market was established in 1980 to enable enterprises which hold quota certificates to buy foreign exchange with RMB or sell surplus foreign exchange in this market for RMB. The swaps were limited to swaps of foreign exchange and RMB; swaps between foreign currencies were still processed by the banks.
- A dual exchange rate system resulted from the above two points: the official exchange rate for buying foreign exchange with the bank against quota certificates and the swap exchange rate for buying foreign exchange in the swap market. The swap exchange rate was initially set by the central government but subsequently determined by the market. Both rates were pegged against the USD.
- From 1979 some financial institutions (trust companies (eg CITIC), financial companies or leasing companies) other than BOC were allowed to deal with foreign exchange by PBC. By 1986, all commercial banks were allowed to carry out foreign exchange business which had been monopolised by BOC before.
- Control measures over the capital account were adopted. China began to encourage foreign direct investment and foreign debts. Foreign debts were initially jointly managed by the State Planning Committee, the Ministry of Finance (MOF) and SAEC and subsequently solely managed and supervised by SAEC from 1986. All foreign debts required the prior approval of SAEC. Foreign investment enterprises (FIEs) could reserve their foreign exchange and open foreign exchange accounts without

approval of SAEC. FIEs could also apply for loans from foreign banks without approval and profits of FIEs could be remitted abroad, though it was compulsory for FIEs to go through registration and annual inspection.

- Control measures over individuals were relaxed. Before 1979, individuals in China were not allowed to possess foreign exchange. From 1986, individuals were allowed to possess foreign exchange received abroad and open foreign exchange accounts in commercial banks. In 1991, individuals who needed foreign exchange for their studies, immigration, etc, could apply to SAEC for a stipulated amount of foreign exchange.
- BOC, on behalf of PBC, issued the "foreign exchange certificate" to address the illegal circulation of foreign currencies in China brought mainly by foreign travellers and overseas-Chinese. The foreign exchange certificate was to be used in China at designated places like hotels and shops as evidence of foreign exchange. It served as an exchange medium — a currency parallel with the RMB.

The developments from 1979 to 1993 formed the fundamental legal framework of foreign exchange control in China, embodying distinguishing features compared with the earlier stage. However, these policies were only suitable for that period of transformation and they did not meet international requirements. With the recovery of seats in IMF and the World Bank, it became increasingly necessary for the PRC to take its seat in the General Agreement for Tariff and Trade (GATT; currently World Trade Organisation or WTO). Reforming these foreign exchange control policies according to international standards became unavoidable to China.

Stage Three: 1993–current

Stage three started from 1993 and will continue until the RMB is freely convertible in the future. In November 1993, the central government issued a document entitled *Decisions on Establishing Socialism Market Economy System*. The document signalled China's determination to give up the planned economy system completely and establish the international market economy system. This meant inevitable changes to foreign exchange control in China. The exchange authority of China changed its name from State Administration of Exchange Control (SAEC) to State Administration of Foreign Exchange (SAFE), indicating the abandoning of the planned economy. The following measures have been adopted from the beginning of 1994:

- The RMB becomes conditionally convertible under the current account:
 - (1) The dual exchange rate system was changed to the unitary exchange rate system. The "unitary, manageable, floating exchange rate system based on market supply and demand" was adopted in January 1994 with the official exchange rate of RMB to USD raised

Part III — Practical guidelines for foreign exchange transactions in China

Introduction

Part I outlines the general stance of the Chinese government on foreign exchange control policies. The framework of foreign exchange control is introduced in Part II, focusing on the reasons for the adoption of foreign exchange control practices in China and the ways in which China implements foreign exchange control at a macro level.

In Part III, focus is given on details of foreign exchange operations in China carried on by enterprises and other organisations, individuals as well as banks, to provide readers with a thorough understanding of such operations and to assist in the handling of their day-to-day foreign exchange-related transactions in China. The topics in Part III also deal closely with routine but indispensable aspects of foreign exchange-related operations of FIEs and individuals, including the operation of the foreign exchange account (Chapter 8), foreign exchange compliance requirements for FIEs (Chapter 9), requirements of export collection verification (Chapter 10), import payment verification (Chapter 11), service trade and individuals (Chapter 12), foreign exchange administration of bonded zones, QFII and M&As (Chapter 13) and operational requirements of foreign exchange designated banks (Chapter 14).

