

Circular of the State Administration of Foreign Exchange on Relevant Issues Concerning the Administration of Donations in Foreign Exchange by Domestic Institutions

[Official Translation Issued by the State Administration of Foreign Exchange]

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For the purpose of realizing the administration of donations in foreign exchange and facilitating the receipt and payment of donations in foreign exchange, and pursuant to the Regulations of the People's Republic of China on Foreign Exchange Administration and other relevant laws and regulations, the relevant issues concerning administration of donations in foreign exchange by domestic institutions are hereby promulgated:

Article 1. Donations herein refer to free donations and aid of legal foreign exchange funds between domestic institutions and overseas institutions/individuals.

Article 2. Donations in foreign exchange by domestic institutions must be conducted in compliance with the laws and regulations and other relevant administrative rules of the People's Republic of China, and shall not be in violation of social morality, nor be detrimental to the public interest and legal rights and interests of other citizens.

Article 3. Domestic institutions shall handle donations in foreign exchange via separate foreign exchange accounts for donations. Designated foreign exchange banks (hereinafter referred to as Banks) shall open accounts hereof for domestic institutions, and bring them under the administration of the foreign exchange account administration information system.

Unless otherwise stipulated in the Circular, the opening, use, alteration, and closing of foreign exchange accounts for donations shall be subject to the relevant regulations of foreign exchange administration for current accounts. The income of the accounts hereof shall include: donated foreign exchange funds remitted inward from overseas countries/regions and foreign exchange funds for donation to overseas countries/regions that have been transferred from the foreign exchange accounts of the current accounts under the same name or via foreign exchange purchases. Expenditures hereof shall include donations agreed upon in donation agreements as well as other donation expenditures.

Income/expenditure of foreign exchange accounts for donations by domestic representative institutions of overseas non-governmental organizations (NGOs) shall include foreign exchange funds for donations to projects agreed upon by the general headquarters of overseas NGOs and for the legal expenditures incurred in China.

In the event that domestic enterprises accept/make donations from/to overseas profit-making institutions or overseas individuals, the opening, use, alteration, and closing of their foreign exchange accounts for donations shall be subject to the relevant regulations concerning the administration of foreign exchange accounts under the current account.

Article 4. Domestic institutions shall not carry out the account procedures for entry and outward payments of donated foreign exchange funds unless the relevant materials have been provided and approved by the banks in compliance with the Circular.

Article 5. In the event of accepting/making donations from/to overseas non-profit institutions by domestic enterprises, the domestic enterprises shall provide the following materials to the banks:

- (1) An application. (In the application the domestic enterprises must truthfully guarantee and affirm that their donations shall not be in violation of any relevant prohibitions of the state, that all procedures such as approval and filing have been conducted in line with the relevant regulations of the state, that the overseas institutions from/to which they accept/make donations are non-profit institutions, and that the domestic enterprises shall use the donated funds in strict accordance with the donation agreements and shall be held legally responsible for any issues arising therefrom. See Annex 1 for the format);
- (2) A photocopy of the business license of the enterprise;
- (3) A notarized donation agreement specifying the purpose of the fund;
- (4) Supporting documents proving the legal overseas registration and establishment of the overseas non-profit institutions (accompanied by Chinese translations);
- (5) Other required materials when the aforesaid materials fail to sufficiently prove the validity of the transaction.

When domestic enterprises accept/make donations from/to overseas profit-making institutions or overseas individuals, the relevant procedures shall be conducted in line with the relevant regulations on cross-border investments and external liabilities and claims.

Article 6. When donations are made/accepted by government organs at or above the county level and some social organizations (see Annex 2 for the list) that do not need to register or that are exempt from social organization registration according to the relevant regulations, the relevant procedures for receipt and payment of foreign exchange shall be carried out with the aforesaid application at the banks.

Article 7. Domestic representative institutions of overseas NGOs shall carry out the procedures for account entry of foreign exchange with the aforesaid application and the donation agreement between the general headquarters of the overseas NGO and the domestic party receiving the donation.

Article 8. When domestic institutions other than those prescribed in Article 5, 6, and 7 herein carry out receipt and payment of donations in foreign exchange, the following

materials shall be provided to the banks:

- (1) An application. (In the application the domestic enterprisesⁱ must truthfully guarantee and affirm that their donations shall not be in violation of any relevant prohibitions of the state, that they have carried out all procedures, such as the approval and filing in compliance with the relevant regulations of the state, and that they shall be held legally responsible for any issues arising therefrom);
- (2) A photocopy of the registration certification issued by the relevant authorities;
- (3) The donation agreement specifying the purpose of the fund.

