

Summary of the Circular of the State Administration of Foreign Exchange on Issues Concerning the Foreign Exchange Administration of Overseas Loans of Domestic Enterprises

On June 9, the State Administration of Foreign Exchange (the "SAFE") promulgated the Circular on Issues Concerning the Foreign Exchange Administration of Overseas Loans of Domestic Enterprises (No.24[2009]) (the "Circular"), which will become effective on August 1, 2009. As the Circular takes into effect, in case of any conflicts between the Circular and the terms of current Circular of the State Administration of Foreign Exchange on Issues Concerning the Management of Internal Operation of Foreign Exchange Funds of Transnational Companies (No. 104 [2004]) concerning the foreign exchange administration of overseas loans, the Circular will prevail. Pursuant to the Circular, a qualified domestic enterprise (the "Lender") may directly provide a loan within the approved limit as well as in accordance with the amount, interest rate and term as agreed on in contract to its wholly-owned subsidiary enterprises which are legally established abroad or overseas enterprises in which it holds shares (the "Borrower"). The branch of foreign exchange department of the SAFE of the place where a Lender is located (the "Foreign Exchange Bureau") will be responsible for the supervision and administration of such matters concerning an overseas loan as approval of limit, registration, special account, settlement of foreign exchange and funds transfer. The Circular increases the types of entities which are qualified to provide overseas loans, and broadens the range of overseas loan sources. Meanwhile, it simplifies the procedures for approval and settlement of foreign exchange for overseas loans, improves the system of statistical monitoring and risk prevention and provides substantial convenience to domestic enterprises for their "going out" strategies.

The main ideas of the Circular are as follows:

1. Increasing kinds of Lenders.

The Circular increases the types of entities which are qualified to provide overseas loans. Specifically, the Circular allows all kinds of domestic enterprises to provide qualified overseas loans, as opposed to the current rules which require the Lenders to transnational companies. Pursuant to the Circular, the Lender and the Borrower shall meet the following conditions:

- (1) both the Lender and the Borrower are duly incorporated and registered, and have paid off their registered capital in full;
- (2) both the Lender and the Borrower have a history of continuous good standing, sound financial and internal control systems, and are not found to have committed any violation of foreign exchange regulations over the last three years;
- (3) all the overseas direct investment projects of the Lender in the past years have been

approved by the domestic competent department of overseas investments and the foreign exchange registration formalities for these projects have been completed at the competent Foreign Exchange Bureau. The rating of the Lender in the latest annual joint inspection of overseas investment covering the Lender reaches Grade II or higher (unless the length of existence of the Lender is less than one year); and

- (4) for a Lender which has been engaged in overseas loans upon approval, the last overseas loan granted is in a normal operation and no breach of contract has taken place.

2. Broadening the sources of funds for overseas loans.

A Lender may grant overseas loans to Borrowers with its own foreign exchange funds, the foreign exchange funds purchased with RMB funds and the funds in the foreign currency fund pool approved by competent Foreign Exchange Bureau.

3. Implementing balance management for overseas loans.

A domestic enterprise may remit funds abroad in a lump sum or in installments within the overseas loans limit approved by the Foreign Exchange Bureau. The term of validity of the overseas loans limit is two years from the date when the Lender obtains the approval of the overseas loans limit from the Foreign Exchange Bureau. Upon the expiry of such term, if the Lender needs to continue to use the overseas loans limit, it shall submit an application for renewal to the Foreign Exchange Bureau of the place where the Lender is located within one month before the expiry of this term. The balance of the overseas loans granted by a Lender shall not exceed 30% of its ownership interests or the agreed amount of Chinese investment for which the relevant registration formalities have been completed by the Borrower. If an enterprise indeed needs to exceed the aforesaid limits, it shall submit relevant application to the SAFE for examination and approval after being initially examined by the Foreign Exchange Bureau of the place where the Lender is located.

4. Application and approval of overseas loans.

A lender shall apply for carrying out the overseas loan business at the Foreign Exchange Bureau of the place where it is located and submit the following materials:

- (1) a written application, including but not limited to: basic information of the Lender, basic information of the overseas enterprise, amount of the overseas loan to be granted, sources of funds and a commitment letter for the overseas loan (basically including (i) the purpose of the overseas loan conforms to the laws and administrative regulations of China and the country or region of the Borrower, (ii) the principal and interest of the loan granted will be timely recovered according to the contract and (iii) in the event that China's balance of payment is seriously threatened, the Lender will timely take back the overseas loan funds according to the requirements of the SAFE, etc.);
- (2) the loan agreement signed by the Lender and the Borrower or an entrusted loan agreement signed by the Lender, the Borrower and the entrusted domestic designated foreign exchange bank or finance company which will clarify the amount, interest rate, term, guarantee manner, methods for repayment of principal and payment of interest, etc.;
- (3) the latest financial audit report of the Lender (if the Lender is an FIE, it shall have passed the annual joint inspection of FIEs for two consecutive years and provide its foreign exchange

registration certificate of FIEs and the form of foreign exchange receipts and disbursements for the last year), the industrial and commercial business license passing the annual inspection and a description of the overseas loan regarding its use and repayment, etc.. If the Lender intends to grant loans with its own foreign exchange funds, it shall provide a bank statement on its foreign exchange account at the end of last month before the date of application; if the lender intends to purchase foreign exchange for granting overseas loans, it shall indicate the amount of foreign exchange to be purchased;

- (4) the foreign exchange registration certificate for overseas investment and the latest financial audit report of the Borrower; and
- (5) other supplementary materials as may be required by the Foreign Exchange Bureau.

The Foreign Exchange Bureau of the place where the Lender is located shall, after receiving the complete application materials and verifying them as correct, make a decision of approval or disapproval within 20 working days; in the case of approval, it shall authorize the limit of the overseas loans at the mean time.

5. Settlement of exchange and funds transfer.

A Lender may, after acquiring the overseas loan limit authorized by the Foreign Exchange Bureau, directly apply for a special account for overseas loans at a designated foreign exchange bank with the approval documents. If the Lender intends to grant two or more overseas loans, it may open a single special account for such overseas loans and transfer corresponding funds through this account. As regarding the transfer and settlement of exchange for funds between the special account and other domestic foreign exchange accounts of the Lender, the Lender may handle them directly at a designed foreign exchange bank with the overseas loan approval documents, without special approval by the Foreign Exchange Bureau.

If you have any questions about the above information, please feel free to contact us. Thank you.

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