Each of the abovementioned topics will be presented with an introduction and a set of guidelines divided into several sub-topics. Under each sub-topic, the reader will be provided with, in relation to that sub-topic, a description, a flow chart, a list of materials to be prepared for submission to the relevant authorities, the main regulations and important points to note. These topics are set out in such a manner to provide a convenient and quick form of reference for anyone handling foreign exchange-related matters in China. Enterprises or individuals involved in foreign exchange issues can simply refer to this Part of the book for a detailed account of the procedures that need to be completed, the materials that are to be submitted, the regulations that ought to be complied with and the likely issues that may arise which would require special attention.

Chapter 8

Foreign exchange accounts

8-100 Introduction

A foreign exchange account is an account denominated in a convertible currency opened by a domestic entity, foreign establishment, residential individual or non-residential individual in China and maintained at a financial institution such as a foreign exchange designated bank within or outside of the PRC. According to the latest regulations on foreign exchange accounts, the vostro and nostro accounts of financial institutions and accounts of foreign embassies, consulates and resident representative offices of international organisations maintained in China are not subject to the administration of the foreign exchange account as defined in the foregoing sentence.

Strictly speaking, the scope of foreign exchange account defined above covers all kinds of foreign exchange accounts, including those maintained by entities and individuals, domestically and overseas, etc. There are many standards for the classification of foreign exchange accounts in China at present. These accounts can be divided into entity accounts or individual accounts according to the identity of the owner of the account or divided into domestic accounts or overseas accounts according to the location of the bank with which the account is opened.

Since the administration of the individual account differs very much from that of the entity account, the entity account will be covered in this Chapter and the individual account will be covered in Chapter 13. The foreign exchange account discussed in this Chapter will therefore refer to the entity account unless otherwise specified.

Regulations on administration of foreign exchange account

Historically, SAFE's definition of the foreign exchange account varied according to the circumstances at any one time. The foreign exchange account had been referred to as the common account, special account, settlement account, capital account, FIE's account, etc. According to statistics, the types of foreign exchange account numbered about 30 at its height. In addition, SAFE stipulated different scopes allowed for expenditure and income for some types of account on a case-by-case basis. The over-elaborated classification system resulted in great inconvenience in the use and administration of foreign exchange accounts.

Fortunately, SAFE established the current administration system of the foreign exchange account since 1997 to simplify and unify the administration of all types of foreign exchange accounts. This system of administration is based on the following five fundamental regulations:

- (1) *Administrative Regulations on Domestic Foreign Exchange Account* promulgated by PBC on 7 October 1997.

The provisions regulate the following items:

- the “accounts for foreign exchange under current accounts, their opening and use”. This is provided in Chapter II, 14 articles from Article 6 to Article 19. Article 12 specifies the requirements for FIEs
- the “accounts for foreign exchange under capital accounts, their opening and use” in Chapter III, 16 articles from Article 20 to Article 35; and
- the “supervision and control of foreign exchange accounts” in Chapter IV, 10 articles from Article 36 to Article 45.

- (2) *Regulations on the Administration of Overseas Foreign Exchange Account* promulgated by PBC on 11 December 1997.

These regulations specify the requirements of the foreign exchange account opened in banks located outside of the PRC. The regulatory contents include conditions and documents for the opening, use of and changes to the account. These regulations do not differentiate between the current account and the capital account.

- (3) *Detailed Implementing Rules on the Administration of Domestic Entity's Foreign Exchange Account for Current Account Transactions* promulgated by SAFE on 9 September 2002.

The promulgation of this piece of regulation emphasised the following points:

- relaxing the restrictions on the qualification of account opening. According to old regulations, for example, Chinese-funded enterprises were allowed to open foreign exchange account only if they have foreign exchange expenditure and income under the current account. Such restrictions have been softened in these rules
- unifying the standard of account opening for Chinese-funded and foreign-invested enterprises; and
- consolidating the account types; all types of foreign exchange accounts for current account transactions, which had exceeded 20 before the promulgation of these rules, were consolidated into one type of account under these rules.

