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Key Points of the Administrative Measures for Registration of Foreign Debts and its Operational Guidelines

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The State Administration of Foreign Exchange (“SAFE”) released *the Administrative Measures for the Registration of Foreign Debt* (Hui Fa [2013] No.19, the “**Administrative Measures**”) and *the Operational Guidelines for the Administrative Measures* (the “**Operational Guidelines**”) on April 28, 2013. The Administrative Measures and Operational Guidelines will significantly alter the current registration system and administrative methods for foreign debts¹, and will take effect on May 13, 2013.

Compared with the current registration system and administrative methods for foreign debts, the following points of the Administrative Measures and Operational Guidelines are worthy of attention.

Improves the management methods of foreign debts registration

The Administrative Measures and the Operational Guidelines provide three different foreign debts registration methods for three types of debtors, which are financial departments, domestic banks and other domestic debtors:

- a) Financial department debtors shall within the first 10 business days of each month submit all contract executions, drawings, settlement and purchase of foreign exchange, repayments and changes of accounts regarding foreign debts to SAFE on a case-by-case basis;

¹ Foreign debts described herein shall refer to debt borrowed from international financial institutions, foreign governments, financial institutions, enterprises or other institutions outside the People’s Republic of China by domestic organizations, enterprises or financial institutions, where the debtors are contractually obligated to repay in foreign currency. Foreign debt herein shall include international financial institution loans, foreign government loans, foreign bank and financial institution loans, buyer’s credits, foreign enterprise loans, securities issued in foreign currency, international financial leases, and foreign debt in other forms.

- b) Domestic bank debtors shall submit the information of foreign debts through the relevant systems of SAFE on a case-by-case basis; and
- c) Other debtors (“**Non-bank Debtors**”) shall go through foreign debts contract-signing registration within 15 business days after execution of the relevant foreign debts contracts on a case-by-case basis.

The Operational Guidelines further clarify the requirements and scale of foreign debts for various enterprises (including ordinary foreign-invested enterprises, foreign-invested investment companies, foreign-invested rental companies and foreign-invested real estate companies), and specify that Non-bank Debtors shall conduct foreign debts registration for businesses of financing lease, financing leaseback and issuance of offshore bonds.

Cancels several approvals for foreign debts and simplifies the procedures of foreign debts management

The Administrative Measures repeal several approvals for foreign debts such as advances and payables under foreign goods or services trade, and foreign payables under financial asset deals other than foreign debt. Since these three types of businesses are not included in the foreign debts scale, foreign debts registration is not required. The Administrative Measures also specify that the opening of foreign debts accounts, settlement of foreign exchange, and repayment of principal and payment of interest shall be reviewed and handled by the designated foreign exchange banks directly, while the foreign debts registration shall be conducted by the local SAFE branch of the debtor.

Clarifies the foreign exchange management for foreign guarantees under domestic loans

According to the Administrative Measures, qualified debtors can accept guarantees provided by foreign entities and individuals when borrowing money from domestic financial institutions (“**Foreign Guarantee under Domestic Loans**”). Foreign-invested enterprises may execute foreign guarantee contracts directly, while domestic companies must first apply for a guarantee amount with SAFE.

In principle, the management method for Foreign Guarantee under Domestic Loans is the “Creditor Assembly Registration”, which means that the financial institution creditors shall within the first 10 business days of each month submit the data regarding Foreign Guarantee under Domestic Loans to SAFE. In case that the performance of a foreign guarantee occurs, the foreign guarantee shall become the foreign debts of the debtors, and the debtors shall go through the foreign debts registration procedures. Where the debtors are foreign-invested

enterprises, the performed amount under the foreign guarantees shall be included into and controlled within the Investment Balance² or foreign debts scale.

Clarifies foreign exchange management for the foreign transfer of non-performing assets

The Administrative Measures and the Operational Guidelines provide that the foreign transfer of non-performing assets by domestic entities shall obtain prior approval from SAFE, and the offshore investors shall go through the filing for the foreign transfer of non-performing assets within 15 business days after obtaining approval. The Operational Guidelines also stipulate the procedures regarding the purchase and payment of foreign exchange for transfer revenues, and further provides that domestic guarantees already listed in the abovementioned filings will not constitute foreign guarantees solely due to the foreign transfer of non-performing assets.

Clarifies the procedures for foreign debts registration and management

To refine the management requirements and procedures of foreign debts registration and related matters, the Operational Guidelines divide foreign debts management matters into 15 items, which consist of the following:

- a) Non-bank Debtors to go through foreign debts contract-signing registration,
- b) Financial departments and banks to go through foreign debts registration;
- c) Banks to open and close foreign debts accounts for Non-bank Debtors;
- d) Non-bank Debtors to file drawings in the form of non-funds transfer;
- e) Non-bank Debtors to file repayment of principal and payment of interest in the form of non-funds transfer;
- f) Banks to handle foreign exchange settlements under foreign debts for Non-bank Debtors;
- g) Foreign debts cancellation registration;
- h) Domestic enterprises to go through the procedures of foreign guarantee under domestic loans;
- i) Financial institutions to handle the settlement and purchase of foreign exchange for performed amount under foreign guarantee;
- j) Non-bank debtors to go through the procedures for foreign payment of the guarantee fees;

² Investment Balance refers to the balance between the total investment amount and the registered capital of a foreign-invested enterprise.

- k) Approvals for receiving, payment and exchange of foreign exchange involved in foreign transfer of non-performing assets;
- l) Filings by foreign investors of non-performing assets and approval for the purchase and payment of foreign exchange;
- m) Banks to handle drawings in form of funds transfer under foreign debts for Non-bank Debtors;
- n) Banks to handle repayment of principal and payment of interest in the form of funds transfer under foreign debts for Non-bank Debtors;
- o) Banks to handle delivery performance under foreign debts hedging for Non-bank Debtors.

Repeals several regulations related to foreign debts management

SAFE announced its repeal of eight regulations in regard to foreign debts management including: *the Circular of SAFE on Issues Concerning the Improvement of the Administration of Foreign Debts* (Hui Fa [2005] No.74) and *the Circular of SAFE on Issues Concerning Management on Filings of Guarantees Involved in Transfer of Non-performing Assets by Financing Asset Management Companies* (Hui Fa [2011] No.13).

Important Announcement

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