When national religious organizations accept donations in foreign exchange equivalent to RMB 1,000,000 or more in a lump sum, the supporting documents for the approval of the donation hereof by the State Administration for Religious Affairs shall also be provided. When religious sites, such as Buddhist temples, Taoist temples, mosques and churches, and local religious organizations accept donations in foreign exchange equivalent to RMB 1,000,000 or more in a lump sum, supporting documents for approval of the donation hereof by the people's government at the provincial level in the places where the aforesaid sites and organizations are located shall also be provided.

Article 9. In the event of donations to overseas countries/regions by domestic institutions, other than such materials as prescribed herein, the Tax Certificates for Foreign Payments under Trade in Services, Profits, Current Transfers, and Partial Capital Accounts shall also be submitted according to the relevant regulations.

Article 10. In the event of carrying out the receipt and payment of donations in foreign exchange for domestic institutions, the banks shall examine the relevant materials according to the relevant regulations and report in a timely manner to the administrative foreign exchange authorities in the locality where they are located any information regarding suspicious or abnormal receipt/payment of donations in foreign exchange.

The banks shall, on the examination documents, specify the date and amount of the transaction and affix their business seal. The relevant documents shall be preserved in the archives for a period of 5 years for future reference.

Article 11. The Administrative foreign exchange authorities shall, according to the relevant laws, supervise and administer the receipt and payment of donations in foreign exchange according to the laws and regulations and shall enhance the off-site supervision thereof.

Article 12. Conduct in violation of the Circular and the relevant regulations on foreign exchange administration shall be punished in accordance with such regulations as the Regulations of the People's Republic of China on Foreign Exchange Administration.

Article 13. This Circular shall enter into force as of March 1, 2010. Should there be any

difference between previous regulations and this Circular, this Circular shall prevail.

Upon receipt of this Circular, the branches of the SAFE in a timely manner shall forward it to their subdivisions, city commercial banks, rural commercial banks, and foreign banks within their jurisdiction. The Chinese-funded designated foreign exchange banks shall in a timely manner forward it to their branches and divisions. In the event of any problem arising from implementation, kindly provide feedback to the SAFE promptly.

Appendix 1:

**Application by Domestic Enterprises to Accept/Make Foreign Exchange Donations
[Translation by Human Rights in China]**

_____ Bank:

I, the applicant company, hereby apply to accept/make foreign exchange donations of \$ _____ (amount), from/to overseas non-profit institution _____ (name) for the purpose(s) of _____.

I solemnly guarantee: The enterprise's conduct of accepting/making foreign exchange donations is not in violation of any relevant prohibitions of the state, that we have carried out all procedures, such as the approval and filing in compliance with the relevant regulations of the state that, the overseas institution _____(name) is a non-profit institution. The enterprise will use the donation strictly in accordance with the donation agreement, and is willing to assume all legal liabilities arising therefrom.

Contact Person:

Contact Tel:

Applicant Enterprise (Signature):

Date:

Appendix 2:

**List of Organizations Exempted from Registration of Social Organizations
By the Ministry of Civil Affairs
[Translation by Human Rights in China]**

According to the *Notice on Relevant Issues of Certain Organizations Exempted from Social Organization Registration* (Minfa no. 256 [2000], December 5, 2000) and the *Notice of Certain Social Organizations Exempt from Social Organization Registration* (Minfa no. 257 [2000], December 5, 2000) issued by the Ministry of Civil Affairs, the organizations that do not need to register and are exempted from registration are:

1. Government-authorized people's organizations that participate in the Chinese People's Political Consultative Conference: the All-China Federation of Trade Unions, the Communist Youth League of China, All-China Women's Federation, China Association for Science and Technology, the All-China Federation of Returned Overseas Chinese, All-China Federation of Taiwan Compatriots, All-China Youth Federation, All-China Federation of Industry and Commerce.
2. Social organizations approved by the State Council may be exempt from registration: the Chinese Federation of Literary and Art Circles, the Chinese Writers Association, the All-China Journalists Association, the Chinese People's Association for Friendship with Foreign Countries, the Chinese People's Institute of Foreign Affairs, China Council for Promotion of International Trade, China Disabled Persons' Federation, Soong Ching Ling Foundation, the China Law Society, Red Cross Society of China, Chinese Workers Ideological and Political Work Research Association, Western Returned Scholars Association, the Whampoa Military Academy Alumni Association, National Association of Vocational Education.
3. The 11 artists' associations that belong to the China Federation of Literature and Art Circles: the Chinese Traditional Opera Association, the China Film Association, the Chinese Musicians Association, China Artists Association, Chinese Ballad Singers Association, Chinese Dancers Association, the China Society for the Studies of Folk Literature and Art, the China Photographers Association, the Chinese Calligraphers Association, the Chinese Acrobats Association, the China Television Artists Association.
4. The provincial, autonomous regional, and municipal branches of the China Federation of Literature and Art Circles and the Chinese Writers Association that are directly under the central government.

ⁱ HRIC note: The Chinese original reads "domestic institutions" (境内机构).