- (4) *Circular Concerning Domestic Entity Reserve Foreign Exchange Income under the Current Account* promulgated by SAFE on 12 August 2007.

This regulation represents a very significant change on foreign exchange control in China. It allows domestic entities, including the FIEs to reserve its foreign exchange income in its account and is no longer compulsory to sell it to the bank.

- (5) *Circular Concerning Issues Related to Process Foreign Exchange Businesses through Foreign Exchange Accounts* promulgated by SAFE on 7 November 2008.

This set of Regulation puts forward a new idea related to foreign exchange account administration. It requires all foreign exchange transactions, including settlements, sales, payments and receipts in foreign exchange to be processed by banks through relevant foreign exchange account of the customer.

Footnotes:

- * This regulation is provided in Part VI.

¶8-200 Administration of the foreign exchange account

At present, SAFE adopts a classification system of administration to deal with each type of foreign exchange account on the basis of the five above-mentioned regulations.

According to the classification under these regulations, the foreign exchange account firstly can be divided into the domestic account and the overseas account. Secondly, the foreign exchange account can be classified into that which is for current account transactions or that which is for capital account transactions. The current administration of the overseas account does not differ whether the foreign exchange account belongs to the current account or the capital account but the administration of the domestic account does. To facilitate discussion in this Chapter, when an account reference is followed by the words “for current account transactions” or “for capital account transactions”, it refers to the domestic account.

In a nutshell, the foreign exchange account in China is made up of the overseas account, the account for current account transactions and the account for capital account transactions.

¶8-210 Account for current account transactions

Administration of the foreign exchange account for current account transactions presently is regulated by Chapter II of the *Administrative Regulations on Domestic Foreign Exchange Account* and the *Detailed Implementing Rules on the Administration of Domestic Entity's Foreign Exchange Account for*

Current Account Transactions. The administration of the domestic account for current account transactions is the most detailed and systematic among the administration of all foreign exchange accounts. An outline of the regulations is provided below:

- (1) Domestic entities excluding financial institutions are allowed to apply to open a foreign exchange account for their lawfully-earned foreign exchange income from their current transactions or foreign exchange income from donations, aids, international postal remittance, etc.
- (2) The required and sufficient number of documents and materials are to be submitted to SAFE when the domestic entity applies to open an account. The opening, use, closure of and changes to the account must be approved by SAFE.

Before 12 August 2007, SAFE adopted a "balance ceiling management" policy in the administration of the foreign exchange account for current account transactions. This meant that each account for current account transactions would be prescribed a balance ceiling, ie a maximum amount. If the balance of the account exceeded this maximum amount over 10 days, the amount exceeding the ceiling was to be compulsorily sold to the foreign exchange designated banks. With reference to income earned, the balance ceiling will equal 20% of the total income earned the preceding year.

- (3) Since 12 August 2007 when the *Circular Concerning Domestic Entity Reserve Foreign Exchange Income under the Current Account* was promulgated by SAFE, the balance ceiling has been removed completely. All foreign exchange income under the current account may be sold to the banks or deposited into the account. The domestic entity may make their own decision without approval by SAFE.
- (4) SAFE will issue a *Certificate of Use of Foreign Exchange Account* to the domestic entity to record the requirements for this account and the changes of the account, etc.

¶8-220 Account for capital account transactions

Administration of the domestic foreign exchange account for capital account transactions is unitarily regulated by Chapter III of the *Administrative Regulations on Domestic Foreign Exchange Account*:

- (1) An account is only allowed to be opened for foreign exchange income under the capital account to deposit that income into the account. Foreign exchange income under the capital account can be made up of the following eight categories of income:
 - foreign debts and foreign exchange loans borrowed from Chinese-funded financial institutions

- foreign exchange prepared by the domestic entity for repayment of loan principal denominated in foreign exchange in and outside of the PRC
 - foreign exchange income from stock issuance by the domestic entity
 - capital of FIEs paid by Chinese and foreign investors in the form of foreign exchange
 - foreign exchange remitted into the PRC by non-residents for the purpose of funding of FIEs
 - foreign exchange of domestic entities from realisation of asset stock
 - foreign exchange of non-residents from the buying and selling of B-share stock; and
 - foreign exchange from other capital account transactions approved by SAFE.
- (2) Each of the eight categories of income above for capital account transactions is defined by its own scope of income and expenditure, time limit for use of account and ceiling amount of the account as stipulated by SAFE.
 - (3) The opening, use, closure of and changes to the account must be approved by SAFE.

Compared with the rules for the foreign exchange account for current account transactions, the rules for the foreign exchange account for capital account transactions are not as detailed and have yet to be worked out by the authorities. In other words, operational requirements for foreign exchange accounts for capital account transactions are not as meticulously stipulated as that for the capital account.

It is important to note, however, that the penalties described in Chapter 7 *Foreign Exchange Supervision, Inspection and Penalties* of this book may be imposed for the violation of the activities indicated in the three points above.

¶8-230 Overseas foreign exchange account

Administration of the overseas foreign exchange account is relatively simple and clear. All the requirements for it have been specified in the *Regulations on the Administration of Overseas Foreign Exchange Account*. The main provisions are as follows:

- (1) These regulations shall apply to the opening, use, closure of and changes to an overseas foreign exchange account and SAFE and its branches are in charge of the approval and supervision of the account.

- (2) Domestic entities with sporadic income and expenditure abroad, which undertake construction projects contracted overseas or which issue securities denominated in foreign currencies abroad are allowed to apply to open an overseas account.
- (3) Valid and sufficient number of documents and materials are to be presented to SAFE and SAFE is to give a reply within 30 days from the receipt of acceptable materials.
- (4) Domestic entities are required to open, use and close overseas accounts according to requirements and are not allowed to open an overseas account without the authorisation of SAFE.

¶8-300 Guidelines for the administration of foreign exchange accounts

Six topics will be introduced with guidelines on foreign exchange accounts:

- Opening of foreign exchange account for current account transactions (¶8-310)
- Changes to foreign exchange account for current account transactions (¶8-320)
- Closing of foreign exchange account for current account transactions (¶8-330)
- Opening, closure of and changes to foreign exchange account for capital account (¶8-340)
- Opening, closure of and changes to overseas account (¶8-350); and
- Domestic foreign exchange transfer (¶8-360).

First, it is necessary to introduce some terms that will be used in the guidelines.

- (1) *SAFE*. It refers to the local branches of the State Administration of Foreign Exchange, which is referred to as the "foreign exchange bureaus" in the regulations. In Beijing, there are two SAFE offices located there. One is the General Office of SAFE, the headquarters of SAFE, and the other is the Beijing Administration Department of SAFE, which is the local branch of SAFE in Beijing. According to current requirements, all applications from the residents and non-residents are to be processed by local SAFE branches.
- (2) *Business licence*. It is issued by SAIC to serve as proof of authorisation of the business scope allowed for the legal person of an enterprise.
- (3) *Registration Certificate of Social Organisation*. It is issued by the Ministry of Civil Affairs to serve as proof of the legal existence of a social organisation.

- (4) *Foreign Exchange Registration Certificate*. It is issued by SAFE specifically to an FIE as record of the FIE and serves as evidence of permission granted by SAFE for the conduct of the relevant foreign exchange transactions.
- (5) *Certificate of Use of Foreign Exchange Account*. It is issued by SAFE specifically to the Chinese-funded domestic entity to record the information of the entity and serves as the certificate of approval of use of foreign exchange account from SAFE.
- (6) *Proofs verifying foreign exchange proceeds under the current account*. They refer to the vouchers or documents issued by the authorities or banks to certify that the domestic entity owns or will own foreign exchange and needs to open an account. For example, the inward remittance advice from the bank.
- (7) *Certificate of Institutional Code*. It is enacted and issued by the State Bureau of Technical Supervision to specify the standards and unified codes for domestic entities.
- (8) *Account bank*. It refers to the financial institutions and banks with which the foreign exchange account under the current account is opened.

¶8-310 Opening of foreign exchange account for current account transactions

Description

The domestic entity which has foreign exchange income earned from transactions under the current account or from donations, aids, etc, can apply to SAFE for approval to open a foreign exchange deposit account. The account is usually opened with the account bank located at the same place where the domestic entity is registered. If necessary, the account can be opened in the account bank elsewhere, ie at a location other than the registered place of the entity and supervised by another branch of SAFE.

Required documents

The following lists the documents required for submission to SAFE for the purpose of opening a foreign exchange account for current account transactions:

- (1) a written application, in which the applicant/domestic entity specifies the reason and the legal basis for applying to open the account. It is allowed to designate the bank with which the account will be opened, or it can ask SAFE to designate a bank instead for the account. The common seal of the domestic entity must be affixed to the application
- (2) the original and a photocopy of the business licence or the *Registration Certificate of Social Organisation*

Rules of the People's Republic of China on Foreign Exchange Control

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- Chapter 1 — General Principles
- Chapter 2 — Foreign Exchange Control for Current Account Items
- Chapter 3 — Foreign Exchange Control for Capital Account Items
- Chapter 4 — Administration of Foreign Exchange Businesses of Financial Institutions
- Chapter 5 — Administration of Renminbi Exchange Rates and Foreign Exchange Market
- Chapter 6 — Supervision and Administration
- Chapter 7 — Legal Liability
- Chapter 8 — Supplementary Provisions

Promulgated via the State Council of the People's Republic of China Order No. 193 on 29 January 1996
First Revision on 14 January 1997 pursuant to the Decision of the State Council on Revision of the "Foreign Exchange Control Regulations of the People's Republic of China"

Second Revision on 1 August 2008 pursuant to the State Council of the People's Republic of China Order No. 532 passed by the 20th Session of the Standing Committee of the State Council

[5 August 2008]

CHAPTER 1 — GENERAL PRINCIPLES

Article 1 These Regulations are formulated for the purposes of strengthening foreign exchange control, promoting balance of international receipts and payments, and promoting healthy development of national economy.

Article 2 The foreign exchange control department of the State Council and its branches (hereinafter referred to collectively as the "foreign exchange control authorities") shall perform foreign exchange control duties pursuant to the law and be responsible for the implementation of these Regulations.

Article 3 Foreign exchange referred to in these Regulations shall mean the following payment means and assets expressed in foreign currency which may be used for international settlement:

- (1) foreign currency cash, including notes and coins;
- (2) foreign currency payment vouchers or payment tools, including notes, bank deposit vouchers, bank cards, etc;
- (3) foreign currency-denominated quoted securities, including debentures, shares, etc.;
- (4) Special Drawing Right; and
- (5) other foreign exchange assets.

Article 4 These Regulations shall apply to foreign exchange receipts and payments or foreign exchange business activities carried out by domestic organisations and domestic individuals, and foreign exchange receipts and payments or foreign exchange business activities carried out in China by overseas organisations and overseas individuals.

Article 5 The State shall not impose restrictions on regular international payments and transfers.

Article 6 The State shall implement a statistical declaration system for international balance of payments.

The foreign exchange control department of the State Council shall carry out statistical monitoring of international balance of payments, and regularly announce the status of international balance of payments.

Article 7 Financial institutions engaging in foreign currency businesses shall open foreign exchange accounts for customers pursuant to the provisions of the foreign exchange control department of the State Council and handle foreign exchange businesses through foreign exchange accounts.

Financial institutions engaging in foreign currency businesses shall submit information on customers' foreign exchange receipts and payments and changes in accounts to the foreign exchange control authorities pursuant to the law.

Article 8 Circulation of foreign currencies within the territory of the People's Republic of China shall be prohibited, and no pricing and settlement shall be made in foreign currencies, unless otherwise stipulated by the State.

Article 9 The foreign exchange receipts of domestic organisations and domestic individuals may be remitted into China or deposited overseas; the criteria and time-limit for remittance into China or overseas deposits, etc. shall be stipulated by the foreign exchange control department of the State Council according to the status of international balance of payments and foreign exchange control requirements.

Article 10 The foreign exchange control department of the State Council shall hold, manage and operate the foreign exchange reserve of the State pursuant to the law, and comply with the principles of security, liquidity and value-add.

Article 11 Where the international balance of payments has become or may become seriously unbalanced and the national economy has encountered or may encounter a serious crisis, the State may adopt the requisite safeguard and control measures for international balance of payments.

CHAPTER 2 — FOREIGN EXCHANGE CONTROL FOR CURRENT ACCOUNT ITEMS

Article 12 Foreign exchange receipts and payments under current account items shall be based on true and legitimate transactions. Financial institutions engaging in conversion and sale of foreign currencies shall, pursuant to the provisions of the foreign exchange control department of the State Council, carry out reasonable examination of the veracity of transaction documents and the consistency of the transaction documents and the foreign exchange receipts and payments.

The foreign exchange control authorities shall have the right to carry out supervision and inspection of matters stipulated in the preceding paragraph.

Article 13 Foreign exchange receipts under current account items may, pursuant to the relevant provisions of the State, be retained or sold to financial institutions engaging in conversion and sale of foreign currencies.

Article 14 Foreign exchange payments under current account items shall, pursuant to the administrative provisions of the foreign exchange control department of the State Council on payments of foreign currencies and purchase of foreign currencies, be made using self-owned foreign currency or foreign currency purchased from financial institutions engaging in conversion and sale of foreign currencies by presenting the valid documentation.

Article 15 The quota for carrying and declaration of foreign currency cash brought into and out of China shall be stipulated by the foreign exchange control department of the State Council.

CHAPTER 3 — FOREIGN EXCHANGE CONTROL FOR CAPITAL ACCOUNT ITEMS

Article 16 Overseas organisations and overseas individuals making direct investments in China shall, upon approval by the relevant authorities in charge, process registration formalities with the foreign exchange control authorities.

Overseas organisations and overseas individuals engaging in issuance and trading of quoted securities or derivatives in China shall comply with the market entry provisions of the State and process registration formalities pursuant to the provisions of the foreign exchange control department of the State Council.

Article 17 Domestic organisations and domestic individuals making direct investments overseas or engaging in issuance and trading of quoted securities and derivatives overseas shall process registration formalities pursuant to the provisions of the foreign exchange control department of the State Council. Where the State stipulates that prior approval by or filing with the relevant authorities in charge is required, the approval or filing formalities shall be processed prior to foreign exchange registration formalities.

Article 18 The State shall implement scale management for foreign debts. Borrowing of foreign debts shall be handled pursuant to the relevant provisions of the State and foreign debt registration formalities shall be processed with the foreign exchange control authorities.

The foreign exchange control department of the State Council shall be responsible for statistical monitoring of foreign debts nationwide and shall regularly announce the status of foreign debts.

Article 19 An application shall be submitted to the foreign exchange control authorities for provision of external guarantee; the foreign exchange control authorities shall decide on approval or non-approval based on the assets and liabilities, etc. of the applicant; where the State stipulates that the scope of business of the applicant shall be subject to approval by the relevant authorities in charge, approval formalities shall be processed

prior to submitting the application to the foreign exchange control authorities. Upon execution of an external guarantee contract by the applicant, external guarantee registration formalities shall be processed with the foreign exchange control authorities.

The provisions of the preceding paragraph shall not apply where the State Council has approved the provision of external guarantee for onward lending for loan from foreign government or loan from international financial institution.

Article 20 Financial institutions in the banking industry may directly provide commercial loans overseas within their approved scope of business. Other domestic organisations proposing to provide commercial loans overseas shall submit an application to the foreign exchange control authorities; the foreign exchange control authorities shall decide on approval or non-approval based on the assets and liabilities, etc. of the applicant; where the State stipulates that the scope of business of the applicant shall be subject to approval by the relevant authorities in charge, approval formalities shall be processed prior to submitting the application to the foreign exchange control authorities.

Registration formalities shall be processed pursuant to the provisions of the foreign exchange control department of the State Council for provision of commercial loans to overseas parties.

Article 21 Foreign exchange receipts under capital account items to be retained or sold to financial institutions engaging in conversion and sale of foreign currencies shall be subject to approval by the foreign exchange control authorities, except where the State stipulates that no approval is required.

Article 22 Foreign exchange payments under capital account items shall, pursuant to the administrative provisions of the foreign exchange control department of the State Council on payments of foreign currencies and purchase of foreign currencies, be made using self-owned foreign currency or foreign currency purchased from financial institutions engaging in conversion and sale of foreign currencies by presenting the valid documentation. Where the State stipulates that approval by the foreign exchange control authorities is required, approval formalities shall be processed prior to making foreign exchange payments.

Where a foreign investment enterprise has terminated pursuant to the law, upon liquidation and tax payment pursuant to the relevant provisions of the State, all Renminbi which belong to the foreign investors may be remitted out of China using foreign currency purchased from financial institutions engaging in conversion and sale of foreign currencies.

Article 23 Foreign exchange from capital account items and funds from conversion of foreign currencies shall be used for the purpose(s) approved by the relevant authorities in charge and the foreign exchange control authorities. The foreign exchange control authorities shall have the right to carry out supervision and inspection of usage of foreign exchange from capital account items and funds from conversion of foreign currencies and changes in accounts.

CHAPTER 4 — ADMINISTRATION OF FOREIGN EXCHANGE BUSINESSES OF FINANCIAL INSTITUTIONS

Article 24 Financial institutions proposing to engage in conversion and sale of foreign currencies or terminate engagement in conversion and sale of foreign currencies shall be subject to approval by the foreign exchange control authorities; financial institutions proposing to engage in other foreign exchange businesses or terminate engagement in other foreign exchange businesses shall, pursuant to the division of duties, be subject to approval by the foreign exchange control authorities or the financial industry regulatory authorities.

Article 25 The foreign exchange control authorities shall implement consolidated positions administration for foreign exchange businesses of financial institutions; the specific measures shall be formulated by the foreign exchange control department of the State Council.

Article 26 Switching between Renminbi and foreign currencies for the capital funds and profits of a financial institution and due to incompatibility of Renminbi-denominated and foreign currency-denominated assets shall be subject to approval by the foreign exchange control authorities.

CHAPTER 5 — ADMINISTRATION OF RENMINBI EXCHANGE RATES AND FOREIGN EXCHANGE MARKET

Article 27 An administered floating rate system based on market supply and demand shall be implemented for Renminbi exchange rates.

Article 28 Financial institutions engaging in conversion and sale of foreign currencies and other organisations which comply with the criteria stipulated by the foreign exchange control department of the State Council may carry out foreign exchange transactions in the interbank foreign exchange market pursuant to the provisions of the foreign exchange control department of the State Council.

Article 29 Transactions in the foreign exchange markets shall comply with the principles of transparency, fairness, equitableness, honesty and trustworthiness.

Article 30 The types of currency and forms of transactions in the foreign exchange markets shall be stipulated by the foreign exchange control department of the State Council.

Article 31 The foreign exchange control department of the State Council shall supervise and administer the foreign exchange markets nationwide pursuant to the law.

Article 32 The foreign exchange control department of the State Council may regulate the foreign exchange markets pursuant to the law according to the changes in the foreign exchange markets and the requirements of monetary policy.

CHAPTER 6 — SUPERVISION AND ADMINISTRATION

Article 33 The foreign exchange control authorities shall perform duties pursuant to the law and shall have the right to adopt the following measures:

- (1) conduct on-site inspection on financial institutions engaging in foreign currency businesses;
- (2) enter the premises where illegal foreign exchange acts alleged to be committed for investigation and gathering of evidence;
- (3) question organisations and individuals engaging in foreign exchange receipts and payments or foreign exchange businesses, and request such organisations and individuals to provide explanations for matters directly relating to the illegal foreign exchange acts under investigation;
- (4) inspect and make copies of materials directly relating to the illegal foreign exchange acts under investigation such as transaction documents, etc.;
- (5) inspect and make copies of financial accounting information and related documents of the parties concerned in the illegal foreign exchange acts under investigation and organisations and individuals directly relating to the illegal foreign exchange acts under investigation, and may seal up and retain documents and materials which may be removed, concealed or destroyed;
- (6) upon approval by the person-in-charge of the foreign exchange control department of the State Council or the provincial foreign exchange control authorities, enquire about the accounts of the parties concerned in the illegal foreign exchange acts under investigation and organisations and individuals directly relating to the illegal foreign exchange acts under investigation, except for personal savings accounts; and
- (7) for assets related to the case such as illegal funds, etc. which are proved to have been or may be removed or concealed or important evidence which is proved to have been or may be concealed, forged or destroyed, an application may be made to a People's Court for freezing or confiscation.

The relevant organisations and individuals shall cooperate in supervision and inspection by the foreign exchange control authorities, provide truthful explanations of the relevant matters and provide the relevant documents and materials, and shall not refuse or hinder supervision and inspection and conceal any information.

Article 34 In the supervision and inspection or investigation by the foreign exchange control authorities carried out pursuant to the law, the number of supervision and inspection officers or investigation officers shall not be less than two and the officers shall display their identity pass. Where the number of supervision and inspection officers or investigation officers is less than two or the officers failed to display their identity pass, the organisation and individual subject to supervision and inspection or investigation shall have the right to refuse supervision and inspection or investigation.

Article 35 Domestic organisations engaging in foreign exchange businesses shall submit information such as financial accounting reports, statistical reports, etc. pursuant to the provisions of the foreign exchange control department of the State Council.

Article 36 Financial institutions engaging in foreign currency businesses shall promptly report to the foreign exchange control authorities upon discovery of any illegal foreign exchange act of their customers.

Article 37 The foreign exchange control department of the State Council may, for the purpose of performing foreign exchange control duties, obtain the requisite information from the relevant departments and agencies of the State Council; the relevant departments and agencies of the State Council shall provide such information.

The foreign exchange control department of the State Council shall report information of foreign exchange control works to the relevant departments and agencies of the State Council.

Article 38 All organisations and individuals shall have the right to report illegal foreign exchange acts.

The foreign exchange control authorities shall keep confidentiality of the informers and reward informers or organisations and individuals that have assisted in investigation and punishment of illegal foreign exchange acts pursuant to the provisions.

CHAPTER 7 — LEGAL LIABILITY

Article 39 Persons who evade foreign exchange by transferring foreign exchange from China to overseas or by using fraudulent means to transfer domestic capital to overseas in violation of the provisions shall be ordered by the foreign exchange control authorities to recover the foreign exchange within a stipulated period and be subject to a fine of not more than 30% of the amount of evaded foreign exchange; where the case is serious, a fine ranging from 30% of the amount of evaded foreign exchange to the equivalent value shall be imposed; where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law.

Article 40 Persons who violate the provisions in committing illegal arbitrage by collecting foreign currencies for sums payable in Renminbi or using false or invalid transaction documents, etc. to purchase foreign currencies etc. from financial institutions engaging in conversion and sale of foreign currencies shall be ordered by the foreign exchange control authorities to do a reverse exchange of such illegal arbitrage funds and be subject to a fine of not more than 30% of the illegal arbitrage amount; where the case is serious, a fine ranging from 30% of the illegal arbitrage amount to the equivalent value shall be imposed; where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law.

Article 41 Persons who remit foreign exchange into China in violation of the provisions shall be ordered by the foreign exchange control authorities to make correction and be subject to a fine of not more than 30% of the illegal amount; where the case is serious, a fine ranging from 30% of the illegal amount to the equivalent value shall be imposed.

Persons who engage in illegal conversion of foreign currencies shall be ordered by the foreign exchange control authorities to do a reverse exchange of the funds involved in the illegal conversion of foreign currencies and be subject to a fine of not more than 30% of the illegal amount.